

2SSB 5664 - H AMD 1300

By Representative Hansen

WITHDRAWN 03/03/2022

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 10.77.010 and 2021 c 263 s 9 are each reenacted and  
4 amended to read as follows:

5 As used in this chapter:

6 (1) "Admission" means acceptance based on medical necessity, of a  
7 person as a patient.

8 (2) "Commitment" means the determination by a court that a person  
9 should be detained for a period of either evaluation or treatment, or  
10 both, in an inpatient or a less-restrictive setting.

11 (3) "Community behavioral health agency" has the same meaning as  
12 "licensed or certified behavioral health agency" defined in RCW  
13 71.24.025.

14 (4) "Conditional release" means modification of a court-ordered  
15 commitment, which may be revoked upon violation of any of its terms.

16 (5) A "criminally insane" person means any person who has been  
17 acquitted of a crime charged by reason of insanity, and thereupon  
18 found to be a substantial danger to other persons or to present a  
19 substantial likelihood of committing criminal acts jeopardizing  
20 public safety or security unless kept under further control by the  
21 court or other persons or institutions.

22 (6) "Department" means the state department of social and health  
23 services.

24 (7) "Designated crisis responder" has the same meaning as  
25 provided in RCW 71.05.020.

26 (8) "Detention" or "detain" means the lawful confinement of a  
27 person, under the provisions of this chapter, pending evaluation.

28 (9) "Developmental disabilities professional" means a person who  
29 has specialized training and three years of experience in directly  
30 treating or working with persons with developmental disabilities and  
31 is a psychiatrist or psychologist, or a social worker, and such other

1 developmental disabilities professionals as may be defined by rules  
2 adopted by the secretary.

3 (10) "Developmental disability" means the condition as defined in  
4 RCW 71A.10.020(5).

5 (11) "Discharge" means the termination of hospital medical  
6 authority. The commitment may remain in place, be terminated, or be  
7 amended by court order.

8 (12) "Furlough" means an authorized leave of absence for a  
9 resident of a state institution operated by the department designated  
10 for the custody, care, and treatment of the criminally insane,  
11 consistent with an order of conditional release from the court under  
12 this chapter, without any requirement that the resident be  
13 accompanied by, or be in the custody of, any law enforcement or  
14 institutional staff, while on such unescorted leave.

15 (13) "Habilitative services" means those services provided by  
16 program personnel to assist persons in acquiring and maintaining life  
17 skills and in raising their levels of physical, mental, social, and  
18 vocational functioning. Habilitative services include education,  
19 training for employment, and therapy. The habilitative process shall  
20 be undertaken with recognition of the risk to the public safety  
21 presented by the person being assisted as manifested by prior charged  
22 criminal conduct.

23 (14) "History of one or more violent acts" means violent acts  
24 committed during: (a) The ten-year period of time prior to the filing  
25 of criminal charges; plus (b) the amount of time equal to time spent  
26 during the ten-year period in a mental health facility or in  
27 confinement as a result of a criminal conviction.

28 (15) "Immediate family member" means a spouse, child, stepchild,  
29 parent, stepparent, grandparent, sibling, or domestic partner.

30 (16) "Incompetency" means a person lacks the capacity to  
31 understand the nature of the proceedings against him or her or to  
32 assist in his or her own defense as a result of mental disease or  
33 defect.

34 (17) "Indigent" means any person who is financially unable to  
35 obtain counsel or other necessary expert or professional services  
36 without causing substantial hardship to the person or his or her  
37 family.

38 (18) "Individualized service plan" means a plan prepared by a  
39 developmental disabilities professional with other professionals as a

1 team, for an individual with developmental disabilities, which shall  
2 state:

3 (a) The nature of the person's specific problems, prior charged  
4 criminal behavior, and habilitation needs;

5 (b) The conditions and strategies necessary to achieve the  
6 purposes of habilitation;

7 (c) The intermediate and long-range goals of the habilitation  
8 program, with a projected timetable for the attainment;

9 (d) The rationale for using this plan of habilitation to achieve  
10 those intermediate and long-range goals;

11 (e) The staff responsible for carrying out the plan;

12 (f) Where relevant in light of past criminal behavior and due  
13 consideration for public safety, the criteria for proposed movement  
14 to less-restrictive settings, criteria for proposed eventual release,  
15 and a projected possible date for release; and

16 (g) The type of residence immediately anticipated for the person  
17 and possible future types of residences.

18 (19) "Professional person" means:

19 (a) A psychiatrist licensed as a physician and surgeon in this  
20 state who has, in addition, completed three years of graduate  
21 training in psychiatry in a program approved by the American medical  
22 association or the American osteopathic association and is certified  
23 or eligible to be certified by the American board of psychiatry and  
24 neurology or the American osteopathic board of neurology and  
25 psychiatry;

26 (b) A psychologist licensed as a psychologist pursuant to chapter  
27 18.83 RCW; (~~(e)~~)

28 (c) A psychiatric advanced registered nurse practitioner, as  
29 defined in RCW 71.05.020; or

30 (d) A social worker with a master's or further advanced degree  
31 from a social work educational program accredited and approved as  
32 provided in RCW 18.320.010.

33 (20) "Release" means legal termination of the court-ordered  
34 commitment under the provisions of this chapter.

35 (21) "Secretary" means the secretary of the department of social  
36 and health services or his or her designee.

37 (22) "Treatment" means any currently standardized medical or  
38 mental health procedure including medication.

39 (23) "Treatment records" include registration and all other  
40 records concerning persons who are receiving or who at any time have

1 received services for mental illness, which are maintained by the  
2 department, by behavioral health administrative services  
3 organizations and their staffs, by managed care organizations and  
4 their staffs, and by treatment facilities. Treatment records do not  
5 include notes or records maintained for personal use by a person  
6 providing treatment services for the department, behavioral health  
7 administrative services organizations, managed care organizations, or  
8 a treatment facility if the notes or records are not available to  
9 others.

10 (24) "Violent act" means behavior that: (a) (i) Resulted in; (ii)  
11 if completed as intended would have resulted in; or (iii) was  
12 threatened to be carried out by a person who had the intent and  
13 opportunity to carry out the threat and would have resulted in,  
14 homicide, nonfatal injuries, or substantial damage to property; or  
15 (b) recklessly creates an immediate risk of serious physical injury  
16 to another person. As used in this subsection, "nonfatal injuries"  
17 means physical pain or injury, illness, or an impairment of physical  
18 condition. "Nonfatal injuries" shall be construed to be consistent  
19 with the definition of "bodily injury," as defined in RCW 9A.04.110.

20 (25) "Authority" means the Washington state health care  
21 authority.

22 **Sec. 2.** RCW 10.77.060 and 2021 c 263 s 5 are each amended to  
23 read as follows:

24 (1) (a) Whenever a defendant has pleaded not guilty by reason of  
25 insanity, or there is reason to doubt his or her competency, the  
26 court on its own motion or on the motion of any party shall either  
27 appoint or request the secretary to designate a qualified expert or  
28 professional person, who shall be approved by the prosecuting  
29 attorney, to evaluate and report upon the mental condition of the  
30 defendant.

31 (b) The signed order of the court shall serve as authority for  
32 the evaluator to be given access to all records held by any mental  
33 health, medical, educational, or correctional facility that relate to  
34 the present or past mental, emotional, or physical condition of the  
35 defendant. If the court is advised by any party that the defendant  
36 may have a developmental disability, the evaluation must be performed  
37 by a developmental disabilities professional and the evaluator shall  
38 have access to records of the developmental disabilities  
39 administration of the department.

1 (c) The evaluator shall assess the defendant in a jail, detention  
2 facility, in the community, or in court to determine whether a period  
3 of inpatient commitment will be necessary to complete an accurate  
4 evaluation. If inpatient commitment is needed, the signed order of  
5 the court shall serve as authority for the evaluator to request the  
6 jail or detention facility to transport the defendant to a hospital  
7 or secure mental health facility for a period of commitment not to  
8 exceed fifteen days from the time of admission to the facility.  
9 Otherwise, the evaluator shall complete the evaluation.

10 (d) The court may commit the defendant for evaluation to a  
11 hospital or secure mental health facility without an assessment if:  
12 (i) The defendant is charged with murder in the first or second  
13 degree; (ii) the court finds that it is more likely than not that an  
14 evaluation in the jail will be inadequate to complete an accurate  
15 evaluation; or (iii) the court finds that an evaluation outside the  
16 jail setting is necessary for the health, safety, or welfare of the  
17 defendant. The court shall not order an initial inpatient evaluation  
18 for any purpose other than a competency evaluation.

19 (e) The order shall indicate whether, in the event the defendant  
20 is committed to a hospital or secure mental health facility for  
21 evaluation, all parties agree to waive the presence of the defendant  
22 or to the defendant's remote participation at a subsequent competency  
23 hearing or presentation of an agreed order if the recommendation of  
24 the evaluator is for continuation of the stay of criminal  
25 proceedings, or if the opinion of the evaluator is that the defendant  
26 remains incompetent and there is no remaining restoration period, and  
27 the hearing is held prior to the expiration of the authorized  
28 commitment period.

29 (f) When a defendant is ordered to be evaluated under this  
30 subsection (1), or when a party or the court determines at first  
31 appearance that an order for evaluation under this subsection will be  
32 requested or ordered if charges are pursued, the court may delay  
33 granting bail until the defendant has been evaluated for competency  
34 or sanity and appears before the court. Following the evaluation, in  
35 determining bail the court shall consider: (i) Recommendations of the  
36 evaluator regarding the defendant's competency, sanity, or diminished  
37 capacity; (ii) whether the defendant has a recent history of one or  
38 more violent acts; (iii) whether the defendant has previously been  
39 acquitted by reason of insanity or found incompetent; (iv) whether it  
40 is reasonably likely the defendant will fail to appear for a future

1 court hearing; and (v) whether the defendant is a threat to public  
2 safety.

3 (2) The court may direct that a qualified expert or professional  
4 person retained by or appointed for the defendant be permitted to  
5 witness the evaluation authorized by subsection (1) of this section,  
6 and that the defendant shall have access to all information obtained  
7 by the court appointed experts or professional persons. The  
8 defendant's expert or professional person shall have the right to  
9 file his or her own report following the guidelines of subsection (3)  
10 of this section. If the defendant is indigent, the court shall upon  
11 the request of the defendant assist him or her in obtaining an expert  
12 or professional person.

13 (3) The report of the evaluation shall include the following:

14 (a) A description of the nature of the evaluation;

15 (b) A diagnosis or description of the current mental status of  
16 the defendant;

17 (c) If the defendant suffers from a mental disease or defect, or  
18 has a developmental disability, an opinion as to competency;

19 (d) If the defendant has indicated his or her intention to rely  
20 on the defense of insanity pursuant to RCW 10.77.030, and an  
21 evaluation and report by an expert or professional person has been  
22 provided concluding that the defendant was criminally insane at the  
23 time of the alleged offense, an opinion as to the defendant's sanity  
24 at the time of the act, and an opinion as to whether the defendant  
25 presents a substantial danger to other persons, or presents a  
26 substantial likelihood of committing criminal acts jeopardizing  
27 public safety or security, unless kept under further control by the  
28 court or other persons or institutions, provided that no opinion  
29 shall be rendered under this subsection (3)(d) unless the evaluator  
30 or court determines that the defendant is competent to stand trial;

31 (e) When directed by the court, if an evaluation and report by an  
32 expert or professional person has been provided concluding that the  
33 defendant lacked the capacity at the time of the offense to form the  
34 mental state necessary to commit the charged offense, an opinion as  
35 to the capacity of the defendant to have a particular state of mind  
36 which is an element of the offense charged;

37 (f) An opinion as to whether the defendant should be evaluated by  
38 a designated crisis responder under chapter 71.05 RCW.

1 (4) The secretary may execute such agreements as appropriate and  
2 necessary to implement this section and may choose to designate more  
3 than one evaluator.

4 (5) In the event that a person remains in jail more than 21 days  
5 after service on the department of a court order to transport the  
6 person to a facility designated by the department for inpatient  
7 competency restoration treatment, upon the request of any party and  
8 with notice to all parties, the department shall perform a competency  
9 to stand trial status check to determine if the circumstances of the  
10 person have changed such that the court should authorize an updated  
11 competency evaluation. The status update shall be provided to the  
12 parties and the court. Status updates may be provided at reasonable  
13 intervals.

14 **Sec. 3.** RCW 10.77.068 and 2015 c 5 s 1 are each amended to read  
15 as follows:

16 (1) (a) The legislature establishes ~~((the—following))~~ a  
17 performance ~~((targets and maximum time limits for the timeliness of~~  
18 ~~the completion of accurate and reliable evaluations of competency to~~  
19 ~~stand trial and admissions for inpatient restoration services related~~  
20 ~~to competency to proceed or stand trial for adult criminal~~  
21 ~~defendants))~~ target of seven days or fewer for the following services  
22 related to competency to stand trial, when access to the services is  
23 legally authorized:

24 (i) To extend an offer of admission to a defendant in pretrial  
25 custody for inpatient competency evaluation or inpatient competency  
26 restoration services;

27 (ii) To extend an offer of admission to a defendant ordered to be  
28 committed to a state hospital following dismissal of charges based on  
29 incompetency to stand trial under RCW 10.77.086; and

30 (iii) To complete a competency evaluation in jail and distribute  
31 the evaluation report.

32 (b) The legislature establishes a performance target of 21 days  
33 or fewer to complete a competency evaluation in the community and  
34 distribute the evaluation report.

35 (2) A maximum time limit of 14 days is established to complete  
36 the services specified in subsection (1) (a) of this section, subject  
37 to the limitations under subsection (9) of this section.

38 (3) The legislature recognizes that these targets may not be  
39 achievable in all cases ~~((without compromise to the quality of~~

1 ~~competency evaluation and restoration services)), but intends for the~~  
2 ~~department to manage, allocate, and request appropriations for~~  
3 ~~resources in order to meet these targets whenever possible without~~  
4 ~~sacrificing the accuracy and quality of competency ((evaluations and~~  
5 ~~restorations, and to otherwise make sustainable improvements and~~  
6 ~~track performance related to the timeliness of competency services:~~

7 ~~(i) For a state hospital to extend an offer of admission to a~~  
8 ~~defendant in pretrial custody for legally authorized evaluation~~  
9 ~~services related to competency, or to extend an offer of admission~~  
10 ~~for legally authorized services following dismissal of charges based~~  
11 ~~on incompetence to proceed or stand trial:~~

12 ~~(A) A performance target of seven days or less; and~~

13 ~~(B) A maximum time limit of fourteen days;~~

14 ~~(ii) For a state hospital to extend an offer of admission to a~~  
15 ~~defendant in pretrial custody for legally authorized inpatient~~  
16 ~~restoration treatment related to competency:~~

17 ~~(A) A performance target of seven days or less; and~~

18 ~~(B) A maximum time limit of fourteen days;~~

19 ~~(iii) For completion of a competency evaluation in jail and~~  
20 ~~distribution of the evaluation report for a defendant in pretrial~~  
21 ~~custody:~~

22 ~~(A) A performance target of seven days or less; and~~

23 ~~(B) A maximum time limit of fourteen days, plus an additional~~  
24 ~~seven-day extension if needed for clinical reasons to complete the~~  
25 ~~evaluation at the determination of the department;~~

26 ~~(iv) For completion of a competency evaluation in the community~~  
27 ~~and distribution of the evaluation report for a defendant who is~~  
28 ~~released from custody and makes a reasonable effort to cooperate with~~  
29 ~~the evaluation, a performance target of twenty-one days or less))~~  
30 services.

31 ~~((b)) The time periods measured in ((these performance targets~~  
32 ~~and maximum time limits)) subsection (1) of this section shall run~~  
33 ~~from the date on which the state hospital receives the court referral~~  
34 ~~and charging documents, discovery, police reports, the names and~~  
35 ~~addresses of the attorneys for the defendant and state or county, the~~  
36 ~~name of the judge ordering the evaluation, information about the~~  
37 ~~alleged crime, and criminal history information related to the~~  
38 ~~defendant. ((The maximum time limits in (a) of this subsection shall~~  
39 ~~be phased in over a one-year period beginning July 1, 2015, in a~~



1 manner that results in measurable incremental progress toward meeting  
2 the time limits over the course of the year.

3 ~~(e))~~ (4) It shall be a defense to an allegation that the  
4 department has exceeded the maximum time limits for completion of  
5 competency services described in ~~((a) of this))~~ subsection (2) of  
6 this section if the department can demonstrate by a preponderance of  
7 the evidence that the reason for exceeding the maximum time limits  
8 was outside of the department's control including, but not limited  
9 to, the following circumstances:

10 ~~((i))~~ (a) Despite a timely request, the department has not  
11 received necessary medical ~~((clearance))~~ information regarding the  
12 current medical status of a defendant ~~((in pretrial custody for the~~  
13 ~~purposes of admission to a state hospital))~~;

14 ~~((ii))~~ (b) The individual circumstances of the defendant make  
15 accurate completion of an evaluation of competency to ~~((proceed or))~~  
16 stand trial dependent upon review of mental health, substance use  
17 disorder, or medical history information which is in the custody of a  
18 third party and cannot be immediately obtained by the department ~~((~~  
19 ~~Completion of a competency evaluation))~~, provided that completion  
20 shall not be postponed for procurement of ~~((mental health, substance~~  
21 ~~use disorder, or medical history))~~ information which is merely  
22 supplementary ~~((to the competency determination))~~;

23 ~~((iii))~~ (c) Additional time is needed for the defendant to no  
24 longer show active signs and symptoms of impairment related to  
25 substance use so that an accurate evaluation may be completed;

26 (d) The defendant is medically unavailable for competency  
27 evaluation or admission to a facility for competency restoration;

28 (e) Completion of the referral ~~((is frustrated by lack of))~~  
29 requires additional time to accommodate the availability or  
30 participation ~~((by))~~ of counsel, ~~((jail or))~~ court personnel,  
31 interpreters, or the defendant;

32 ~~((iv) The department does not have access to appropriate private~~  
33 ~~space to conduct a competency evaluation for a defendant in pretrial~~  
34 ~~custody;~~

35 ~~(v))~~ (f) The defendant asserts legal rights that result in a  
36 delay in the provision of competency services; or

37 ~~((vi))~~ (g) An unusual spike in the receipt of evaluation  
38 referrals or in the number of defendants requiring restoration  
39 services has occurred, causing temporary delays until the unexpected  
40 excess demand for competency services can be resolved.

1        ~~((2))~~ (5) The department shall provide written notice to the  
2 court when it will not be able to meet the maximum time limits under  
3 subsection (2) of this section and identify the reasons for the delay  
4 and provide a reasonable estimate of the time necessary to complete  
5 the competency service. Good cause for an extension for the  
6 additional time estimated by the department shall be presumed absent  
7 a written response from the court or a party received by the  
8 department within seven days.

9        (6) The department shall:

10        (a) Develop, document, and implement procedures to monitor the  
11 clinical status of defendants admitted to a state hospital for  
12 competency services that allow the state hospital to accomplish early  
13 discharge for defendants for whom clinical objectives have been  
14 achieved or may be achieved before expiration of the commitment  
15 period;

16        (b) Investigate the extent to which patients admitted to a state  
17 hospital under this chapter overstay time periods authorized by law  
18 and take reasonable steps to limit the time of commitment to  
19 authorized periods; and

20        (c) Establish written standards for the productivity of forensic  
21 evaluators and utilize these standards to internally review the  
22 performance of forensic evaluators.

23        ~~((3))~~ (7) Following any quarter in which a state hospital has  
24 failed to meet one or more of the performance targets or maximum time  
25 limits ~~((in))~~ under subsection (1) or (2) of this section ~~((after~~  
26 ~~full implementation of the performance target or maximum time~~  
27 ~~limit))~~, the department shall report to the executive and the  
28 legislature the extent of this deviation and describe any corrective  
29 action being taken to improve performance. This report ~~((must))~~ shall  
30 be made publicly available. An average may be used to determine  
31 timeliness under this subsection.

32        ~~((4) Beginning December 1, 2013, the))~~ (8) The department shall  
33 report annually to the legislature and the executive on the  
34 timeliness of services related to competency to ~~((proceed or))~~ stand  
35 trial and the timeliness with which court referrals accompanied by  
36 charging documents, discovery, and criminal history information are  
37 provided to the department relative to the signature date of the  
38 court order. The report must be in a form that is accessible to the  
39 public and that breaks down performance by county.

1       ~~((5))~~ (9) This section does not create any new entitlement or  
2 cause of action related to the timeliness of competency ~~((evaluations~~  
3 ~~or admission for inpatient restoration))~~ to stand trial services  
4 ~~((related to competency to proceed or stand trial))~~, nor can it form  
5 the basis for contempt sanctions under chapter 7.21 RCW or a motion  
6 to dismiss criminal charges.

7       **Sec. 4.** RCW 10.77.086 and 2019 c 326 s 4 are each amended to  
8 read as follows:

9       (1)~~((a)(i))~~ If the defendant is charged with a felony and  
10 determined to be incompetent, until he or she has regained the  
11 competency necessary to understand the proceedings against him or her  
12 and assist in his or her own defense, but in any event for a period  
13 of no longer than ~~((ninety))~~ 90 days, the court shall commit the  
14 defendant to the custody of the secretary for inpatient competency  
15 restoration~~((Based))~~, or may alternatively order the defendant to  
16 receive outpatient competency restoration based on a recommendation  
17 from a forensic navigator and input from the parties~~((, the court may~~  
18 ~~order the defendant to receive inpatient competency restoration or~~  
19 ~~outpatient competency restoration))~~.

20       ~~((A))~~ (a) To be eligible for an order for outpatient competency  
21 restoration, a defendant must be clinically appropriate and be  
22 willing to:

23       ~~((I))~~ (i) Adhere to medications or receive prescribed  
24 intramuscular medication; ~~((and~~  
25 ~~(II))~~ (ii) Abstain from alcohol and unprescribed drugs; and  
26 (iii) Comply with urinalysis or breathalyzer monitoring if  
27 needed.

28       ~~((B))~~ (b) If the court orders inpatient competency restoration,  
29 the department shall place the defendant in an appropriate facility  
30 of the department for competency restoration.

31       ~~((C))~~ (c) If the court orders outpatient competency  
32 restoration, the court shall modify conditions of release as needed  
33 to authorize the department to place the person in approved housing,  
34 which may include access to supported housing, affiliated with a  
35 contracted outpatient competency restoration program. The department,  
36 in conjunction with the health care authority, must establish rules  
37 for conditions of participation in the outpatient competency  
38 restoration program, which must include the defendant being subject  
39 to medication management ~~((and))~~. The court may order regular

1 urinalysis testing (~~for defendants who have a current substance use~~  
2 ~~disorder diagnosis~~). The outpatient competency restoration program  
3 shall monitor the defendant during the defendant's placement in the  
4 program and report any noncompliance or significant changes with  
5 respect to the defendant to the department and, if applicable, the  
6 forensic navigator.

7 ~~((D))~~ (d) If a defendant fails to comply with the restrictions  
8 of the outpatient restoration program such that restoration is no  
9 longer appropriate in that setting or the defendant is no longer  
10 clinically appropriate for outpatient competency restoration, the  
11 ~~(department shall remove the defendant from the outpatient~~  
12 ~~restoration program and place the defendant instead)~~ director of the  
13 outpatient competency restoration program shall notify the authority  
14 and the department of the need to terminate the outpatient competency  
15 restoration placement and intent to request placement for the  
16 defendant in an appropriate facility of the department for inpatient  
17 competency restoration (~~for no longer than the time allowed as if~~  
18 ~~the defendant had been initially placed into inpatient competency~~  
19 ~~restoration, in addition to reasonable time for transport to or from~~  
20 ~~the facility~~). The outpatient competency restoration program shall  
21 coordinate with the authority, the department, and any law  
22 enforcement personnel under (d)(i) of this subsection to ensure that  
23 the time period between termination and admission into the inpatient  
24 facility is as minimal as possible. The time period for inpatient  
25 competency restoration shall be reduced by the time period spent in  
26 active treatment within the outpatient competency restoration  
27 program, excluding time periods in which the defendant was absent  
28 from the program and all time from notice of termination of the  
29 outpatient competency restoration period through the defendant's  
30 admission to the facility. The department shall obtain a placement  
31 for the defendant within seven days of the notice of intent to  
32 terminate the outpatient competency restoration placement.

33 (i) The department may authorize a peace officer to detain the  
34 defendant into emergency custody for transport to the designated  
35 inpatient competency restoration facility. If medical clearance is  
36 required by the designated competency restoration facility before  
37 admission, the peace officer must transport the defendant to a crisis  
38 stabilization unit, evaluation and treatment facility, emergency  
39 department of a local hospital, or triage facility for medical  
40 clearance once a bed is available at the designated inpatient

1 competency restoration facility. The signed outpatient competency  
2 restoration order of the court shall serve as authority for the  
3 detention of the defendant under this subsection. This subsection  
4 does not preclude voluntary transportation of the defendant to a  
5 facility for inpatient competency restoration or for medical  
6 clearance, or authorize admission of the defendant into jail.

7 (ii) The department shall notify the court and parties of the  
8 ((change in placement)) defendant's admission for inpatient  
9 competency restoration before the close of the next judicial day. The  
10 court shall schedule a hearing within five days to review the  
11 ((placement and)) conditions of release of the defendant and  
12 anticipated release from treatment and issue appropriate orders.  
13 ((The standard of proof shall be a preponderance of the evidence, and  
14 the court may in its discretion render its decision based on written  
15 submissions, live testimony, or remote testimony.

16 (E)) (e) The court may not issue an order for outpatient  
17 competency restoration unless the department certifies that there is  
18 an available appropriate outpatient competency restoration program  
19 that has adequate space for the person at the time the order is  
20 issued or the court places the defendant under the guidance and  
21 control of a professional person identified in the court order.

22 ((ii) The ninety day period for competency restoration under  
23 this subsection (1) includes only the time the defendant is actually  
24 at the facility and is in addition to reasonable time for transport  
25 to or from the facility.

26 (b)) (2) For a defendant whose highest charge is a class C  
27 felony, or a class B felony that is not classified as violent under  
28 RCW 9.94A.030, the maximum time allowed for the initial competency  
29 restoration period ((of commitment for competency restoration)) is  
30 ((forty-five)) 45 days if the defendant is referred for inpatient  
31 competency restoration, or 90 days if the defendant is referred for  
32 outpatient competency restoration, provided that if the outpatient  
33 competency restoration placement is terminated and the defendant is  
34 subsequently admitted to an inpatient facility, the period of  
35 inpatient treatment during the first competency restoration period  
36 under this subsection shall not exceed 45 days. ((The forty-five day  
37 period includes only the time the defendant is actually at the  
38 facility and is in addition to reasonable time for transport to or  
39 from the facility.

1 ~~(e))~~ (3) If the court determines or the parties agree before the  
2 initial competency restoration period or at any subsequent stage of  
3 the proceedings that the defendant is unlikely to regain competency,  
4 the court may dismiss the charges without prejudice without ordering  
5 the defendant to undergo an initial or further period of competency  
6 restoration treatment, in which case the court shall order that the  
7 defendant be referred for evaluation for civil commitment in the  
8 manner provided in subsection ~~((4))~~ (5) of this section.

9 ~~((2))~~ (4) On or before expiration of the initial competency  
10 restoration period ~~((of commitment under subsection (1) of this~~  
11 ~~section))~~ the court shall conduct a hearing ~~((, at which it shall))~~ to  
12 determine whether ~~((or not))~~ the defendant is ~~((incompetent. (3))~~  
13 now competent to stand trial. If the court finds by a preponderance  
14 of the evidence that ~~((a))~~ the defendant ~~((charged with a felony))~~ is  
15 incompetent to stand trial, the court ~~((shall have the option of~~  
16 ~~extending the))~~ may order ~~((of commitment or alternative treatment))~~  
17 an extension of the competency restoration period for an additional  
18 period of ~~((ninety))~~ 90 days, but the court must at the same time  
19 ~~((of extension))~~ set a date for a ~~((prompt))~~ new hearing to determine  
20 the defendant's competency to stand trial before the expiration of  
21 ~~((the))~~ this second restoration period. The defendant, the  
22 defendant's attorney, ~~((or))~~ and the prosecutor ~~((has))~~ have the  
23 right to demand that the hearing be before a jury. No extension shall  
24 be ordered for a second or third competency restoration period ~~((as~~  
25 ~~provided in subsection (4) of this section))~~ if the defendant's  
26 incompetence has been determined by the secretary to be solely the  
27 result of a developmental disability which is such that competence is  
28 not reasonably likely to be regained during an extension. ~~((The~~  
29 ~~ninety-day period includes only the time the defendant is actually at~~  
30 ~~the facility and is in addition to reasonable time for transport to~~  
31 ~~or from the facility.~~

32 ~~(4) For persons charged with a felony, at))~~

33 (5) At the hearing upon the expiration of the second competency  
34 restoration period, or at the end of the first competency restoration  
35 period ~~((in the case of a))~~ if the defendant ~~((with a developmental~~  
36 ~~disability))~~ is ineligible for a second or third competency  
37 restoration period under subsection (4) of this section, if the jury  
38 or court finds that the defendant is incompetent ~~((, or if the court~~  
39 ~~or jury at any stage finds that the defendant is incompetent and the~~  
40 ~~court determines that the defendant is unlikely to regain competency,~~

1 ~~the charges shall be dismissed)~~ to stand trial, the court shall  
2 dismiss the charges without prejudice(~~(r)~~) and (~~the court shall~~)  
3 order the defendant to be committed to a state hospital (~~as defined~~  
4 ~~in RCW 72.23.010)~~) for up to (~~seventy-two~~) 120 hours if the  
5 defendant has not undergone competency restoration services and up to  
6 72 hours if the defendant engaged in competency restoration services  
7 starting from admission to the facility, excluding Saturdays,  
8 Sundays, and holidays, for evaluation for the purpose of filing a  
9 civil commitment petition under chapter 71.05 RCW. (~~The criminal~~  
10 ~~charges)~~) However, the court shall not (~~be dismissed~~) dismiss the  
11 charges if the court or jury finds that: (a) The defendant (i) is a  
12 substantial danger to other persons; or (ii) presents a substantial  
13 likelihood of committing criminal acts jeopardizing public safety or  
14 security; and (b) there is a substantial probability that the  
15 defendant will regain competency within a reasonable period of time.  
16 (~~In the event that~~) If the court or jury makes such a finding, the  
17 court may extend the period of commitment for up to an additional six  
18 months. (~~The six-month~~)

19 (6) Any period of competency restoration treatment under this  
20 section includes only the time the defendant is actually at the  
21 facility or is actively participating in an outpatient competency  
22 restoration program and is in addition to reasonable time for  
23 transport to or from the facility.

24 **Sec. 5.** RCW 10.77.088 and 2020 c 18 s 4 are each amended to read  
25 as follows:

26 (1) If the defendant is charged with a nonfelony crime which is a  
27 serious offense as identified in RCW 10.77.092 and found by the court  
28 to be not competent, then the court:

29 (a) Shall dismiss the proceedings without prejudice and detain  
30 the defendant for sufficient time to allow the designated crisis  
31 responder to evaluate the defendant and consider initial detention  
32 proceedings under chapter 71.05 RCW, unless the prosecutor objects to  
33 the dismissal and provides notice of a motion for an order for  
34 competency restoration treatment, in which case the court shall  
35 schedule a hearing within seven days (~~to determine whether to enter~~  
36 ~~an order of competency restoration~~)).

37 (b) At the hearing, the prosecuting attorney must establish that  
38 there is a compelling state interest to order competency restoration  
39 treatment for the defendant. The court may consider prior criminal

1 history, prior history in treatment, prior history of violence, the  
2 quality and severity of the pending charges, any history that  
3 suggests whether ~~((or not))~~ competency restoration treatment is  
4 likely to be successful, in addition to the factors listed under RCW  
5 10.77.092. If the prosecuting attorney proves by a preponderance of  
6 the evidence that there is a compelling state interest in ordering  
7 competency restoration treatment, then the court shall issue an order  
8 ~~((competency restoration))~~ in accordance with subsection (2)~~((a))~~  
9 of this section.

10 (2)~~((a))~~ If a court finds pursuant to subsection (1)(b) of this  
11 section that there is a compelling state interest in pursuing  
12 competency restoration treatment, ~~((then))~~ the court shall commit the  
13 defendant to the custody of the secretary for inpatient competency  
14 restoration~~((Based))~~, or may alternatively order the defendant to  
15 receive outpatient competency restoration based on a recommendation  
16 from a forensic navigator and input from the parties~~((, the court may~~  
17 ~~order the defendant to receive inpatient competency restoration or~~  
18 ~~outpatient competency restoration))~~.

19 ~~((i))~~ (a) To be eligible for an order for outpatient competency  
20 restoration, a defendant must be clinically appropriate and be  
21 willing to:

22 ~~((A))~~ (i) Adhere to medications or receive prescribed  
23 intramuscular medication; ~~((and~~  
24 ~~(B))~~ (ii) Abstain from alcohol and unprescribed drugs; and  
25 (iii) Comply with urinalysis or breathalyzer monitoring if  
26 needed.

27 ~~((ii))~~ (b) If the court orders inpatient competency  
28 restoration, the department shall place the defendant in an  
29 appropriate facility of the department for competency restoration  
30 under ~~((b))~~ subsection (3) of this ~~((subsection))~~ section.

31 ~~((iii))~~ (c) If the court orders outpatient competency  
32 restoration, the court shall modify conditions of release as needed  
33 to authorize the department to place the person in approved housing,  
34 which may include access to supported housing, affiliated with a  
35 contracted outpatient competency restoration program. The department,  
36 in conjunction with the health care authority, must establish rules  
37 for conditions of participation in the outpatient competency  
38 restoration program, which must include the defendant being subject  
39 to medication management ~~((and))~~. The court may order regular  
40 urinalysis testing ~~((for defendants who have a current substance use~~



1 ~~disorder diagnosis~~). The outpatient competency restoration program  
2 shall monitor the defendant during the defendant's placement in the  
3 program and report any noncompliance or significant changes with  
4 respect to the defendant to the department and, if applicable, the  
5 forensic navigator.

6 ~~((iv))~~ (d) If a defendant fails to comply with the restrictions  
7 of the outpatient competency restoration program such that  
8 restoration is no longer appropriate in that setting or the defendant  
9 is no longer clinically appropriate for outpatient competency  
10 restoration, the ~~((department shall remove the defendant from the  
11 outpatient restoration program. The department shall place the  
12 defendant instead))~~ director of the outpatient competency restoration  
13 program shall notify the authority and the department of the need to  
14 terminate the outpatient competency restoration placement and intent  
15 to request placement for the defendant in an appropriate facility of  
16 the department for inpatient competency restoration ((for no longer  
17 than twenty-nine days regardless of any time spent in outpatient  
18 competency restoration, in addition to reasonable time for transport  
19 to or from the facility)). The outpatient competency restoration  
20 program shall coordinate with the authority, the department, and any  
21 law enforcement personnel under (d)(i) of this subsection to ensure  
22 that the time period between termination and admission into the  
23 inpatient facility is as minimal as possible. The time period for  
24 inpatient competency restoration shall be reduced by the time period  
25 spent in active treatment within the outpatient competency  
26 restoration program, excluding time periods in which the defendant  
27 was absent from the program and all time from notice of termination  
28 of the outpatient competency restoration period through the  
29 defendant's admission to the facility. The department shall obtain a  
30 placement for the defendant within seven days of the notice of intent  
31 to terminate the outpatient competency restoration placement.

32 (i) The department may authorize a peace officer to detain the  
33 defendant into emergency custody for transport to the designated  
34 inpatient competency restoration facility. If medical clearance is  
35 required by the designated competency restoration facility before  
36 admission, the peace officer must transport the defendant to a crisis  
37 stabilization unit, evaluation and treatment facility, emergency  
38 department of a local hospital, or triage facility for medical  
39 clearance once a bed is available at the designated inpatient  
40 competency restoration facility. The signed outpatient competency

1 restoration order of the court shall serve as authority for the  
2 detention of the defendant under this subsection. This subsection  
3 does not preclude voluntary transportation of the defendant to a  
4 facility for inpatient competency restoration or for medical  
5 clearance, or authorize admission of the defendant into jail.

6 (ii) The department shall notify the court and parties of the  
7 ~~((change in placement))~~ defendant's admission for inpatient  
8 competency restoration before the close of the next judicial day. The  
9 court shall schedule a hearing within five days to review the  
10 ~~((placement and))~~ conditions of release of the defendant and  
11 anticipated release from treatment and issue appropriate orders.  
12 ~~((The standard of proof shall be a preponderance of the evidence, and~~  
13 ~~the court may in its discretion render its decision based on written~~  
14 ~~submissions, live testimony, or remote testimony.~~

15 ~~(v))~~ (e) The court may not issue an order for outpatient  
16 competency restoration unless the department certifies that there is  
17 an available appropriate outpatient restoration program that has  
18 adequate space for the person at the time the order is issued or the  
19 court places the defendant under the guidance and control of a  
20 professional person identified in the court order.

21 ~~((b))~~ (3) The placement under ~~((a))~~ subsection (2) of this  
22 ~~((subsection))~~ section shall not exceed ~~((twenty-nine))~~ 29 days if  
23 the defendant is ordered to receive inpatient competency restoration,  
24 ~~((or))~~ and shall not exceed ~~((ninety))~~ 90 days if the defendant is  
25 ordered to receive outpatient competency restoration. The court may  
26 order any combination of this subsection~~((, not to exceed ninety~~  
27 ~~days. This period must be considered to include only the time the~~  
28 ~~defendant is actually at the facility and shall be in addition to~~  
29 ~~reasonable time for transport to or from the facility)), but the~~  
30 total period of inpatient competency restoration may not exceed 29  
31 days.

32 ~~((e))~~ (4) If the court has determined or the parties agree that  
33 the defendant is unlikely to regain competency, the court may dismiss  
34 the charges without prejudice without ordering the defendant to  
35 undergo competency restoration treatment, in which case the court  
36 shall order that the defendant be referred for evaluation for civil  
37 commitment in the manner provided in ~~((d))~~ subsection (5) of this  
38 ~~((subsection))~~ section.

39 ~~((d-i))~~ (5)(a) If the proceedings are dismissed under RCW  
40 10.77.084 and the defendant was on conditional release at the time of

1 dismissal, the court shall order the designated crisis responder  
2 within that county to evaluate the defendant pursuant to chapter  
3 71.05 RCW. The evaluation may be conducted in any location chosen by  
4 the professional.

5 ~~((+iii))~~ (b) If the defendant was in custody and not on  
6 conditional release at the time of dismissal, the defendant shall be  
7 detained and sent to an evaluation and treatment facility for up to  
8 ~~((seventy-two))~~ 120 hours if the defendant has not undergone  
9 competency restoration services and up to 72 hours if the defendant  
10 engaged in competency restoration services, excluding Saturdays,  
11 Sundays, and holidays, for evaluation for purposes of filing a  
12 petition under chapter 71.05 RCW. The ~~((seventy-two))~~ 120-hour or 72-  
13 hour period shall commence upon the next nonholiday weekday following  
14 the court order and shall run to the end of the last nonholiday  
15 weekday within the ~~((seventy-two))~~ 120-hour or 72-hour period.

16 ~~((+3))~~ (6) If the defendant is charged with a nonfelony crime  
17 that is not a serious offense as defined in RCW 10.77.092 and found  
18 by the court to be not competent, the court may stay or dismiss  
19 proceedings and detain the defendant for sufficient time to allow the  
20 designated crisis responder to evaluate the defendant and consider  
21 initial detention proceedings under chapter 71.05 RCW. The court must  
22 give notice to all parties at least ~~((twenty-four))~~ 24 hours before  
23 the dismissal of any proceeding under this subsection, and provide an  
24 opportunity for a hearing on whether to dismiss the proceedings.

25 ~~((+4))~~ (7) If at any time the court dismisses charges under  
26 subsections (1) through ~~((+3))~~ (6) of this section, the court shall  
27 make a finding as to whether the defendant has a history of one or  
28 more violent acts. If the court so finds, the defendant is barred  
29 from the possession of firearms until a court restores his or her  
30 right to possess a firearm under RCW 9.41.047. The court shall state  
31 to the defendant and provide written notice that the defendant is  
32 barred from the possession of firearms and that the prohibition  
33 remains in effect until a court restores his or her right to possess  
34 a firearm under RCW 9.41.047.

35 (8) Any period of competency restoration treatment under this  
36 section includes only the time the defendant is actually at the  
37 facility or is actively participating in an outpatient competency  
38 restoration program and is in addition to reasonable time for  
39 transport to or from the facility.

1       **Sec. 6.** RCW 10.77.250 and 1987 c 75 s 1 are each amended to read  
2 as follows:

3       ~~((The))~~ (1) Within amounts appropriated, the department shall be  
4 responsible for all costs relating to the evaluation and inpatient  
5 treatment of persons committed to it pursuant to any provisions of  
6 this chapter, and the logistical and supportive services pertaining  
7 thereto except as otherwise provided by law. Reimbursement may be  
8 obtained by the department pursuant to RCW 43.20B.330.

9       (2) Within amounts appropriated, the authority shall be  
10 responsible for all costs relating to outpatient competency  
11 restoration programs.

12       NEW SECTION. **Sec. 7.** A new section is added to chapter 10.77  
13 RCW to read as follows:

14       No officer of a public or private agency, nor the superintendent,  
15 professional person in charge, his or her professional designee, or  
16 attending staff of any such agency, nor any public official  
17 performing functions necessary to the administration of this chapter,  
18 nor peace officer responsible for detaining a person pursuant to this  
19 chapter, nor the state, a unit of local government, an evaluation and  
20 treatment facility, a secure withdrawal management and stabilization  
21 facility, or an approved substance use disorder treatment program  
22 shall be civilly or criminally liable for performing duties pursuant  
23 to this chapter with regard to the decision of whether to detain a  
24 person for medical clearance or treatment, provided that such duties  
25 were performed in good faith and without gross negligence.

26       NEW SECTION. **Sec. 8.** A new section is added to chapter 10.77  
27 RCW to read as follows:

28       The authority shall report annually to the governor and relevant  
29 committees of the legislature, beginning November 1, 2022, and shall  
30 make the report public, describing:

31       (1) How many individuals are being served by outpatient  
32 competency restoration programs and in what locations;

33       (2) The length of stay of individuals in outpatient competency  
34 restoration programs;

35       (3) The number of individuals who are revoked from an outpatient  
36 competency restoration program into inpatient treatment, and the  
37 outcomes of other individuals, if any, whose participation in an

1 outpatient competency restoration program were terminated before the  
2 completion of the program; and

3 (4) For individuals who were revoked from an outpatient  
4 competency restoration program into an inpatient competency  
5 restoration program, how many days the individuals spent in  
6 outpatient competency restoration treatment and inpatient competency  
7 restoration treatment, and whether the restoration programs resulted  
8 in a finding of competent to stand trial or another outcome."

9 Correct the title.

EFFECT: Includes psychiatric advanced registered nurse practitioners in the definition of "professional person."

Provides that when a person is removed from an outpatient competency restoration program (OCRP) to inpatient competency restoration, the time period for inpatient treatment must be reduced by the time spent in active treatment within the OCRP, excluding time periods in which the defendant was absent from the OCRP and all time from notice of termination of the outpatient competency restoration period through the defendant's admission to the facility.

Provides that where a medical clearance is required prior to transport of a person to an inpatient competency restoration facility, a peace officer may transport the person to specified facilities for medical clearance once a bed is available at the designated inpatient competency restoration facility.

For an initial competency restoration order, increases the maximum time period for outpatient competency restoration for a defendant whose highest charge is a class C felony or nonviolent class B felony from 45 days to 90 days. Specifies that if outpatient competency restoration is terminated and the defendant is admitted to an inpatient facility, the period of inpatient treatment during the first competency restoration period must not exceed 45 days.

Provides that a period of competency restoration treatment includes time the person is actively participating in an outpatient competency restoration program (not just the time the defendant is at a facility).

Provides that a competency status check may be requested when a defendant remains in jail more than 21 days after (rather than 21 days after) an order to transport the defendant to an inpatient facility, and requires notice of the request for a status check to be provided to all parties.

Requires the Health Care Authority to make public its annual report on OCRPs.

--- END ---