
SECOND SUBSTITUTE SENATE BILL 5440

State of Washington

68th Legislature

2023 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, Nguyen, Saldaña, Valdez, Van De Wege, and C. Wilson; by request of Office of the Governor)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to providing timely competency evaluations and
2 restoration services to persons suffering from behavioral health
3 disorders within the framework of the forensic mental health care
4 system consistent with the requirements agreed to in the Trueblood
5 settlement agreement; amending RCW 10.77.060, 10.77.068, 10.77.074,
6 10.77.084, 10.77.086, 10.77.088, and 10.77.092; reenacting and
7 amending RCW 10.77.010; adding new sections to chapter 10.77 RCW;
8 creating new sections; and declaring an emergency.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. **Sec. 1.** The legislature finds that defendants
11 referred for services related to competency to stand trial requiring
12 admission into a psychiatric facility are currently facing
13 unprecedented wait times in jail for admission. The situation has
14 been exacerbated by closure of forensic beds and workforce shortages
15 related to COVID-19, and treatment capacity limits related to social
16 distancing requirements. Moreover, a backlog of criminal prosecutions
17 that were held back during the first two years of the pandemic due to
18 capacity limitations in courts, prosecuting attorneys offices, and
19 jails, are now being filed, causing a surge in demand for competency
20 services which exceeds the state's capacity to make a timely
21 response. In partial consequence, as of January 2023, wait times for

1 admission to western state hospital for competency services, directed
2 to be completed within seven days by order of the United States
3 district court for western Washington, have risen to over ten months,
4 while wait times for admission to eastern state hospital for the same
5 services have risen to over five months. The state's forensic bed
6 capacity forecast model indicates that if the state continues to
7 receive competency referrals from local superior, district, and
8 municipal courts at the same volume, the state will rapidly fall
9 farther behind.

10 The legislature further finds that historical investments and
11 policy changes have been made in behavioral health services over the
12 past five years, designed to both increase capacity to provide
13 competency to stand trial services and to reduce the need for them by
14 creating opportunities for diversion, prevention, and improved
15 community health. New construction at western state hospital is
16 expected to result in the opening of 58 forensic psychiatric beds in
17 the first quarter of 2023, while emergency community hospital
18 contracts are expected to allow for the discharge or transfer of over
19 50 civil conversion patients occupying forensic state hospital beds
20 over the same period. Sixteen beds for civil conversion patients will
21 open at Maple Lane school in the first quarter of 2023, with 30
22 additional beds for patients acquitted by reason of insanity expected
23 to open by late 2023 or early 2024. Over a longer time period, 350
24 forensic beds are planned to open within a new forensic hospital on
25 western state hospital campus between 2027 and 2029. Policy and
26 budget changes have increased capacity for assisted outpatient
27 treatment, 988 crisis response, use of medication for opioid use
28 disorders in jails and community settings, reentry services, and
29 mental health advance directives, and created new behavioral health
30 facility types, supportive housing, and supportive employment
31 services. Forensic navigator services, outpatient competency
32 restoration programs, and other specialty forensic services are now
33 available and continuing to be deployed in phase two *Trueblood*
34 settlement regions.

35 The legislature further finds that despite these investments
36 there is a need for everyone to come together to find solutions to
37 both reduce demand for forensic services and to increase their
38 supply. The state needs collaboration from local governments and
39 other entities to identify any and all facilities that can be used to
40 provide services to patients connected to the forensic system, to

1 reduce the flow of competency referrals coming from municipal,
2 district, and superior courts, and to improve availability and
3 effectiveness of behavioral health services provided outside the
4 criminal justice system.

5 **Sec. 2.** RCW 10.77.010 and 2022 c 288 s 1 are each reenacted and
6 amended to read as follows:

7 As used in this chapter:

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

10 (2) "Authority" means the Washington state health care authority.

11 (3) "Clinical intervention specialist" means a licensed
12 professional with prescribing authority who is employed by or
13 contracted with the department to provide enhanced oversight and
14 monitoring of the behavioral health status of in-custody individuals
15 who have been referred for services related to competency to stand
16 trial and to play a coordination role with forensic navigators, the
17 department, and jail health services.

18 (4) "Clinical intervention unit" means a discrete unit in a jail
19 or other facility designated to house pretrial defendants with
20 behavioral health disorders who have been referred for services
21 related to competency to stand trial under voluntary contract with
22 the department to provide enhanced behavioral health services to
23 these defendants.

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

27 ~~((4))~~ (6) "Community behavioral health agency" has the same
28 meaning as "licensed or certified behavioral health agency" defined
29 in RCW 71.24.025.

30 ~~((5))~~ (7) "Conditional release" means modification of a court-
31 ordered commitment, which may be revoked upon violation of any of its
32 terms.

33 ~~((6))~~ (8) A "criminally insane" person means any person who has
34 been acquitted of a crime charged by reason of insanity, and
35 thereupon found to be a substantial danger to other persons or to
36 present a substantial likelihood of committing criminal acts
37 jeopardizing public safety or security unless kept under further
38 control by the court or other persons or institutions.

1 (~~(7)~~) (9) "Department" means the state department of social and
2 health services.

3 (~~(8)~~) (10) "Designated crisis responder" has the same meaning
4 as provided in RCW 71.05.020.

5 (~~(9)~~) (11) "Detention" or "detain" means the lawful confinement
6 of a person, under the provisions of this chapter, pending
7 evaluation.

8 (~~(10)~~) (12) "Developmental disabilities professional" means a
9 person who has specialized training and (~~(three years of)~~) experience
10 in directly treating or working with persons with developmental
11 disabilities and is a psychiatrist or psychologist, or a social
12 worker, and such other developmental disabilities professionals as
13 may be defined by rules adopted by the secretary.

14 (~~(11)~~) (13) "Developmental disability" means the condition as
15 defined in RCW 71A.10.020(~~(5)~~).

16 (~~(12)~~) (14) "Discharge" means the termination of hospital
17 medical authority. The commitment may remain in place, be terminated,
18 or be amended by court order.

19 (~~(13)~~) (15) "Furlough" means an authorized leave of absence for
20 a resident of a state institution operated by the department
21 designated for the custody, care, and treatment of the criminally
22 insane, consistent with an order of conditional release from the
23 court under this chapter, without any requirement that the resident
24 be accompanied by, or be in the custody of, any law enforcement or
25 institutional staff, while on such unescorted leave.

26 (~~(14)~~) (16) "Genuine doubt as to competency" means that there
27 is reasonable cause to believe, based upon actual interactions with
28 or observations of the defendant, that a defendant is incompetent to
29 stand trial.

30 (17) "Habilitative services" means those services provided by
31 program personnel to assist persons in acquiring and maintaining life
32 skills and in raising their levels of physical, mental, social, and
33 vocational functioning. Habilitative services include education,
34 training for employment, and therapy. The habilitative process shall
35 be undertaken with recognition of the risk to the public safety
36 presented by the person being assisted as manifested by prior charged
37 criminal conduct.

38 (~~(15)~~) (18) "History of one or more violent acts" means violent
39 acts committed during: (a) The ten-year period of time prior to the
40 filing of criminal charges; plus (b) the amount of time equal to time

1 spent during the ten-year period in a mental health facility or in
2 confinement as a result of a criminal conviction.

3 ~~((16))~~ (19) "Immediate family member" means a spouse, child,
4 stepchild, parent, stepparent, grandparent, sibling, or domestic
5 partner.

6 ~~((17))~~ (20) "Incompetency" means a person lacks the capacity to
7 understand the nature of the proceedings against him or her or to
8 assist in his or her own defense as a result of mental disease or
9 defect.

10 ~~((18))~~ (21) "Indigent" means any person who is financially
11 unable to obtain counsel or other necessary expert or professional
12 services without causing substantial hardship to the person or his or
13 her family.

14 ~~((19))~~ (22) "Individualized service plan" means a plan prepared
15 by a developmental disabilities professional with other professionals
16 as a team, for an individual with developmental disabilities, which
17 shall state:

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

20 (b) The conditions and strategies necessary to achieve the
21 purposes of habilitation;

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

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

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

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

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

33 ~~((20))~~ (23) "Professional person" means:

34 (a) A psychiatrist licensed as a physician and surgeon in this
35 state who has, in addition, completed three years of graduate
36 training in psychiatry in a program approved by the American medical
37 association or the American osteopathic association and is certified
38 or eligible to be certified by the American board of psychiatry and
39 neurology or the American osteopathic board of neurology and
40 psychiatry;

1 (b) A psychologist licensed as a psychologist pursuant to chapter
2 18.83 RCW;

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

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

8 ~~((21))~~ (24) "Release" means legal termination of the court-
9 ordered commitment under the provisions of this chapter.

10 ~~((22))~~ (25) "Secretary" means the secretary of the department
11 of social and health services or his or her designee.

12 ~~((23))~~ (26) "Treatment" means any currently standardized
13 medical or mental health procedure including medication.

14 ~~((24))~~ (27) "Treatment records" include registration and all
15 other records concerning persons who are receiving or who at any time
16 have received services for mental illness, which are maintained by
17 the department, by behavioral health administrative services
18 organizations and their staffs, by managed care organizations and
19 their staffs, and by treatment facilities. Treatment records do not
20 include notes or records maintained for personal use by a person
21 providing treatment services for the department, behavioral health
22 administrative services organizations, managed care organizations, or
23 a treatment facility if the notes or records are not available to
24 others.

25 ~~((25))~~ (28) "Violent act" means behavior that: (a) (i) Resulted
26 in; (ii) if completed as intended would have resulted in; or (iii)
27 was threatened to be carried out by a person who had the intent and
28 opportunity to carry out the threat and would have resulted in,
29 homicide, nonfatal injuries, or substantial damage to property; or
30 (b) recklessly creates an immediate risk of serious physical injury
31 to another person. As used in this subsection, "nonfatal injuries"
32 means physical pain or injury, illness, or an impairment of physical
33 condition. "Nonfatal injuries" shall be construed to be consistent
34 with the definition of "bodily injury," as defined in RCW 9A.04.110.

35 **Sec. 3.** RCW 10.77.060 and 2022 c 288 s 2 are each amended to
36 read as follows:

37 (1) (a) Whenever a defendant has pleaded not guilty by reason of
38 insanity, ~~((or there is reason to doubt his or her competency,))~~ the
39 court on its own motion or on the motion of any party shall either

1 appoint or request the secretary to designate a qualified expert or
2 professional person, who shall be approved by the prosecuting
3 attorney, to evaluate and report upon the mental condition of the
4 defendant.

5 (b) Whenever there is a doubt as to competency, the court on its
6 own motion or on the motion of any party shall first review the
7 allegations of incompetency. The court shall make a determination of
8 whether a genuine doubt as to competency exists based upon judicial
9 colloquy or direct observation. If a genuine doubt as to competency
10 exists, the court shall either appoint or request the secretary to
11 designate a qualified expert or professional person, who shall be
12 approved by the prosecuting attorney, to evaluate and report upon the
13 mental condition of the defendant.

14 (c) The signed order of the court shall serve as authority for
15 the evaluator to be given access to all records held by any mental
16 health, medical, educational, or correctional facility that relate to
17 the present or past mental, emotional, or physical condition of the
18 defendant. If the court is advised by any party that the defendant
19 may have a developmental disability, the evaluation must be performed
20 by a developmental disabilities professional and the evaluator shall
21 have access to records of the developmental disabilities
22 administration of the department.

23 ~~((e))~~ (d) The evaluator shall assess the defendant in a jail,
24 detention facility, in the community, or in court to determine
25 whether a period of inpatient commitment will be necessary to
26 complete an accurate evaluation. If inpatient commitment is needed,
27 the signed order of the court shall serve as authority for the
28 evaluator to request the jail or detention facility to transport the
29 defendant to a hospital or secure mental health facility for a period
30 of commitment not to exceed fifteen days from the time of admission
31 to the facility. Otherwise, the evaluator shall complete the
32 evaluation.

33 ~~((d))~~ (e) The court may commit the defendant for evaluation to
34 a hospital or secure mental health facility without an assessment if:
35 (i) The defendant is charged with murder in the first or second
36 degree; (ii) the court finds that it is more likely than not that an
37 evaluation in the jail will be inadequate to complete an accurate
38 evaluation; or (iii) the court finds that an evaluation outside the
39 jail setting is necessary for the health, safety, or welfare of the

1 defendant. The court shall not order an initial inpatient evaluation
2 for any purpose other than a competency evaluation.

3 ~~((e))~~ (f) The order shall indicate whether, in the event the
4 defendant is committed to a hospital or secure mental health facility
5 for evaluation, all parties agree to waive the presence of the
6 defendant or to the defendant's remote participation at a subsequent
7 competency hearing or presentation of an agreed order if the
8 recommendation of the evaluator is for continuation of the stay of
9 criminal proceedings, or if the opinion of the evaluator is that the
10 defendant remains incompetent and there is no remaining restoration
11 period, and the hearing is held prior to the expiration of the
12 authorized commitment period.

13 ~~((f))~~ (g) When a defendant is ordered to be evaluated under
14 this subsection (1), or when a party or the court determines at first
15 appearance that an order for evaluation under this subsection will be
16 requested or ordered if charges are pursued, the court may delay
17 granting bail until the defendant has been evaluated for competency
18 or sanity and appears before the court. Following the evaluation, in
19 determining bail the court shall consider: (i) Recommendations of the
20 evaluator regarding the defendant's competency, sanity, or diminished
21 capacity; (ii) whether the defendant has a recent history of one or
22 more violent acts; (iii) whether the defendant has previously been
23 acquitted by reason of insanity or found incompetent; (iv) whether it
24 is reasonably likely the defendant will fail to appear for a future
25 court hearing; and (v) whether the defendant is a threat to public
26 safety.

27 (h) If the defendant ordered to be evaluated under this
28 subsection (1) is charged with a serious traffic offense under RCW
29 9.94A.030, or a felony version of a serious traffic offense, the
30 prosecutor may make a motion to modify the defendant's conditions of
31 release to include a condition prohibiting the defendant from driving
32 during the pendency of the competency evaluation period.

33 (2) The court may direct that a qualified expert or professional
34 person retained by or appointed for the defendant be permitted to
35 witness the evaluation authorized by subsection (1) of this section,
36 and that the defendant shall have access to all information obtained
37 by the court appointed experts or professional persons. The
38 defendant's expert or professional person shall have the right to
39 file his or her own report following the guidelines of subsection (3)
40 of this section. If the defendant is indigent, the court shall upon

1 the request of the defendant assist him or her in obtaining an expert
2 or professional person.

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

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

5 (b) A diagnosis or description of the current mental status of
6 the defendant;

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

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

21 (e) When directed by the court, if an evaluation and report by an
22 expert or professional person has been provided concluding that the
23 defendant lacked the capacity at the time of the offense to form the
24 mental state necessary to commit the charged offense, an opinion as
25 to the capacity of the defendant to have a particular state of mind
26 which is an element of the offense charged;

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

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

32 (5) In the event that a person remains in jail more than 21 days
33 after service on the department of a court order to transport the
34 person to a facility designated by the department for inpatient
35 competency restoration treatment, upon the request of any party and
36 with notice to all parties, the department shall perform a competency
37 to stand trial status check to determine if the circumstances of the
38 person have changed such that the court should authorize an updated
39 competency evaluation. The status update shall be provided to the

1 parties and the court. Status updates may be provided at reasonable
2 intervals.

3 (6) If a finding of the competency evaluation under this section
4 or under RCW 10.77.084 is that the individual is not competent due to
5 an intellectual or developmental disability, the evaluator shall
6 notify the department, which shall refer the individual to the
7 developmental disabilities administration of the department for
8 review of eligibility for services. Information about availability of
9 services must be provided to the evaluator and the forensic
10 navigator, if any.

11 **Sec. 4.** RCW 10.77.068 and 2022 c 288 s 3 are each amended to
12 read as follows:

13 (1)(a) The legislature establishes a performance target of seven
14 days or fewer to extend an offer of admission to a defendant in
15 pretrial custody for inpatient competency evaluation or inpatient
16 competency restoration services, when access to the services is
17 legally authorized.

18 (b) The legislature establishes a performance target of 14 days
19 or fewer for the following services related to competency to stand
20 trial, when access to the services is legally authorized:

21 (i) To complete a competency evaluation in jail and distribute
22 the evaluation report; and

23 (ii) To extend an offer of admission to a defendant ordered to be
24 committed to (~~a state hospital~~) the custody of the department for
25 placement in a facility operated or contracted by the department
26 following dismissal of charges based on incompetency to stand trial
27 under RCW 10.77.086.

28 (c) The legislature establishes a performance target of 21 days
29 or fewer to complete a competency evaluation in the community and
30 distribute the evaluation report.

31 (2)(a) A maximum time limit of seven days as measured from the
32 department's receipt of the court order, or a maximum time limit of
33 14 days as measured from signature of the court order, whichever is
34 shorter, is established to complete the services specified in
35 subsection (1)(a) of this section, subject to the limitations under
36 subsection (9) of this section.

37 (b) A maximum time limit of 14 days as measured from the
38 department's receipt of the court order, or a maximum time limit of
39 21 days as measured from signature of the court order, whichever is

1 shorter, is established to complete the services specified in
2 subsection (1)(b) of this section, subject to the limitations under
3 subsection (9) of this section.

4 (3) The legislature recognizes that these targets may not be
5 achievable in all cases, but intends for the department to manage,
6 allocate, and request appropriations for resources in order to meet
7 these targets whenever possible without sacrificing the accuracy and
8 quality of competency services.

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

16 (a) Despite a timely request, the department has not received
17 necessary medical information regarding the current medical status of
18 a defendant;

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

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

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

31 (e) Completion of the referral requires additional time to
32 accommodate the availability or participation of counsel, court
33 personnel, interpreters, or the defendant;

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

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

1 (5) The department shall provide written notice to the court when
2 it will not be able to meet the maximum time limits under subsection
3 (2) of this section and identify the reasons for the delay and
4 provide a reasonable estimate of the time necessary to complete the
5 competency service. Good cause for an extension for the additional
6 time estimated by the department shall be presumed absent a written
7 response from the court or a party received by the department within
8 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 (7) Following any quarter in which a state hospital has failed to
24 meet one or more of the performance targets or maximum time limits
25 under subsection (1) or (2) of this section, the department shall
26 report to the executive and the legislature the extent of this
27 deviation and describe any corrective action being taken to improve
28 performance. This report shall be made publicly available. An average
29 may be used to determine timeliness under this subsection.

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

37 (9) This section does not create any new entitlement or cause of
38 action related to the timeliness of competency to stand trial
39 services, nor can it form the basis for contempt sanctions under
40 chapter 7.21 RCW or a motion to dismiss criminal charges.

1 **Sec. 5.** RCW 10.77.074 and 2019 c 326 s 2 are each amended to
2 read as follows:

3 (1) Subject to the limitations described in subsection (2) of
4 this section, a court may appoint an impartial forensic navigator
5 employed by or contracted by the department to assist individuals who
6 have been referred for competency evaluation and shall appoint a
7 forensic navigator in circumstances described under section 9 of this
8 act.

9 (2) A forensic navigator must assist the individual to access
10 services related to diversion and community outpatient competency
11 restoration. The forensic navigator must assist the individual,
12 prosecuting attorney, defense attorney, and the court to understand
13 the options available to the individual and be accountable as an
14 officer of the court for faithful execution of the responsibilities
15 outlined in this section.

16 (3) The duties of the forensic navigator include, but are not
17 limited to, the following:

18 (a) To collect relevant information about the individual,
19 including behavioral health services and supports available to the
20 individual that might support placement in outpatient restoration,
21 diversion, or some combination of these;

22 (b) To meet with, interview, and observe the individual;

23 (c) To assess the individual for appropriateness for assisted
24 outpatient treatment under chapter 71.05 RCW if the individual is out
25 of custody or is released from custody as part of a diversion;

26 (d) To present information to the court in order to assist the
27 court in understanding the treatment options available to the
28 individual to support the entry of orders for diversion from the
29 forensic mental health system or for community outpatient competency
30 restoration, ((and)) to facilitate that transition, and to provide
31 updates to the court and parties of the status of the individual's
32 participation in diversion services; ((and

33 ~~(d))~~ (e) When the individual is ordered to receive community
34 outpatient restoration, to provide services to the individual
35 including:

36 (i) Assisting the individual with attending appointments and
37 classes relating to outpatient competency restoration;

38 (ii) Coordinating access to housing for the individual;

39 (iii) Meeting with the individual on a regular basis;

1 (iv) Providing information to the court concerning the
2 individual's progress and compliance with court-ordered conditions of
3 release, which may include appearing at court hearings to provide
4 information to the court;

5 (v) Coordinating the individual's access to community case
6 management services and mental health services;

7 (vi) Assisting the individual with obtaining prescribed
8 medication and encouraging adherence with prescribed medication;

9 (vii) Assessing the individual for appropriateness for assisted
10 outpatient treatment under chapter 71.05 RCW and coordinating the
11 initiation of an assisted outpatient treatment order if appropriate
12 as part of a diversion program plan;

13 (viii) Planning for a coordinated transition of the individual to
14 a case manager in the community behavioral health system;

15 ~~((viii))~~ (ix) Attempting to follow-up with the individual to
16 check whether the meeting with a community-based case manager took
17 place;

18 ~~((ix))~~ (x) When the individual is a high utilizer, attempting
19 to connect the individual with high utilizer services; and

20 ~~((x))~~ (xi) Attempting to check up on the individual at least
21 once per month for up to sixty days after coordinated transition to
22 community behavioral health services, without duplicating the
23 services of the community-based case manager;

24 (f) If the individual is an American Indian or Alaska Native who
25 receives medical, behavioral health, housing, or other supportive
26 services from a tribe within this state, to notify and coordinate
27 with the tribe and Indian health care provider. Notification shall be
28 made in person or by telephonic or electronic communication to the
29 tribal contact listed in the authority's tribal crisis coordination
30 plan as soon as possible.

31 (4) Forensic navigators may submit nonclinical recommendations to
32 the court regarding treatment and restoration options for the
33 individual, which the court may consider and weigh in conjunction
34 with the recommendations of all of the parties.

35 (5) Forensic navigators shall be deemed officers of the court for
36 the purpose of immunity from civil liability.

37 (6) The signed order for competency evaluation from the court
38 shall serve as authority for the forensic navigator to be given
39 access to all records held by a behavioral health, educational, or
40 law enforcement agency or a correctional facility that relates to an

1 individual. Information that is protected by state or federal law,
2 including health information, shall not be entered into the court
3 record without the consent of the individual or their defense
4 attorney.

5 (7) Admissions made by the individual in the course of receiving
6 services from the forensic navigator may not be used against the
7 individual in the prosecution's case in chief.

8 (8) A court may not issue an order appointing a forensic
9 navigator unless the department certifies that there is adequate
10 forensic navigator capacity to provide these services at the time the
11 order is issued.

12 **Sec. 6.** RCW 10.77.084 and 2016 sp.s. c 29 s 410 are each amended
13 to read as follows:

14 (1)(a) If at any time during the pendency of an action and prior
15 to judgment the court finds, following a report as provided in RCW
16 10.77.060, a defendant is incompetent, the court shall order the
17 proceedings against the defendant be stayed except as provided in
18 subsection (4) of this section. If the defendant is charged with a
19 serious traffic offense under RCW 9.94A.030, or a felony version of a
20 serious traffic offense, the court may order the clerk to transmit an
21 order to the department of licensing for revocation of the
22 defendant's driver's license for a period of one year.

23 (b) The court may order a defendant who has been found to be
24 incompetent to undergo competency restoration treatment at a facility
25 designated by the department if the defendant is eligible under RCW
26 10.77.086 or 10.77.088. At the end of each competency restoration
27 period or at any time a professional person determines competency has
28 been, or is unlikely to be, restored, the defendant shall be returned
29 to court for a hearing, except that if the opinion of the
30 professional person is that the defendant remains incompetent and the
31 hearing is held before the expiration of the current competency
32 restoration period, the parties may agree to waive the defendant's
33 presence, to remote participation by the defendant at a hearing, or
34 to presentation of an agreed order in lieu of a hearing. The facility
35 shall promptly notify the court and all parties of the date on which
36 the competency restoration period commences and expires so that a
37 timely hearing date may be scheduled.

38 (c) For a defendant in custody, the court's order shall indicate
39 whether the court's commitment order includes the authority for the

1 department to modify the defendant's conditions of release by
2 transferring the defendant to a step-down or outpatient competency
3 restoration facility if the department determines that such placement
4 is clinically appropriate.

5 (d) If, following notice and hearing or entry of an agreed order
6 under (b) of this subsection, the court finds that competency has
7 been restored, the court shall lift the stay entered under (a) of
8 this subsection. If the court finds that competency has not been
9 restored, the court shall dismiss the proceedings without prejudice,
10 except that the court may order a further period of competency
11 restoration treatment if it finds that further treatment within the
12 time limits established by RCW 10.77.086 or 10.77.088 is likely to
13 restore competency, and a further period of treatment is allowed
14 under RCW 10.77.086 or 10.77.088.

15 ~~((d))~~ (e) If at any time during the proceeding the court finds,
16 following notice and hearing, a defendant is not likely to regain
17 competency, the court shall dismiss the proceedings without prejudice
18 and refer the defendant for civil commitment evaluation or
19 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
20 10.77.088.

21 (f) If the court issues an order directing revocation of the
22 defendant's driver's license under (a) of this subsection, and the
23 court subsequently finds that the defendant's competency has been
24 restored, the court shall order the clerk to transmit an order to the
25 department of licensing for reinstatement of the defendant's driver's
26 license. The court may direct the clerk to transmit an order
27 reinstating the defendant's driver's license before the end of one
28 year for good cause upon the petition of the defendant.

29 (2) If the defendant is referred for evaluation by a designated
30 crisis responder under this chapter, the designated crisis responder
31 shall provide prompt written notification of the results of the
32 evaluation and whether the person was detained. The notification
33 shall be provided to the court in which the criminal action was
34 pending, the prosecutor, the defense attorney in the criminal action,
35 and the facility that evaluated the defendant for competency.

36 (3) The fact that the defendant is unfit to proceed does not
37 preclude any pretrial proceedings which do not require the personal
38 participation of the defendant.

39 (4) A defendant receiving medication for either physical or
40 mental problems shall not be prohibited from standing trial, if the

1 medication either enables the defendant to understand the proceedings
2 against him or her and to assist in his or her own defense, or does
3 not disable him or her from so understanding and assisting in his or
4 her own defense.

5 (5) At or before the conclusion of any commitment period provided
6 for by this section, the facility providing evaluation and treatment
7 shall provide to the court a written report of evaluation which meets
8 the requirements of RCW 10.77.060(3). For defendants charged with a
9 felony, the report following the second competency restoration period
10 or first competency restoration period if the defendant's
11 incompetence is determined to be solely due to a developmental
12 disability or the evaluator concludes that the defendant is not
13 likely to regain competency must include an assessment of the
14 defendant's future dangerousness which is evidence-based regarding
15 predictive validity.

16 **Sec. 7.** RCW 10.77.086 and 2022 c 288 s 4 are each amended to
17 read as follows:

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

27 (a) To be eligible for an order for outpatient competency
28 restoration, a defendant must be clinically appropriate and be
29 willing to:

30 (i) Adhere to medications or receive prescribed intramuscular
31 medication;

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

33 (iii) Comply with urinalysis or breathalyzer monitoring if
34 needed.

35 (b) If the court orders inpatient competency restoration, the
36 department shall place the defendant in an appropriate facility of
37 the department for competency restoration.

38 (c) If the court orders outpatient competency restoration, the
39 court shall modify conditions of release as needed to authorize the

1 department to place the person in approved housing, which may include
2 access to supported housing, affiliated with a contracted outpatient
3 competency restoration program. The department, in conjunction with
4 the health care authority, must establish rules for conditions of
5 participation in the outpatient competency restoration program, which
6 must include the defendant being subject to medication management.
7 The court may order regular urinalysis testing. The outpatient
8 competency restoration program shall monitor the defendant during the
9 defendant's placement in the program and report any noncompliance or
10 significant changes with respect to the defendant to the department
11 and, if applicable, the forensic navigator.

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

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

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

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

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

19 (2) For a defendant whose highest charge is a class C felony, or
20 a class B felony that is not classified as violent under RCW
21 9.94A.030, the maximum time allowed for the initial competency
22 restoration period is 45 days if the defendant is referred for
23 inpatient competency restoration, or 90 days if the defendant is
24 referred for outpatient competency restoration, provided that if the
25 outpatient competency restoration placement is terminated and the
26 defendant is subsequently admitted to an inpatient facility, the
27 period of inpatient treatment during the first competency restoration
28 period under this subsection shall not exceed 45 days.

29 (3) If the court determines or the parties agree before the
30 initial competency restoration period or at any subsequent stage of
31 the proceedings that the defendant is unlikely to regain competency,
32 the court may dismiss the charges without prejudice without ordering
33 the defendant to undergo an initial or further period of competency
34 restoration treatment, in which case the court shall order that the
35 defendant be referred for evaluation for civil commitment in the
36 manner provided in subsection (5) of this section.

37 (4) On or before expiration of the initial competency restoration
38 period the court shall conduct a hearing to determine whether the
39 defendant is now competent to stand trial. If the court finds by a
40 preponderance of the evidence that the defendant is incompetent to

1 stand trial, the court may order an extension of the competency
2 restoration period for an additional period of 90 days, but the court
3 must at the same time set a date for a new hearing to determine the
4 defendant's competency to stand trial before the expiration of this
5 second restoration period. The defendant, the defendant's attorney,
6 and the prosecutor have the right to demand that the hearing be
7 before a jury. No extension shall be ordered for a second or third
8 competency restoration period if the defendant's incompetence has
9 been determined by the secretary to be solely the result of a
10 developmental disability which is such that competence is not
11 reasonably likely to be regained during an extension.

12 (5) At the hearing upon the expiration of the second competency
13 restoration period, or at the end of the first competency restoration
14 period if the defendant is ineligible for a second or third
15 competency restoration period under subsection (4) of this section,
16 if the jury or court finds that the defendant is incompetent to stand
17 trial, the court shall dismiss the charges without prejudice and
18 order the defendant to be committed to (~~(a state hospital)~~) the
19 department for up to 120 hours if the defendant has not undergone
20 competency restoration services or has engaged in outpatient
21 competency restoration services and up to 72 hours if the defendant
22 engaged in inpatient competency restoration services starting from
23 admission to the facility, excluding Saturdays, Sundays, and
24 holidays (~~(, for evaluation for the purpose of filing a civil~~
25 ~~commitment petition under chapter 71.05 RCW)).~~ However, the court
26 shall not dismiss the charges if the court or jury finds that: (a)
27 The defendant (i) is a substantial danger to other persons; or (ii)
28 presents a substantial likelihood of committing criminal acts
29 jeopardizing public safety or security; and (b) there is a
30 substantial probability that the defendant will regain competency
31 within a reasonable period of time. If the court or jury makes such a
32 finding, the court may extend the period of commitment for up to an
33 additional six months.

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

1 **Sec. 8.** RCW 10.77.088 and 2022 c 288 s 5 are each amended to
2 read as follows:

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

6 (a) Shall dismiss the proceedings without prejudice and detain
7 the defendant (~~for sufficient time to allow the designated crisis~~
8 ~~responder to evaluate the defendant and consider initial detention~~
9 ~~proceedings under chapter 71.05 RCW~~) pursuant to subsection (5) of
10 this section, unless the prosecutor objects to the dismissal and
11 provides notice of a motion for an order for competency restoration
12 treatment, in which case the court shall schedule a hearing within
13 seven days.

14 (b) At the hearing, the prosecuting attorney must establish that
15 there is a compelling state interest to order competency restoration
16 treatment for the defendant. The court may consider prior criminal
17 history, prior history in treatment, prior history of violence, the
18 quality and severity of the pending charges, any history that
19 suggests whether competency restoration treatment is likely to be
20 successful, in addition to the factors listed under RCW 10.77.092. If
21 the prosecuting attorney proves by a preponderance of the evidence
22 that there is a compelling state interest in ordering competency
23 restoration treatment, then the court shall issue an order in
24 accordance with subsection (2) of this section, however the state's
25 compelling interest shall be considered satisfied and the court shall
26 not order competency restoration treatment if the defendant is
27 subject to a current treatment order under chapter 71.05 RCW. If the
28 defendant is charged with a serious traffic offense under RCW
29 9.94A.030, the court may order the clerk to transmit an order to the
30 department of licensing for revocation of the defendant's driver's
31 license for a period of one year. The court shall direct the clerk to
32 transmit an order to the department of licensing reinstating the
33 defendant's driver's license if the defendant is subsequently
34 restored to competency, and may do so at any time before the end of
35 one year for good cause upon the petition of the defendant.

36 (2) (a) If a court finds pursuant to subsection (1)(b) of this
37 section that there is a compelling state interest in pursuing
38 competency restoration treatment, the court shall (~~commit the~~
39 ~~defendant to the custody of the secretary for inpatient competency~~
40 ~~restoration, or may alternatively~~) order the defendant to receive

1 outpatient competency restoration (~~(based on a recommendation from a~~
2 ~~forensic navigator and input from the parties)~~) if an outpatient
3 competency restoration program is available in the jurisdiction and
4 is recommended as clinically appropriate by the forensic navigator,
5 consistent with the recommendation of the forensic navigator, unless
6 the court finds that an order for outpatient competency restoration
7 is clearly inappropriate considering the health and safety of the
8 defendant, risks to public safety, and other relevant factors.

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

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

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

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

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

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

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

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

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

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

36 ~~((e))~~ (f) The court may not issue an order for outpatient
37 competency restoration unless the department certifies that there is
38 an available appropriate outpatient restoration program that has
39 adequate space for the person at the time the order is issued or the

1 court places the defendant under the guidance and control of a
2 professional person identified in the court order.

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

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

14 (4) If the court has determined or the parties agree that the
15 defendant is unlikely to regain competency, the court may dismiss the
16 charges without prejudice without ordering the defendant to undergo
17 competency restoration treatment, in which case the court shall order
18 that the defendant be referred for evaluation for civil commitment in
19 the manner provided in subsection (5) of this section.

20 (5) (a) If the proceedings are dismissed under RCW 10.77.084 and
21 the defendant was on conditional release at the time of dismissal,
22 the court shall order the designated crisis responder within that
23 county to evaluate the defendant pursuant to chapter 71.05 RCW. The
24 evaluation may be conducted in any location chosen by the
25 professional.

26 (b) If the defendant was in custody and not on conditional
27 release at the time of dismissal, the defendant shall be detained and
28 sent to an evaluation and treatment facility for up to 120 hours if
29 the defendant has not undergone competency restoration services or
30 has engaged in outpatient competency restoration services and up to
31 72 hours if the defendant engaged in inpatient competency restoration
32 services, excluding Saturdays, Sundays, and holidays, for evaluation
33 for purposes of filing a petition under chapter 71.05 RCW. The 120-
34 hour or 72-hour period shall commence upon the next nonholiday
35 weekday following the court order and shall run to the end of the
36 last nonholiday weekday within the 120-hour or 72-hour period.

37 (6) If the defendant is charged with a nonfelony crime that is
38 not a serious offense as defined in RCW 10.77.092 and found by the
39 court to be not competent, the court may stay or dismiss proceedings
40 and detain the defendant for sufficient time to allow the designated

1 crisis responder to evaluate the defendant and consider initial
2 detention proceedings under chapter 71.05 RCW. The court must give
3 notice to all parties at least 24 hours before the dismissal of any
4 proceeding under this subsection, and provide an opportunity for a
5 hearing on whether to dismiss the proceedings.

6 (7) If at any time the court dismisses charges under subsections
7 (1) through (6) of this section, the court shall make a finding as to
8 whether the defendant has a history of one or more violent acts. If
9 the court so finds, the defendant is barred from the possession of
10 firearms until a court restores his or her right to possess a firearm
11 under RCW 9.41.047. The court shall state to the defendant and
12 provide written notice that the defendant is barred from the
13 possession of firearms and that the prohibition remains in effect
14 until a court restores his or her right to possess a firearm under
15 RCW 9.41.047.

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

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.77
22 RCW to read as follows:

23 (1) The court shall appoint a forensic navigator for every
24 defendant referred for competency evaluation whose most serious
25 charge is a nonfelony if:

26 (a) The defendant has had two or more competency evaluations in
27 the preceding 24 months on separate charges or cause numbers; and

28 (b) The defendant's current charges are filed in a county that
29 has a forensic navigator program.

30 (2) In each case in which a forensic navigator is appointed under
31 subsection (1) of this section, the forensic navigator shall:

32 (a) Meet, interview, and observe the defendant and determine the
33 defendant's willingness to engage with services under this section;
34 and

35 (b) Provide a diversion program plan to the parties that includes
36 a recommendation for a diversion program to defense counsel and the
37 prosecuting attorney. Services under a diversion program may include
38 a referral for assisted outpatient treatment under chapter 71.05 RCW.

1 (3) If the parties agree on the diversion program recommended by
2 the forensic navigator, the prosecutor shall request dismissal of the
3 criminal charges.

4 (4) If the parties do not agree on the diversion program, the
5 defense may move the court for an order dismissing the criminal
6 charges without prejudice and referring the defendant to the services
7 described in the diversion program. The court shall hold a hearing on
8 this motion within 10 days. The court shall grant the defense motion
9 if it finds by a preponderance of the evidence that the defendant is
10 amenable to the services described in the diversion program and can
11 safely receive services in the community.

12 (5) Individuals who receive a dismissal of charges and referral
13 to services described in a diversion program shall have a forensic
14 navigator assigned to assist them for up to six months while engaging
15 in the services described in the diversion program. The forensic
16 navigator shall provide monthly status updates to the court and the
17 parties regarding the individual's status in the diversion program.

18 **Sec. 10.** RCW 10.77.092 and 2014 c 10 s 2 are each amended to
19 read as follows:

20 (1) For purposes of determining whether a court may authorize
21 involuntary medication for the purpose of competency restoration
22 pursuant to RCW 10.77.084 and for maintaining the level of
23 restoration in the jail following the restoration period, a pending
24 charge involving any one or more of the following crimes is a serious
25 offense per se in the context of competency restoration:

26 (a) Any violent offense, sex offense, serious traffic offense,
27 and most serious offense, as those terms are defined in RCW
28 9.94A.030;

29 (b) Any offense, except nonfelony counterfeiting offenses,
30 included in crimes against persons in RCW 9.94A.411;

31 (c) Any offense contained in chapter 9.41 RCW (firearms and
32 dangerous weapons);

33 (d) Any offense listed as domestic violence in RCW 10.99.020;

34 (e) Any offense listed as a harassment offense in chapter 9A.46
35 RCW, except for criminal trespass in the first or second degree;

36 (f) Any violation of chapter 69.50 RCW that is a class B felony;
37 or

38 (g) Any city or county ordinance or statute that is equivalent to
39 an offense referenced in this subsection.

1 (2) (a) In a particular case, a court may determine that a pending
2 charge not otherwise defined as serious by state or federal law or by
3 a city or county ordinance is, nevertheless, a serious offense within
4 the context of competency restoration treatment when the conduct in
5 the charged offense falls within the standards established in (b) of
6 this subsection.

7 (b) To determine that the particular case is a serious offense
8 within the context of competency restoration, the court must consider
9 the following factors and determine that one or more of the following
10 factors creates a situation in which the offense is serious:

11 (i) The charge includes an allegation that the defendant actually
12 inflicted bodily or emotional harm on another person or that the
13 defendant created a reasonable apprehension of bodily or emotional
14 harm to another;

15 (ii) The extent of the impact of the alleged offense on the basic
16 human need for security of the citizens within the jurisdiction;

17 (iii) The number and nature of related charges pending against
18 the defendant;

19 (iv) The length of potential confinement if the defendant is
20 convicted; and

21 (v) The number of potential and actual victims or persons
22 impacted by the defendant's alleged acts.

23 NEW SECTION. **Sec. 11.** A new section is added to chapter 10.77
24 RCW to read as follows:

25 (1) When an individual has a prescription for an antipsychotic,
26 antidepressant, antiepileptic, or other drug prescribed to the
27 individual to treat a serious mental illness by a state hospital or
28 other state facility or a behavioral health agency or other certified
29 medical provider, and the individual is medically stable on the drug,
30 a jail or juvenile detention facility shall continue prescribing the
31 prescribed drug and may not require the substitution of a different
32 drug in a given therapeutic class, except under the following
33 circumstances:

34 (a) The substitution is for a generic version of a name brand
35 drug and the generic version is chemically identical to the name
36 brand drug; or

37 (b) The drug cannot be prescribed for reasons of drug recall or
38 removal from the market, or medical evidence indicating no
39 therapeutic effect of the drug.

1 (2) This section includes but is not limited to situations in
2 which the individual returns to a jail or juvenile detention facility
3 directly after undergoing treatment at a state hospital, behavioral
4 health agency, outpatient competency restoration program, or prison.

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

7 (1) The department shall develop a program for individuals who
8 have been involved with the criminal justice system and who are
9 diagnosed with a developmental disability or dementia disorder. The
10 program must involve wraparound services and housing supports
11 appropriate to the needs of the individual. It is sufficient to meet
12 the criteria for participation in this program if the individual has
13 recently been the subject of criminal charges that were dismissed
14 without prejudice and was evaluated as incompetent to stand trial due
15 to a developmental disability or dementia disorder.

16 (2) In the event that a court orders the commitment of an
17 individual to the custody of the department under RCW 10.77.086(5)
18 who was found incompetent to stand trial due to a developmental
19 disability or dementia disorder, the department shall place the
20 individual in the program either directly from the jail or as soon
21 thereafter as may be practicable, without maintaining the individual
22 at an inpatient facility for longer than is clinically necessary.
23 Nothing in this subsection prohibits the department from returning
24 the individual to their home or to another less restrictive setting
25 if such placement is appropriate, which may include provision of
26 supportive services to help the person maintain stability.

27 NEW SECTION. **Sec. 13.** Subject to the availability of funds
28 appropriated for this specific purpose, the health care authority
29 shall increase compensation for staff in outpatient competency
30 restoration programs to ensure compensation is provided at
31 competitive levels to improve recruitment and allow for the full
32 implementation of outpatient competency restoration programs.

33 NEW SECTION. **Sec. 14.** A new section is added to chapter 10.77
34 RCW to read as follows:

35 The staff of an outpatient competency restoration program must
36 include a prescriber.

1 NEW SECTION. **Sec. 15.** A new section is added to chapter 10.77
2 RCW to read as follows:

3 (1) The department may contract with willing jails to fund
4 construction and operational costs for clinical intervention units to
5 provide enhanced oversight, monitoring, and support to in-custody
6 individuals within the jails who have been referred for services
7 related to competency to stand trial.

8 (2) Jails which contract with the department to provide clinical
9 intervention units shall allow access to individuals who are
10 participating in the program by clinical intervention specialists
11 employed by or contracted with the department. Clinical intervention
12 specialists shall support jail health services in providing enhanced
13 oversight and monitoring of the behavioral health status of
14 participating individuals. Clinical intervention specialists shall
15 work collaboratively with jail health services to ensure appropriate
16 prescriptions, medication compliance monitoring, and access to
17 supportive behavioral health services to the individuals. Clinical
18 intervention specialists shall interface regularly with forensic
19 navigators and the department to assist forensic navigators in making
20 recommendations for appropriate placements, which may include
21 recommendations for participation in an outpatient competency
22 restoration program or a diversion program designed for the needs of
23 the individual. The clinical intervention specialist shall notify the
24 department if a participating individual appears to have stabilized
25 in their behavioral health such that a new competency evaluation is
26 appropriate to reassess the individual's need for competency
27 restoration treatment.

28 (3) To participate in a clinical intervention unit, an
29 incarcerated individual must agree to take prescribed psychotropic
30 medication and to engage with a clinical intervention specialist.

31 (4) The department may establish other requirements for clinical
32 intervention units by contract or rule.

33 NEW SECTION. **Sec. 16.** A new section is added to chapter 10.77
34 RCW to read as follows:

35 The department shall configure its data systems related to
36 forensic mental health services such that the systems can retrieve
37 data about unique individual defendants reflecting the full history
38 of criminal charges and forensic referrals relating to that

1 individual rather than tracking referrals in such a way that cannot
2 be tied to individual defendants.

3 NEW SECTION. **Sec. 17.** A new section is added to chapter 10.77
4 RCW to read as follows:

5 (1) The department shall coordinate with cities, counties,
6 hospitals, and other public and private entities to identify
7 locations that may be commissioned or renovated for use in treating
8 clients committed to the department for competency evaluation,
9 competency restoration, civil conversion, or treatment following
10 acquittal by reason of insanity.

11 (2) The department may provide capital grants to entities to
12 accomplish the purposes described in subsection (1) of this section
13 subject to provision of funding provided for this specific purpose.

14 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of
16 the state government and its existing public institutions, and takes
17 effect immediately.

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