

ESB 6246 - H COMM AMD

By Committee on Civil Rights & Judiciary

ADOPTED 02/27/2024

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

3 **"Sec. 1.** RCW 9.41.047 and 2023 c 295 s 5 and 2023 c 161 s 3 are
4 each reenacted and amended to read as follows:

5 (1) (a) At the time a person is convicted or found not guilty by
6 reason of insanity of an offense making the person ineligible to
7 possess a firearm under state or federal law, including if the person
8 was convicted of possession under RCW 69.50.4011, 69.50.4013,
9 69.50.4014, or 69.41.030, or at the time a person is committed by
10 court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
11 chapter 10.77 RCW for treatment for a mental disorder, or at the time
12 that charges are dismissed based on incompetency to stand trial under
13 RCW 10.77.086, or the charges are dismissed based on incompetency to
14 stand trial under RCW 10.77.088 and the court makes a finding that
15 the person has a history of one or more violent acts, the court shall
16 notify the person, orally and in writing, that the person must
17 immediately surrender all firearms to their local law enforcement
18 agency and any concealed pistol license and that the person may not
19 possess a firearm unless the person's right to do so is restored by
20 the superior court that issued the order.

21 (b) The court shall forward within three judicial days (~~(after)~~)
22 following conviction(~~(r)~~) or finding of not guilty by reason of
23 insanity(~~(r entry of the commitment order, or dismissal of charges,~~)
24 a copy of the person's driver's license or identicard, or comparable
25 information such as the person's name, address, and date of birth,
26 along with the date of conviction (~~(or commitment, or date charges~~
27 ~~are dismissed)~~) or finding of not guilty by reason of insanity, to
28 the department of licensing and to the Washington state patrol
29 firearms background check program. (~~(When a person is committed)~~)

30 (c) The court shall forward within three judicial days following
31 commitment by court order under RCW 71.05.240, 71.05.320, 71.34.740,

1 71.34.750, or chapter 10.77 RCW, for treatment for a mental disorder,
2 or (~~when a person's~~) upon dismissal of charges (~~(are dismissed)~~)
3 based on incompetency to stand trial under RCW 10.77.086, or the
4 charges are dismissed based on incompetency to stand trial under RCW
5 10.77.088 (~~and~~) when the court makes a finding that the person has
6 a history of one or more violent acts, (~~the court also shall~~
7 ~~forward, within three judicial days after entry of the commitment~~
8 ~~order, or dismissal of charges,~~) a copy of the person's driver's
9 license or identicard, or comparable information such as the person's
10 name, address, and date of birth, along with the date of commitment
11 or date charges are dismissed, to the national instant criminal
12 background check system index, denied persons file, created by the
13 federal Brady handgun violence prevention act (P.L. 103-159), and to
14 the department of licensing, Washington state patrol firearms
15 background check program, and the criminal division of the county
16 prosecutor in the county of commitment or the county in which charges
17 are dismissed. The petitioning party shall provide the court with the
18 information required. If more than one commitment order is entered
19 under one cause number, only one notification to the national instant
20 criminal background check system, the department of licensing, the
21 Washington state patrol firearms background check program, and the
22 (~~national instant criminal background check system~~) criminal
23 division of the county prosecutor in the county of commitment or
24 county in which charges are dismissed is required.

25 (2) Upon receipt of the information provided for by subsection
26 (1) of this section, the department of licensing shall determine if
27 the person has a concealed pistol license. If the person has a
28 concealed pistol license, the department of licensing shall
29 immediately notify the license-issuing authority which, upon receipt
30 of such notification, shall immediately revoke the license.

31 (3) (a) A person who is prohibited from possessing a firearm, by
32 reason of having been involuntarily committed for treatment for a
33 mental disorder under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
34 chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or
35 by reason of having been detained under RCW 71.05.150 or 71.05.153,
36 or because the person's charges were dismissed based on incompetency
37 to stand trial under RCW 10.77.086, or the charges were dismissed
38 based on incompetency to stand trial under RCW 10.77.088 and the
39 court made a finding that the person has a history of one or more
40 violent acts, may, upon discharge, petition the superior court to

1 have his or her right to possess a firearm restored, except that a
2 person found not guilty by reason of insanity may not petition for
3 restoration of the right to possess a firearm until one year after
4 discharge.

5 (b) The petition must be brought in the superior court that
6 ordered the involuntary commitment or dismissed the charges based on
7 incompetency to stand trial or the superior court of the county in
8 which the petitioner resides.

9 (c) Except as provided in (d) and (e) of this subsection, firearm
10 rights shall be restored if the person petitioning for restoration of
11 firearm rights proves by a preponderance of the evidence that:

12 (i) The person petitioning for restoration of firearm rights is
13 no longer required to participate in court-ordered inpatient or
14 outpatient treatment;

15 (ii) The person petitioning for restoration of firearm rights has
16 successfully managed the condition related to the commitment or
17 detention or incompetency;

18 (iii) The person petitioning for restoration of firearm rights no
19 longer presents a substantial danger to self or to the public;
20 ((and))

21 (iv) The symptoms related to the commitment or detention or
22 incompetency are not reasonably likely to recur; and

23 (v) There is no active extreme risk protection order or order to
24 surrender and prohibit weapons entered against the petitioner.

25 (d) If a preponderance of the evidence in the record supports a
26 finding that the person petitioning for restoration of firearm rights
27 has engaged in violence and that it is more likely than not that the
28 person will engage in violence after the person's right to possess a
29 firearm is restored, the person petitioning for restoration of
30 firearm rights shall bear the burden of proving by clear, cogent, and
31 convincing evidence that the person does not present a substantial
32 danger to the safety of others.

33 (e) If the person seeking restoration of firearm rights seeks
34 restoration after having been detained under RCW 71.05.150 or
35 71.05.153, the state shall bear the burden of proof to show, by a
36 preponderance of the evidence, that the person does not meet the
37 restoration criteria in (c) of this subsection.

38 (f) When a person's right to possess a firearm has been restored
39 under this subsection, the court shall forward, within three judicial
40 days after entry of the restoration order, notification that the

1 person's right to possess a firearm has been restored to the
2 department of licensing and the Washington state patrol criminal
3 records division, with a copy of the person's driver's license or
4 identicard, or comparable identification such as the person's name,
5 address, and date of birth, and to the health care authority, and the
6 national instant criminal background check system index, denied
7 persons file. In the case of a person whose right to possess a
8 firearm has been suspended for six months as provided in RCW
9 71.05.182, the department of licensing shall forward notification of
10 the restoration order to the licensing authority, which, upon receipt
11 of such notification, shall immediately lift the suspension,
12 restoring the person's concealed pistol license.

13 (4) No person who has been found not guilty by reason of insanity
14 may petition a court for restoration of the right to possess a
15 firearm unless the person meets the requirements for the restoration
16 of the right to possess a firearm under RCW 9.41.041.

17 **Sec. 2.** RCW 9.41.049 and 2020 c 302 s 61 are each amended to
18 read as follows:

19 (1) When a designated crisis responder files a petition for
20 initial detention under RCW 71.05.150 or 71.05.153 on the grounds
21 that the person presents a likelihood of serious harm, the petition
22 shall include a copy of the person's driver's license or identicard
23 or comparable information such as their name, address, and date of
24 birth. If the person is not subsequently committed for involuntary
25 treatment under RCW 71.05.240, the court shall forward within three
26 business days of the probable cause hearing a copy of the person's
27 driver's license or identicard, or comparable information, along with
28 the date of release from the facility, to the department of
29 licensing, the criminal division of the county prosecutor in the
30 county in which the petition was filed, and ~~((to))~~ the Washington
31 state patrol firearms background check program, ~~((who))~~ which shall
32 forward the information to the national instant criminal background
33 check system index, denied persons file, created by the federal Brady
34 handgun violence prevention act (P.L. 103-159). Upon expiration of
35 the six-month period during which the person's right to possess a
36 firearm is suspended as provided in RCW 71.05.182, the Washington
37 state patrol shall forward to the national instant criminal
38 background check system index, denied persons file, notice that the
39 person's right to possess a firearm has been restored.

1 (2) Upon receipt of the information provided for by subsection
2 (1) of this section, the department of licensing shall determine if
3 the detained person has a concealed pistol license. If the person
4 does have a concealed pistol license, the department of licensing
5 shall immediately notify the license-issuing authority, which, upon
6 receipt of such notification, shall immediately suspend the license
7 for a period of six months from the date of the person's release from
8 the facility.

9 (3) A person who is prohibited from possessing a firearm by
10 reason of having been detained under RCW 71.05.150 or 71.05.153 may,
11 upon discharge, petition the superior court to have his or her right
12 to possess a firearm restored before the six-month suspension period
13 has elapsed by following the procedures provided in RCW 9.41.047(3).

14 **Sec. 3.** RCW 10.77.086 and 2023 c 453 s 8 and 2023 c 433 s 18 are
15 each reenacted and amended to read as follows:

16 (1)(a) Except as otherwise provided in this section, if the
17 defendant is charged with a felony and determined to be incompetent,
18 until he or she has regained the competency necessary to understand
19 the proceedings against him or her and assist in his or her own
20 defense, but in any event for a period of no longer than 90 days, the
21 court shall commit the defendant to the custody of the secretary for
22 inpatient competency restoration, or may alternatively order the
23 defendant to receive outpatient competency restoration based on a
24 recommendation from a forensic navigator and input from the parties.

25 (b) For a defendant who is determined to be incompetent and whose
26 highest charge is a class C felony other than assault in the third
27 degree under RCW 9A.36.031(1) (d) or (f), felony physical control of
28 a vehicle under RCW 46.61.504(6), felony hit and run resulting in
29 injury under RCW 46.52.020(4)(b), a hate crime offense under RCW
30 9A.36.080, a class C felony with a domestic violence designation, a
31 class C felony sex offense as defined in RCW 9.94A.030, or a class C
32 felony with a sexual motivation allegation, the court shall first
33 consider all available and appropriate alternatives to inpatient
34 competency restoration. The court shall dismiss the proceedings
35 without prejudice upon agreement of the parties if the forensic
36 navigator has found an appropriate and available diversion program
37 willing to accept the defendant.

1 (2) (a) To be eligible for an order for outpatient competency
2 restoration, a defendant must be clinically appropriate and be
3 willing to:

4 (i) Adhere to medications or receive prescribed intramuscular
5 medication;

6 (ii) Abstain from alcohol and unprescribed drugs; and

7 (iii) Comply with urinalysis or breathalyzer monitoring if
8 needed.

9 (b) If the court orders inpatient competency restoration, the
10 department shall place the defendant in an appropriate facility of
11 the department for competency restoration.

12 (c) If the court orders outpatient competency restoration, the
13 court shall modify conditions of release as needed to authorize the
14 department to place the person in approved housing, which may include
15 access to supported housing, affiliated with a contracted outpatient
16 competency restoration program. The department, in conjunction with
17 the health care authority, must establish rules for conditions of
18 participation in the outpatient competency restoration program, which
19 must include the defendant being subject to medication management.
20 The court may order regular urinalysis testing. The outpatient
21 competency restoration program shall monitor the defendant during the
22 defendant's placement in the program and report any noncompliance or
23 significant changes with respect to the defendant to the department
24 and, if applicable, the forensic navigator.

25 (d) If a defendant fails to comply with the restrictions of the
26 outpatient restoration program such that restoration is no longer
27 appropriate in that setting or the defendant is no longer clinically
28 appropriate for outpatient competency restoration, the director of
29 the outpatient competency restoration program shall notify the
30 authority and the department of the need to terminate the outpatient
31 competency restoration placement and intent to request placement for
32 the defendant in an appropriate facility of the department for
33 inpatient competency restoration. The outpatient competency
34 restoration program shall coordinate with the authority, the
35 department, and any law enforcement personnel under (d)(i) of this
36 subsection to ensure that the time period between termination and
37 admission into the inpatient facility is as minimal as possible. The
38 time period for inpatient competency restoration shall be reduced by
39 the time period spent in active treatment within the outpatient
40 competency restoration program, excluding time periods in which the

1 defendant was absent from the program and all time from notice of
2 termination of the outpatient competency restoration period through
3 the defendant's admission to the facility. The department shall
4 obtain a placement for the defendant within seven days of the notice
5 of intent to terminate the outpatient competency restoration
6 placement.

7 (i) The department may authorize a peace officer to detain the
8 defendant into emergency custody for transport to the designated
9 inpatient competency restoration facility. If medical clearance is
10 required by the designated competency restoration facility before
11 admission, the peace officer must transport the defendant to a crisis
12 stabilization unit, evaluation and treatment facility, or emergency
13 department of a local hospital for medical clearance once a bed is
14 available at the designated inpatient competency restoration
15 facility. The signed outpatient competency restoration order of the
16 court shall serve as authority for the detention of the defendant
17 under this subsection. This subsection does not preclude voluntary
18 transportation of the defendant to a facility for inpatient
19 competency restoration or for medical clearance, or authorize
20 admission of the defendant into jail.

21 (ii) The department shall notify the court and parties of the
22 defendant's admission for inpatient competency restoration before the
23 close of the next judicial day. The court shall schedule a hearing
24 within five days to review the conditions of release of the defendant
25 and anticipated release from treatment and issue appropriate orders.

26 (e) The court may not issue an order for outpatient competency
27 restoration unless the department certifies that there is an
28 available appropriate outpatient competency restoration program that
29 has adequate space for the person at the time the order is issued or
30 the court places the defendant under the guidance and control of a
31 professional person identified in the court order.

32 (3) For a defendant whose highest charge is a class C felony, or
33 a class B felony that is not classified as violent under RCW
34 9.94A.030, the maximum time allowed for the initial competency
35 restoration period is 45 days if the defendant is referred for
36 inpatient competency restoration, or 90 days if the defendant is
37 referred for outpatient competency restoration, provided that if the
38 outpatient competency restoration placement is terminated and the
39 defendant is subsequently admitted to an inpatient facility, the

1 period of inpatient treatment during the first competency restoration
2 period under this subsection shall not exceed 45 days.

3 (4) When any defendant whose highest charge is a class C felony
4 other than assault in the third degree under RCW 9A.36.031(1) (d) or
5 (f), felony physical control of a vehicle under RCW 46.61.504(6),
6 felony hit and run resulting in injury under RCW 46.52.020(4)(b), a
7 hate crime offense under RCW 9A.36.080, a class C felony with a
8 domestic violence designation, a class C felony sex offense as
9 defined in RCW 9.94A.030, or a class C felony with a sexual
10 motivation allegation is admitted for inpatient competency
11 restoration with an accompanying court order for involuntary
12 medication under RCW 10.77.092, and the defendant is found not
13 competent to stand trial following that period of competency
14 restoration, the court shall dismiss the charges pursuant to
15 subsection (7) of this section.

16 (5) If the court determines or the parties agree before the
17 initial competency restoration period or at any subsequent stage of
18 the proceedings that the defendant is unlikely to regain competency,
19 the court may dismiss the charges without prejudice without ordering
20 the defendant to undergo an initial or further period of competency
21 restoration treatment, in which case the court shall order that the
22 defendant be referred for evaluation for civil commitment in the
23 manner provided in subsection (7) of this section.

24 (6) On or before expiration of the initial competency restoration
25 period the court shall conduct a hearing to determine whether the
26 defendant is now competent to stand trial. If the court finds by a
27 preponderance of the evidence that the defendant is incompetent to
28 stand trial, the court may order an extension of the competency
29 restoration period for an additional period of 90 days, but the court
30 must at the same time set a date for a new hearing to determine the
31 defendant's competency to stand trial before the expiration of this
32 second restoration period. The defendant, the defendant's attorney,
33 and the prosecutor have the right to demand that the hearing be
34 before a jury. No extension shall be ordered for a second or third
35 competency restoration period if the defendant is ineligible for a
36 subsequent competency restoration period under subsection (4) of this
37 section or the defendant's incompetence has been determined by the
38 secretary to be solely the result of an intellectual or developmental
39 disability, dementia, or traumatic brain injury which is such that

1 competence is not reasonably likely to be regained during an
2 extension.

3 (7) (a) Except as provided in (b) of this subsection, at the
4 hearing upon the expiration of the second competency restoration
5 period, or at the end of the first competency restoration period if
6 the defendant is ineligible for a second or third competency
7 restoration period under subsection ~~((3))~~ (4) or (6) of this
8 section, if the jury or court finds that the defendant is incompetent
9 to stand trial, the court shall dismiss the charges without prejudice
10 and order the defendant to be committed to the department for
11 placement in a facility operated or contracted by the department for
12 up to 120 hours if the defendant has not undergone competency
13 restoration services or has engaged in outpatient competency
14 restoration services, and up to 72 hours if the defendant engaged in
15 inpatient competency restoration services starting from admission to
16 the facility, excluding Saturdays, Sundays, and holidays, for
17 evaluation for the purpose of filing a civil commitment petition
18 under chapter 71.05 RCW. If at the time the order to dismiss the
19 charges without prejudice is entered by the court the defendant is
20 already in a facility operated or contracted by the department, the
21 72-hour or 120-hour period shall instead begin upon department
22 receipt of the court order.

23 (b) The court shall not dismiss the charges if the defendant is
24 eligible for a second or third competency restoration period under
25 subsection (6) of this section and the court or jury finds that: (i)
26 The defendant (A) is a substantial danger to other persons; or (B)
27 presents a substantial likelihood of committing criminal acts
28 jeopardizing public safety or security; and (ii) there is a
29 substantial probability that the defendant will regain competency
30 within a reasonable period of time. If the court or jury makes such a
31 finding, the court may extend the period of commitment for up to an
32 additional six months.

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

38 (9) If at any time the court dismisses charges based on
39 incompetency to stand trial under this section, the court shall issue
40 an order prohibiting the defendant from the possession of firearms

1 until a court restores his or her right to possess a firearm under
2 RCW 9.41.047. The court shall notify the defendant orally and in
3 writing that the defendant may not possess a firearm unless the
4 defendant's right to do so is restored by the superior court that
5 issued the order under RCW 9.41.047, and that the defendant must
6 immediately surrender all firearms and any concealed pistol license
7 to their local law enforcement agency.

8 **Sec. 4.** RCW 10.77.088 and 2023 c 453 s 9 and 2023 c 433 s 19 are
9 each reenacted and amended to read as follows:

10 (1) If the defendant is charged with a nonfelony crime which is a
11 serious offense as identified in RCW 10.77.092 and found by the court
12 to be not competent, the court shall first consider all available and
13 appropriate alternatives to inpatient competency restoration. If the
14 parties agree that there is an appropriate diversion program
15 available to accept the defendant, the court shall dismiss the
16 proceedings without prejudice and refer the defendant to the
17 recommended diversion program. If the parties do not agree that there
18 is an appropriate diversion program available to accept the
19 defendant, then the court:

20 (a) Shall dismiss the proceedings without prejudice and detain
21 the defendant pursuant to subsection (6) of this section, unless the
22 prosecutor objects to the dismissal and provides notice of a motion
23 for an order for competency restoration treatment, in which case the
24 court shall schedule a hearing within seven days.

25 (b) At the hearing, the prosecuting attorney must establish that
26 there is a compelling state interest to order competency restoration
27 treatment for the defendant. The court may consider prior criminal
28 history, prior history in treatment, prior history of violence, the
29 quality and severity of the pending charges, any history that
30 suggests whether competency restoration treatment is likely to be
31 successful, in addition to the factors listed under RCW 10.77.092. If
32 the defendant is subject to an order under chapter 71.05 RCW or
33 proceedings under chapter 71.05 RCW have been initiated, there is a
34 rebuttable presumption that there is no compelling state interest in
35 ordering competency restoration treatment. If the prosecuting
36 attorney proves by a preponderance of the evidence that there is a
37 compelling state interest in ordering competency restoration
38 treatment, then the court shall issue an order in accordance with
39 subsection (2) of this section.

1 (2) (a) If a court finds pursuant to subsection (1)(b) of this
2 section that there is a compelling state interest in pursuing
3 competency restoration treatment, the court shall order the defendant
4 to receive outpatient competency restoration consistent with the
5 recommendation of the forensic navigator, unless the court finds that
6 an order for outpatient competency restoration is inappropriate
7 considering the health and safety of the defendant and risks to
8 public safety.

9 (b) To be eligible for an order for outpatient competency
10 restoration, a defendant must be willing to:

11 (i) Adhere to medications or receive prescribed intramuscular
12 medication;

13 (ii) Abstain from alcohol and unprescribed drugs; and

14 (iii) Comply with urinalysis or breathalyzer monitoring if
15 needed.

16 (c) If the court orders inpatient competency restoration, the
17 department shall place the defendant in an appropriate facility of
18 the department for competency restoration under subsection (3) of
19 this section.

20 (d) If the court orders outpatient competency restoration, the
21 court shall modify conditions of release as needed to authorize the
22 department to place the person in approved housing, which may include
23 access to supported housing, affiliated with a contracted outpatient
24 competency restoration program. The department, in conjunction with
25 the health care authority, must establish rules for conditions of
26 participation in the outpatient competency restoration program, which
27 must include the defendant being subject to medication management.
28 The court may order regular urinalysis testing. The outpatient
29 competency restoration program shall monitor the defendant during the
30 defendant's placement in the program and report any noncompliance or
31 significant changes with respect to the defendant to the department
32 and, if applicable, the forensic navigator.

33 (e) If a defendant fails to comply with the restrictions of the
34 outpatient competency restoration program such that restoration is no
35 longer appropriate in that setting or the defendant is no longer
36 clinically appropriate for outpatient competency restoration, the
37 director of the outpatient competency restoration program shall
38 notify the authority and the department of the need to terminate the
39 outpatient competency restoration placement and intent to request
40 placement for the defendant in an appropriate facility of the

1 department for inpatient competency restoration. The outpatient
2 competency restoration program shall coordinate with the authority,
3 the department, and any law enforcement personnel under (e)(i) of
4 this subsection to ensure that the time period between termination
5 and admission into the inpatient facility is as minimal as possible.
6 The time period for inpatient competency restoration shall be reduced
7 by the time period spent in active treatment within the outpatient
8 competency restoration program, excluding time periods in which the
9 defendant was absent from the program and all time from notice of
10 termination of the outpatient competency restoration period through
11 the defendant's admission to the facility. The department shall
12 obtain a placement for the defendant within seven days of the notice
13 of intent to terminate the outpatient competency restoration
14 placement.

15 (i) The department may authorize a peace officer to detain the
16 defendant into emergency custody for transport to the designated
17 inpatient competency restoration facility. If medical clearance is
18 required by the designated competency restoration facility before
19 admission, the peace officer must transport the defendant to a crisis
20 stabilization unit, evaluation and treatment facility, or emergency
21 department of a local hospital for medical clearance once a bed is
22 available at the designated inpatient competency restoration
23 facility. The signed outpatient competency restoration order of the
24 court shall serve as authority for the detention of the defendant
25 under this subsection. This subsection does not preclude voluntary
26 transportation of the defendant to a facility for inpatient
27 competency restoration or for medical clearance, or authorize
28 admission of the defendant into jail.

29 (ii) The department shall notify the court and parties of the
30 defendant's admission for inpatient competency restoration before the
31 close of the next judicial day. The court shall schedule a hearing
32 within five days to review the conditions of release of the defendant
33 and anticipated release from treatment and issue appropriate orders.

34 (f) The court may not issue an order for outpatient competency
35 restoration unless the department certifies that there is an
36 available appropriate outpatient restoration program that has
37 adequate space for the person at the time the order is issued or the
38 court places the defendant under the guidance and control of a
39 professional person identified in the court order.

1 (g) If the court does not order the defendant to receive
2 outpatient competency restoration under (a) of this subsection, the
3 court shall commit the defendant to the department for placement in a
4 facility operated or contracted by the department for inpatient
5 competency restoration.

6 (3) The placement under subsection (2) of this section shall not
7 exceed 29 days if the defendant is ordered to receive inpatient
8 competency restoration, and shall not exceed 90 days if the defendant
9 is ordered to receive outpatient competency restoration. The court
10 may order any combination of this subsection, but the total period of
11 inpatient competency restoration may not exceed 29 days.

12 (4) Beginning October 1, 2023, if the defendant is charged with a
13 serious traffic offense under RCW 9.94A.030, the court may order the
14 clerk to transmit an order to the department of licensing for
15 revocation of the defendant's driver's license for a period of one
16 year. The court shall direct the clerk to transmit an order to the
17 department of licensing reinstating the defendant's driver's license
18 if the defendant is subsequently restored to competency, and may do
19 so at any time before the end of one year for good cause upon the
20 petition of the defendant.

21 (5) If the court has determined or the parties agree that the
22 defendant is unlikely to regain competency, the court may dismiss the
23 charges without prejudice without ordering the defendant to undergo
24 competency restoration treatment, in which case the court shall order
25 that the defendant be referred for evaluation for civil commitment in
26 the manner provided in subsection (6) of this section.

27 (6) (a) If the proceedings are dismissed under RCW 10.77.084 and
28 the defendant was on conditional release at the time of dismissal,
29 the court shall order the designated crisis responder within that
30 county to evaluate the defendant pursuant to chapter 71.05 RCW. The
31 evaluation may be conducted in any location chosen by the
32 professional.

33 (b) If the defendant was in custody and not on conditional
34 release at the time of dismissal, the defendant shall be detained and
35 sent to an evaluation and treatment facility for up to 120 hours if
36 the defendant has not undergone competency restoration services or
37 has engaged in outpatient competency restoration services and up to
38 72 hours if the defendant engaged in inpatient competency restoration
39 services, excluding Saturdays, Sundays, and holidays, for evaluation
40 for purposes of filing a petition under chapter 71.05 RCW. The 120-

1 hour or 72-hour period shall commence upon the next nonholiday
2 weekday following the court order and shall run to the end of the
3 last nonholiday weekday within the 120-hour or 72-hour period.

4 (7) If the defendant is charged with a nonfelony crime that is
5 not a serious offense as defined in RCW 10.77.092 and found by the
6 court to be not competent, the court may stay or dismiss proceedings
7 and detain the defendant for sufficient time to allow the designated
8 crisis responder to evaluate the defendant and consider initial
9 detention proceedings under chapter 71.05 RCW. The court must give
10 notice to all parties at least 24 hours before the dismissal of any
11 proceeding under this subsection, and provide an opportunity for a
12 hearing on whether to dismiss the proceedings.

13 (8) If at any time the court dismisses charges under subsections
14 (1) through (7) of this section, the court shall make a finding as to
15 whether the defendant has a history of one or more violent acts. If
16 the court so finds, the ~~((defendant is barred))~~ court shall issue an
17 order prohibiting the defendant from the possession of firearms until
18 a court restores his or her right to possess a firearm under RCW
19 9.41.047. The court shall ~~((state to the defendant and provide~~
20 ~~written notice that the defendant is barred from the possession of~~
21 ~~firearms and that the prohibition remains in effect until a court~~
22 ~~restores his or her right to possess a firearm under RCW 9.41.047))~~
23 notify the defendant orally and in writing that the defendant may not
24 possess a firearm unless the defendant's right to do so is restored
25 by the superior court that issued the order under RCW 9.41.047, and
26 that the defendant must immediately surrender all firearms and any
27 concealed pistol license to their local law enforcement agency.

28 (9) Any period of competency restoration treatment under this
29 section includes only the time the defendant is actually at the
30 facility or is actively participating in an outpatient competency
31 restoration program and is in addition to reasonable time for
32 transport to or from the facility.

33 **Sec. 5.** RCW 9.41.040 and 2023 c 295 s 3 and 2023 c 262 s 2 are
34 each reenacted and amended to read as follows:

35 (1)(a) A person, whether an adult or juvenile, is guilty of the
36 crime of unlawful possession of a firearm in the first degree, if the
37 person owns, accesses, has in the person's custody, control, or
38 possession, or receives any firearm after having previously been

1 convicted or found not guilty by reason of insanity in this state or
2 elsewhere of any serious offense.

3 (b) Unlawful possession of a firearm in the first degree is a
4 class B felony punishable according to chapter 9A.20 RCW.

5 (2)(a) A person, whether an adult or juvenile, is guilty of the
6 crime of unlawful possession of a firearm in the second degree, if
7 the person does not qualify under subsection (1) of this section for
8 the crime of unlawful possession of a firearm in the first degree and
9 the person owns, accesses, has in the person's custody, control, or
10 possession, or receives any firearm:

11 (i) After having previously been convicted or found not guilty by
12 reason of insanity in this state or elsewhere of:

13 (A) Any felony not specifically listed as prohibiting firearm
14 possession under subsection (1) of this section;

15 (B) Any of the following crimes when committed by one family or
16 household member against another or by one intimate partner against
17 another, as those terms are defined by the statutes in effect at the
18 time of the commission of the crime, committed on or after July 1,
19 1993: Assault in the fourth degree, coercion, stalking, reckless
20 endangerment, criminal trespass in the first degree, or violation of
21 the provisions of a protection order or no-contact order restraining
22 the person or excluding the person from a residence (RCW 10.99.040 or
23 any of the former RCW 26.50.060, 26.50.070, and 26.50.130);

24 (C) Harassment when committed by one family or household member
25 against another or by one intimate partner against another, as those
26 terms are defined by the statutes in effect at the time of the
27 commission of the crime, committed on or after June 7, 2018;

28 (D) Any of the following misdemeanor or gross misdemeanor crimes
29 not included under (a)(i)(B) or (C) of this subsection, committed on
30 or after July 23, 2023: Domestic violence (RCW 10.99.020); stalking;
31 cyberstalking; cyber harassment, excluding cyber harassment committed
32 solely pursuant to the element set forth in RCW 9A.90.120(1)(a)(i);
33 harassment; aiming or discharging a firearm (RCW 9.41.230); unlawful
34 carrying or handling of a firearm (RCW 9.41.270); animal cruelty in
35 the second degree committed under RCW 16.52.207(1); or any prior
36 offense as defined in RCW 46.61.5055(14) if committed within seven
37 years of a conviction for any other prior offense under RCW
38 46.61.5055;

39 (E) A violation of the provisions of a protection order under
40 chapter 7.105 RCW restraining the person or excluding the person from

1 a residence, when committed by one family or household member against
2 another or by one intimate partner against another, committed on or
3 after July 1, 2022; or

4 (F) A violation of the provisions of an order to surrender and
5 prohibit weapons, an extreme risk protection order, or the provisions
6 of any other protection order or no-contact order not included under
7 (a)(i) (B) or (E) of this subsection restraining the person or
8 excluding the person from a residence, committed on or after July 23,
9 2023;

10 (ii) During any period of time that the person is subject to a
11 protection order, no-contact order, or restraining order by a court
12 issued under chapter 7.105, 9A.40, 9A.44, 9A.46, 9A.88, 10.99, 26.09,
13 26.26A, or 26.26B RCW or any of the former chapters 7.90, 7.92,
14 10.14, and 26.50 RCW that:

15 (A) Was issued after a hearing for which the person received
16 actual notice, and at which the person had an opportunity to
17 participate, whether the court then issues a full order or reissues a
18 temporary order. If the court enters an agreed order by the parties
19 without a hearing, such an order meets the requirements of this
20 subsection;

21 (B) Restrains the person from harassing, stalking, or threatening
22 the person protected under the order or child of the person or
23 protected person, or others identified in the order, or engaging in
24 other conduct that would place the protected person in reasonable
25 fear of bodily injury to the protected person or child or others
26 identified in the order; and

27 (C)(I) Includes a finding that the person represents a credible
28 threat to the physical safety of the protected person or child or
29 others identified in the order, or by its terms explicitly prohibits
30 the use, attempted use, or threatened use of physical force against
31 the protected person or child or other persons that would reasonably
32 be expected to cause bodily injury; or

33 (II) Includes an order under RCW 9.41.800 requiring the person to
34 surrender all firearms and prohibiting the person from accessing,
35 having in his or her custody or control, possessing, purchasing,
36 receiving, or attempting to purchase or receive, firearms;

37 (iii) After having previously been involuntarily committed based
38 on a mental disorder under RCW 71.05.240, 71.05.320, 71.34.740,
39 71.34.750, chapter 10.77 RCW, or equivalent statutes of another

1 jurisdiction, unless his or her right to possess a firearm has been
2 restored as provided in RCW 9.41.047;

3 (iv) After dismissal of criminal charges based on incompetency to
4 stand trial under RCW 10.77.086, or after dismissal of criminal
5 charges based on incompetency to stand trial under RCW 10.77.088 when
6 the court has made a finding indicating that the defendant has a
7 history of one or more violent acts, unless his or her right to
8 possess a firearm has been restored as provided in RCW 9.41.047;

9 (v) If the person is under 18 years of age, except as provided in
10 RCW 9.41.042; and/or

11 (vi) If the person is free on bond or personal recognizance
12 pending trial for a serious offense as defined in RCW 9.41.010.

13 (b) Unlawful possession of a firearm in the second degree is a
14 class C felony punishable according to chapter 9A.20 RCW.

15 (3) A person shall not be precluded from possession of a firearm
16 if the conviction has been the subject of a pardon, annulment,
17 certificate of rehabilitation, or other equivalent procedure based on
18 a finding of the rehabilitation of the person convicted or the
19 conviction or disposition has been the subject of a pardon,
20 annulment, or other equivalent procedure based on a finding of
21 innocence. Where no record of the court's disposition of the charges
22 can be found, there shall be a rebuttable presumption that the person
23 was not convicted of the charge.

24 (4) Notwithstanding subsection (1) or (2) of this section, a
25 person convicted or found not guilty by reason of insanity of an
26 offense prohibiting the possession of a firearm under this section
27 other than murder, manslaughter, robbery, rape, indecent liberties,
28 arson, assault, kidnapping, extortion, burglary, or violations with
29 respect to controlled substances under RCW 69.50.401 and 69.50.410,
30 who received a probationary sentence under RCW 9.95.200, and who
31 received a dismissal of the charge under RCW 9.95.240, shall not be
32 precluded from possession of a firearm as a result of the conviction
33 or finding of not guilty by reason of insanity.

34 (5) In addition to any other penalty provided for by law, if a
35 person under the age of 18 years is found by a court to have
36 possessed a firearm in a vehicle in violation of subsection (1) or
37 (2) of this section or to have committed an offense while armed with
38 a firearm during which offense a motor vehicle served an integral
39 function, the court shall notify the department of licensing within
40 24 hours and the person's privilege to drive shall be revoked under

1 RCW 46.20.265, unless the offense is the juvenile's first offense in
2 violation of this section and has not committed an offense while
3 armed with a firearm, an unlawful possession of a firearm offense, or
4 an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

5 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
6 or interpreted as preventing an offender from being charged and
7 subsequently convicted for the separate felony crimes of theft of a
8 firearm or possession of a stolen firearm, or both, in addition to
9 being charged and subsequently convicted under this section for
10 unlawful possession of a firearm in the first or second degree.
11 Notwithstanding any other law, if the offender is convicted under
12 this section for unlawful possession of a firearm in the first or
13 second degree and for the felony crimes of theft of a firearm or
14 possession of a stolen firearm, or both, then the offender shall
15 serve consecutive sentences for each of the felony crimes of
16 conviction listed in this subsection.

17 (7) (a) A person, whether an adult or a juvenile, commits the
18 civil infraction of unlawful possession of a firearm if the person
19 has in the person's possession or has in the person's control a
20 firearm after the person files a voluntary waiver of firearm rights
21 under RCW 9.41.350 and the form has been accepted by the clerk of the
22 court and the voluntary waiver has not been lawfully revoked.

23 (b) The civil infraction of unlawful possession of a firearm is a
24 class 4 civil infraction punishable according to chapter 7.80 RCW.

25 (c) Each firearm unlawfully possessed under this subsection (7)
26 shall be a separate infraction.

27 (d) The court may, in its discretion, order performance of up to
28 two hours of community restitution in lieu of a monetary penalty
29 prescribed for a civil infraction under this subsection (7).

30 (8) Each firearm unlawfully possessed under this section shall be
31 a separate offense.

32 (9) A person may petition to restore the right to possess a
33 firearm as provided in RCW 9.41.041.

34 **Sec. 6.** RCW 70.02.260 and 2018 c 201 s 8005 are each amended to
35 read as follows:

36 (1) (a) A mental health service agency shall release to the
37 persons authorized under subsection (2) of this section, upon
38 request:

1 (i) The fact, place, and date of an involuntary commitment, the
2 fact and date of discharge or release, and the last known address of
3 a person who has been committed under chapter 71.05 or 71.34 RCW.

4 (ii) Information and records related to mental health services,
5 in the format determined under subsection (9) of this section,
6 concerning a person who:

7 (A) Is currently committed to the custody or supervision of the
8 department of corrections or the indeterminate sentence review board
9 under chapter 9.94A or 9.95 RCW;

10 (B) Has been convicted or found not guilty by reason of insanity
11 of a serious violent offense; or

12 (C) Was charged with a serious violent offense and the charges
13 were dismissed under RCW 10.77.086.

14 (b) Legal counsel for the mental health service agency, including
15 a county prosecutor or assistant attorney general who represents the
16 mental health service agency for the purpose of involuntary
17 commitment proceedings, may release ((such)) this information ((~~to~~
18 the persons authorized under subsection (2) of this section)) on
19 behalf of the mental health service agency((, so long as nothing)).

20 (c) Nothing in this subsection requires the disclosure of
21 attorney work product or attorney-client privileged information.

22 (2) The information subject to release under subsection (1) of
23 this section must be released to law enforcement officers, city or
24 county prosecuting attorneys, personnel of a county or city jail,
25 designated mental health professionals or designated crisis
26 responders, as appropriate, public health officers, therapeutic court
27 personnel as defined in RCW 71.05.020, or personnel of the department
28 of corrections, including the indeterminate sentence review board and
29 personnel assigned to perform board-related duties, when such
30 information is requested during the course of business and for the
31 purpose of carrying out the responsibilities of the requesting
32 person's office. No mental health service agency or person employed
33 by a mental health service agency, or its legal counsel, may be
34 liable for information released to or used under the provisions of
35 this section or rules adopted under this section except under RCW
36 71.05.680.

37 (3) A person who requests information under subsection (1)(a)(ii)
38 of this section must comply with the following restrictions:

39 (a) Information must be requested only for the purposes permitted
40 by this subsection and for the purpose of carrying out the

1 responsibilities of the requesting person's office. Appropriate
2 purposes for requesting information under this section include:

3 (i) Completing presentence investigations or risk assessment
4 reports;

5 (ii) Assessing a person's risk to the community;

6 (iii) Assessing a person's risk of harm to self or others when
7 confined in a city or county jail;

8 (iv) Planning for and provision of supervision of an offender,
9 including decisions related to sanctions for violations of conditions
10 of community supervision; and

11 (v) Responding to an offender's failure to report for department
12 of corrections supervision; and

13 (vi) Assessing the need for an extreme risk protection order
14 under chapter 7.105 RCW;

15 (b) Information may not be requested under this section unless
16 the requesting person has reasonable suspicion that the individual
17 who is the subject of the information:

18 (i) Has engaged in activity indicating that a crime or a
19 violation of community custody or parole has been committed or, based
20 upon his or her current or recent past behavior, is likely to be
21 committed in the near future; or

22 (ii) Is exhibiting signs of a deterioration in mental functioning
23 which may make the individual appropriate for civil commitment under
24 chapter 71.05 or 71.34 RCW, or which is associated with a recent
25 detention or order of commitment under chapter 71.05 or 71.34 RCW or
26 an order of commitment or dismissal of charges under chapter 10.77
27 RCW; and

28 (c) Any information received under this section must be held
29 confidential and subject to the limitations on disclosure outlined in
30 this chapter, except:

31 (i) The information may be shared with other persons who have the
32 right to request similar information under subsection (2) of this
33 section, solely for the purpose of coordinating activities related to
34 the individual who is the subject of the information in a manner
35 consistent with the official responsibilities of the persons
36 involved;

37 (ii) The information may be shared with a prosecuting attorney
38 who is acting in an advisory capacity for a person who receives
39 information under this section or who is carrying out other official
40 duties within the scope of this section. A prosecuting attorney under

1 this subsection is subject to the same restrictions and
2 confidentiality limitations as the person who requested the
3 information; and

4 (iii) As provided in RCW 72.09.585.

5 (4) A request for information and records related to mental
6 health services under this section does not require the consent of
7 the subject of the records. The request must be provided in writing,
8 except to the extent authorized in subsection (5) of this section. A
9 written request may include requests made by email or facsimile so
10 long as the requesting person is clearly identified. The request must
11 specify the information being requested.

12 (5) In the event of an emergency situation that poses a
13 significant risk to the public or the offender, a mental health
14 service agency, or its legal counsel, shall release information
15 related to mental health services delivered to the offender and, if
16 known, information regarding where the offender is likely to be found
17 to the department of corrections or law enforcement upon request. The
18 initial request may be written or oral. All oral requests must be
19 subsequently confirmed in writing. Information released in response
20 to an oral request is limited to a statement as to whether the
21 offender is or is not being treated by the mental health service
22 agency and the address or information about the location or
23 whereabouts of the offender.

24 (6) Disclosure under this section to state or local law
25 enforcement authorities is mandatory for the purposes of the federal
26 health insurance portability and accountability act.

27 (7) Whenever federal law or federal regulations restrict the
28 release of information contained in the treatment records of any
29 patient who receives treatment for alcoholism or drug dependency, the
30 release of the information may be restricted as necessary to comply
31 with federal law and regulations.

32 (8) This section does not modify the terms and conditions of
33 disclosure of information related to sexually transmitted diseases
34 under this chapter.

35 (9) In collaboration with interested organizations, the authority
36 shall develop a standard form for requests for information related to
37 mental health services made under this section and a standard format
38 for information provided in response to the requests. Consistent with
39 the goals of the health information privacy provisions of the federal
40 health insurance portability and accountability act, in developing

1 the standard form for responsive information, the authority shall
2 design the form in such a way that the information disclosed is
3 limited to the minimum necessary to serve the purpose for which the
4 information is requested."

5 Correct the title.

EFFECT: Specifies that loss of firearm rights applies for any case where felony charges are dismissed based on incompetency to stand trial whether or not the court has ordered the person to undergo competency restoration treatment.

Provides that a person who possesses a firearm while the person is prohibited due to dismissal of felony charges based on incompetency to stand trial is guilty of Unlawful Possession of a Firearm in the second degree, a class C felony.

With respect to court notification requirements where a person loses firearm rights due to dismissal of felony charges based on incompetency to stand trial, removes references to a statute that generally addresses dismissal of charges based on incompetency to stand trial (RCW 10.77.084), while retaining references to the statute that specifically addresses dismissal of felony charges based on incompetency to stand trial.

Clarifies that court notification to the county prosecutor of a person's loss of firearm rights is to the prosecutor in the county of commitment, the county where charges are dismissed, or the county where the initial detention petition is filed, as appropriate (rather than just the county of commitment).

Corrects an inaccurate cross reference.

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