

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5440**

Chapter 453, Laws of 2023

68th Legislature  
2023 Regular Session

FORENSIC BEHAVIORAL HEALTH—COMPETENCY EVALUATIONS AND RESTORATION  
SERVICES—VARIOUS PROVISIONS

EFFECTIVE DATE: July 23, 2023—Except for sections 7 and 9, which  
take effect May 15, 2023; and section 13, which takes effect  
December 1, 2023.

Passed by the Senate April 22, 2023  
Yeas 43 Nays 6

DENNY HECK

**President of the Senate**

Passed by the House April 21, 2023  
Yeas 79 Nays 18

LURIE JINKINS

**Speaker of the House of  
Representatives**

Approved May 15, 2023 1:53 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Sarah Bannister, Secretary of  
the Senate of the State of  
Washington, do hereby certify that  
the attached is **ENGROSSED SECOND  
SUBSTITUTE SENATE BILL 5440** as  
passed by the Senate and the House  
of Representatives on the dates  
hereon set forth.

SARAH BANNISTER

**Secretary**

FILED

May 16, 2023

**Secretary of State  
State of Washington**

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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5440**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

**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, 10.77.086, 10.77.088, 10.77.092, 10.77.065,  
7 71.05.235, 71.05.280, 71.05.290, 71.05.300, 71.05.425, 71.09.025,  
8 71.09.030, and 71.09.060; reenacting and amending RCW 10.77.010;  
9 adding new sections to chapter 10.77 RCW; creating new sections;  
10 providing an effective date; providing a contingent expiration date;  
11 and declaring an emergency.

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

13            NEW SECTION.    **Sec. 1.**    The legislature finds that defendants  
14 referred for services related to competency to stand trial requiring  
15 admission into a psychiatric facility are currently facing  
16 unprecedented wait times in jail for admission. The situation has  
17 been exacerbated by closure of forensic beds and workforce shortages  
18 related to COVID-19, and treatment capacity limits related to social  
19 distancing requirements. Moreover, a backlog of criminal prosecutions  
20 that were held back during the first two years of the pandemic due to  
21 capacity limitations in courts, prosecuting attorneys offices, and

1 jails, are now being filed, causing a surge in demand for competency  
2 services which exceeds the state's capacity to make a timely  
3 response. In partial consequence, as of January 2023, wait times for  
4 admission to western state hospital for competency services, directed  
5 to be completed within seven days by order of the United States  
6 district court for western Washington, have risen to over ten months,  
7 while wait times for admission to eastern state hospital for the same  
8 services have risen to over five months. The state's forensic bed  
9 capacity forecast model indicates that if the state continues to  
10 receive competency referrals from local superior, district, and  
11 municipal courts at the same volume, the state will rapidly fall  
12 farther behind.

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

38 The legislature further finds that despite these investments  
39 there is a need for everyone to come together to find solutions to  
40 both reduce demand for forensic services and to increase their

1 supply. The state needs collaboration from local governments and  
2 other entities to identify any and all facilities that can be used to  
3 provide services to patients connected to the forensic system, to  
4 reduce the flow of competency referrals coming from municipal,  
5 district, and superior courts, and to improve availability and  
6 effectiveness of behavioral health services provided outside the  
7 criminal justice system.

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

10 As used in this chapter:

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

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

14 (3) "Clinical intervention specialist" means a licensed  
15 professional with prescribing authority who is employed by or  
16 contracted with the department to provide direct services, enhanced  
17 oversight and monitoring of the behavioral health status of in-  
18 custody defendants who have been referred for evaluation or  
19 restoration services related to competency to stand trial and who  
20 coordinate treatment options with forensic navigators, the  
21 department, and jail health services.

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

25 ~~((4))~~ (5) "Community behavioral health agency" has the same  
26 meaning as "licensed or certified behavioral health agency" defined  
27 in RCW 71.24.025.

28 ~~((5))~~ (6) "Conditional release" means modification of a court-  
29 ordered commitment, which may be revoked upon violation of any of its  
30 terms.

31 ~~((6))~~ (7) A "criminally insane" person means any person who has  
32 been acquitted of a crime charged by reason of insanity, and  
33 thereupon found to be a substantial danger to other persons or to  
34 present a substantial likelihood of committing criminal acts  
35 jeopardizing public safety or security unless kept under further  
36 control by the court or other persons or institutions.

37 ~~((7))~~ (8) "Department" means the state department of social and  
38 health services.

1       (~~(8)~~) (9) "Designated crisis responder" has the same meaning as  
2 provided in RCW 71.05.020.

3       (~~(9)~~) (10) "Detention" or "detain" means the lawful confinement  
4 of a person, under the provisions of this chapter, pending  
5 evaluation.

6       (~~(10)~~) (11) "Developmental disabilities professional" means a  
7 person who has specialized training and (~~three years of~~) experience  
8 in directly treating or working with persons with developmental  
9 disabilities and is a psychiatrist or psychologist, or a social  
10 worker, and such other developmental disabilities professionals as  
11 may be defined by rules adopted by the secretary.

12       (~~(11)~~) (12) "Developmental disability" means the condition as  
13 defined in RCW 71A.10.020(~~(5)~~).

14       (~~(12)~~) (13) "Discharge" means the termination of hospital  
15 medical authority. The commitment may remain in place, be terminated,  
16 or be amended by court order.

17       (~~(13)~~) (14) "Furlough" means an authorized leave of absence for  
18 a resident of a state institution operated by the department  
19 designated for the custody, care, and treatment of the criminally  
20 insane, consistent with an order of conditional release from the  
21 court under this chapter, without any requirement that the resident  
22 be accompanied by, or be in the custody of, any law enforcement or  
23 institutional staff, while on such unescorted leave.

24       (~~(14)~~) (15) "Genuine doubt as to competency" means that there  
25 is reasonable cause to believe, based upon actual interactions with  
26 or observations of the defendant or information provided by counsel,  
27 that a defendant is incompetent to stand trial.

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

36       (~~(15)~~) (17) "History of one or more violent acts" means violent  
37 acts committed during: (a) The ten-year period of time prior to the  
38 filing of criminal charges; plus (b) the amount of time equal to time  
39 spent during the ten-year period in a mental health facility or in  
40 confinement as a result of a criminal conviction.

1       (~~(16)~~) (18) "Immediate family member" means a spouse, child,  
2       stepchild, parent, stepparent, grandparent, sibling, or domestic  
3       partner.

4       (~~(17)~~) (19) "Incompetency" means a person lacks the capacity to  
5       understand the nature of the proceedings against him or her or to  
6       assist in his or her own defense as a result of mental disease or  
7       defect.

8       (~~(18)~~) (20) "Indigent" means any person who is financially  
9       unable to obtain counsel or other necessary expert or professional  
10      services without causing substantial hardship to the person or his or  
11      her family.

12      (~~(19)~~) (21) "Individualized service plan" means a plan prepared  
13      by a developmental disabilities professional with other professionals  
14      as a team, for an individual with developmental disabilities, which  
15      shall state:

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

18      (b) The conditions and strategies necessary to achieve the  
19      purposes of habilitation;

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

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

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

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

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

31      (~~(20)~~) (22) "Professional person" means:

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

39      (b) A psychologist licensed as a psychologist pursuant to chapter  
40      18.83 RCW;

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

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

6 ~~((21))~~ (23) "Release" means legal termination of the court-  
7 ordered commitment under the provisions of this chapter.

8 ~~((22))~~ (24) "Secretary" means the secretary of the department  
9 of social and health services or his or her designee.

10 ~~((23))~~ (25) "Treatment" means any currently standardized  
11 medical or mental health procedure including medication.

12 ~~((24))~~ (26) "Treatment records" include registration and all  
13 other records concerning persons who are receiving or who at any time  
14 have received services for mental illness, which are maintained by  
15 the department, by behavioral health administrative services  
16 organizations and their staffs, by managed care organizations and  
17 their staffs, and by treatment facilities. Treatment records do not  
18 include notes or records maintained for personal use by a person  
19 providing treatment services for the department, behavioral health  
20 administrative services organizations, managed care organizations, or  
21 a treatment facility if the notes or records are not available to  
22 others.

23 ~~((25))~~ (27) "Violent act" means behavior that: (a) (i) Resulted  
24 in; (ii) if completed as intended would have resulted in; or (iii)  
25 was threatened to be carried out by a person who had the intent and  
26 opportunity to carry out the threat and would have resulted in,  
27 homicide, nonfatal injuries, or substantial damage to property; or  
28 (b) recklessly creates an immediate risk of serious physical injury  
29 to another person. As used in this subsection, "nonfatal injuries"  
30 means physical pain or injury, illness, or an impairment of physical  
31 condition. "Nonfatal injuries" shall be construed to be consistent  
32 with the definition of "bodily injury," as defined in RCW 9A.04.110.

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

35 (1) (a) Whenever a defendant has pleaded not guilty by reason of  
36 insanity, ~~((or there is reason to doubt his or her competency,))~~ the  
37 court on its own motion or on the motion of any party shall either  
38 appoint or request the secretary to designate a qualified expert or  
39 professional person, who shall be approved by the prosecuting

1 attorney, to evaluate and report upon the mental condition of the  
2 defendant.

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

13 (ii) Nothing in this subsection (1)(b) is intended to require a  
14 waiver of attorney-client privilege. Defense counsel may meet the  
15 requirements under this subsection (1)(b) by filing a declaration  
16 stating that they have reason to believe that a competency evaluation  
17 is necessary, and stating the basis on which the defendant is  
18 believed to be incompetent.

19 (c) The signed order of the court shall serve as authority for  
20 the evaluator to be given access to all records held by any mental  
21 health, medical, long-term services or supports, educational, or  
22 correctional facility that relate to the present or past mental,  
23 emotional, or physical condition of the defendant. If the court is  
24 advised by any party that the defendant may have a developmental  
25 disability, the evaluation must be performed by a developmental  
26 disabilities professional and the evaluator shall have access to  
27 records of the developmental disabilities administration of the  
28 department. If the court is advised by any party that the defendant  
29 may have dementia or another relevant neurocognitive disorder, the  
30 evaluator shall have access to records of the aging and long-term  
31 support administration of the department.

32 ~~((e))~~ (d) The evaluator shall assess the defendant in a jail,  
33 detention facility, in the community, or in court to determine  
34 whether a period of inpatient commitment will be necessary to  
35 complete an accurate evaluation. If inpatient commitment is needed,  
36 the signed order of the court shall serve as authority for the  
37 evaluator to request the jail or detention facility to transport the  
38 defendant to a hospital or secure mental health facility for a period  
39 of commitment not to exceed fifteen days from the time of admission



1 to the facility. Otherwise, the evaluator shall complete the  
2 evaluation.

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

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

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

36 (h) If the defendant ordered to be evaluated under this  
37 subsection (1) is charged with a serious traffic offense under RCW  
38 9.94A.030, or a felony version of a serious traffic offense, the  
39 prosecutor may make a motion to modify the defendant's conditions of

1 release to include a condition prohibiting the defendant from driving  
2 during the pendency of the competency evaluation period.

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

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

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

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

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

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

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

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

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

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

14 (6) If a finding of the competency evaluation under this section  
15 or under RCW 10.77.084 is that the individual is not competent due to  
16 an intellectual or developmental disability, dementia, or traumatic  
17 brain injury, the evaluator shall notify the department, which shall  
18 refer the individual to the developmental disabilities administration  
19 or the aging and long-term support administration of the department  
20 for review of eligibility for services. The department shall inform  
21 the forensic navigator about availability of services.

22 (7) If the expert or professional person appointed to perform a  
23 competency evaluation in the community is not able to complete the  
24 evaluation after two attempts at scheduling with the defendant, the  
25 department shall submit a report to the court and parties and include  
26 a date and time for another evaluation which must be at least four  
27 weeks later. The court shall provide notice to the defendant of the  
28 date and time of the evaluation. If the defendant fails to appear at  
29 that appointment, the court shall recall the order for competency  
30 evaluation and may issue a warrant for the failure to appear.

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

33 (1)(a) The legislature establishes a performance target of seven  
34 days or fewer to extend an offer of admission to a defendant in  
35 pretrial custody for inpatient competency evaluation or inpatient  
36 competency restoration services, when access to the services is  
37 legally authorized.

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

4 (i) To complete a competency evaluation in jail and distribute  
5 the evaluation report; and

6 (ii) To extend an offer of admission to a defendant ordered to be  
7 committed to (~~a state hospital~~) the department for placement in a  
8 facility operated by or contracted by the department following  
9 dismissal of charges based on incompetency to stand trial under RCW  
10 10.77.086.

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

14 (2)(a) A maximum time limit of seven days as measured from the  
15 department's receipt of the court order, or a maximum time limit of  
16 14 days as measured from signature of the court order, whichever is  
17 shorter, is established to complete the services specified in  
18 subsection (1)(a) of this section, subject to the limitations under  
19 subsection (9) of this section.

20 (b) A maximum time limit of 14 days as measured from the  
21 department's receipt of the court order, or a maximum time limit of  
22 21 days as measured from signature of the court order, whichever is  
23 shorter, is established to complete the services specified in  
24 subsection (1)(b) of this section, subject to the limitations under  
25 subsection (9) of this section.

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

31 (4) It shall be a defense to an allegation that the department  
32 has exceeded the maximum time limits for completion of competency  
33 services described in subsection (2) of this section if the  
34 department can demonstrate by a preponderance of the evidence that  
35 the reason for exceeding the maximum time limits was outside of the  
36 department's control including, but not limited to, the following  
37 circumstances:

38 (a) Despite a timely request, the department has not received  
39 necessary medical information regarding the current medical status of  
40 a defendant;

1 (b) The individual circumstances of the defendant make accurate  
2 completion of an evaluation of competency to stand trial dependent  
3 upon review of mental health, substance use disorder, or medical  
4 history information which is in the custody of a third party and  
5 cannot be immediately obtained by the department, provided that  
6 completion shall not be postponed for procurement of information  
7 which is merely supplementary;

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

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

13 (e) Completion of the referral requires additional time to  
14 accommodate the availability or participation of counsel, court  
15 personnel, interpreters, or the defendant;

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

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

22 (5) The department shall provide written notice to the court when  
23 it will not be able to meet the maximum time limits under subsection  
24 (2) of this section and identify the reasons for the delay and  
25 provide a reasonable estimate of the time necessary to complete the  
26 competency service. Good cause for an extension for the additional  
27 time estimated by the department shall be presumed absent a written  
28 response from the court or a party received by the department within  
29 seven days.

30 (6) The department shall:

31 (a) Develop, document, and implement procedures to monitor the  
32 clinical status of defendants admitted to a state hospital for  
33 competency services that allow the state hospital to accomplish early  
34 discharge for defendants for whom clinical objectives have been  
35 achieved or may be achieved before expiration of the commitment  
36 period;

37 (b) Investigate the extent to which patients admitted to a state  
38 hospital under this chapter overstay time periods authorized by law  
39 and take reasonable steps to limit the time of commitment to  
40 authorized periods; and

1 (c) Establish written standards for the productivity of forensic  
2 evaluators and utilize these standards to internally review the  
3 performance of forensic evaluators.

4 (7) Following any quarter in which a state hospital has failed to  
5 meet one or more of the performance targets or maximum time limits  
6 under subsection (1) or (2) of this section, the department shall  
7 report to the executive and the legislature the extent of this  
8 deviation and describe any corrective action being taken to improve  
9 performance. This report shall be made publicly available. An average  
10 may be used to determine timeliness under this subsection.

11 (8) The department shall report annually to the legislature and  
12 the executive on the timeliness of services related to competency to  
13 stand trial and the timeliness with which court referrals accompanied  
14 by charging documents, discovery, and criminal history information  
15 are provided to the department relative to the signature date of the  
16 court order. The report must be in a form that is accessible to the  
17 public and that breaks down performance by county.

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

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

24 (1) Subject to the limitations described in subsection (2) of  
25 this section, a court may appoint an impartial forensic navigator  
26 employed by or contracted by the department to assist individuals who  
27 have been referred for competency evaluation and shall appoint a  
28 forensic navigator in circumstances described under section 10 of  
29 this act.

30 (2) A forensic navigator must assist the individual to access  
31 services related to diversion and community outpatient competency  
32 restoration. The forensic navigator must assist the individual,  
33 prosecuting attorney, defense attorney, and the court to understand  
34 the options available to the individual and be accountable as an  
35 officer of the court for faithful execution of the responsibilities  
36 outlined in this section.

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

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

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

6 (c) To assess the individual for appropriateness for assisted  
7 outpatient treatment under chapter 71.05 RCW;

8 (d) To present information to the court in order to assist the  
9 court in understanding the treatment options available to the  
10 individual to support the entry of orders for diversion from the  
11 forensic mental health system or for community outpatient competency  
12 restoration, ~~((and))~~ to facilitate that transition; ~~((and~~

13 ~~-(d)-))~~ (e) To provide regular updates to the court and parties of  
14 the status of the individual's participation in diversion or  
15 outpatient services and be responsive to inquiries by the parties  
16 about treatment status;

17 (f) When the individual is ordered to receive community  
18 outpatient restoration, to provide services to the individual  
19 including:

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

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

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

24 (iv) Providing information to the court concerning the  
25 individual's progress and compliance with court-ordered conditions of  
26 release, which may include appearing at court hearings to provide  
27 information to the court;

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

30 (vi) Assisting the individual with obtaining prescribed  
31 medication and encouraging adherence with prescribed medication;

32 (vii) Assessing the individual for appropriateness for assisted  
33 outpatient treatment under chapter 71.05 RCW and coordinating the  
34 initiation of an assisted outpatient treatment order if appropriate;

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

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

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

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

7       (g) If the individual is an American Indian or Alaska Native who  
8 receives medical, behavioral health, housing, or other supportive  
9 services from a tribe within this state, to notify and coordinate  
10 with the tribe and Indian health care provider. Notification shall be  
11 made in person or by telephonic or electronic communication to the  
12 tribal contact listed in the authority's tribal crisis coordination  
13 plan as soon as possible.

14       (4) Forensic navigators may submit (~~(nonclinical)~~)  
15 recommendations to the court regarding treatment and restoration  
16 options for the individual, which the court may consider and weigh in  
17 conjunction with the recommendations of all of the parties.

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

20       (6) The signed order for competency evaluation from the court  
21 shall serve as authority for the forensic navigator to be given  
22 access to all records held by a behavioral health, educational, or  
23 law enforcement agency or a correctional facility that relates to an  
24 individual. Information that is protected by state or federal law,  
25 including health information, shall not be entered into the court  
26 record without the consent of the individual or their defense  
27 attorney.

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

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

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

37       (1)(a) If at any time during the pendency of an action and prior  
38 to judgment the court finds, following a report as provided in RCW  
39 10.77.060, a defendant is incompetent, the court shall order the



1 proceedings against the defendant be stayed except as provided in  
2 subsection (4) of this section. Beginning October 1, 2023, if the  
3 defendant is charged with a serious traffic offense under RCW  
4 9.94A.030, or a felony version of a serious traffic offense, the  
5 court may order the clerk to transmit an order to the department of  
6 licensing for revocation of the defendant's driver's license for a  
7 period of one year.

8 (b) The court may order a defendant who has been found to be  
9 incompetent to undergo competency restoration treatment at a facility  
10 designated by the department if the defendant is eligible under RCW  
11 10.77.086 or 10.77.088. At the end of each competency restoration  
12 period or at any time a professional person determines competency has  
13 been, or is unlikely to be, restored, the defendant shall be returned  
14 to court for a hearing, except that if the opinion of the  
15 professional person is that the defendant remains incompetent and the  
16 hearing is held before the expiration of the current competency  
17 restoration period, the parties may agree to waive the defendant's  
18 presence, to remote participation by the defendant at a hearing, or  
19 to presentation of an agreed order in lieu of a hearing. The facility  
20 shall promptly notify the court and all parties of the date on which  
21 the competency restoration period commences and expires so that a  
22 timely hearing date may be scheduled.

23 (c) If, following notice and hearing or entry of an agreed order  
24 under (b) of this subsection, the court finds that competency has  
25 been restored, the court shall lift the stay entered under (a) of  
26 this subsection. If the court finds that competency has not been  
27 restored, the court shall dismiss the proceedings without prejudice,  
28 except that the court may order a further period of competency  
29 restoration treatment if it finds that further treatment within the  
30 time limits established by RCW 10.77.086 or 10.77.088 is likely to  
31 restore competency, and a further period of treatment is allowed  
32 under RCW 10.77.086 or 10.77.088.

33 (d) If at any time during the proceeding the court finds,  
34 following notice and hearing, a defendant is not likely to regain  
35 competency, the court shall dismiss the proceedings without prejudice  
36 and refer the defendant for civil commitment evaluation or  
37 proceedings if appropriate under RCW 10.77.065, 10.77.086, or  
38 10.77.088.

39 (e) Beginning October 1, 2023, if the court issues an order  
40 directing revocation of the defendant's driver's license under (a) of

1 this subsection, and the court subsequently finds that the  
2 defendant's competency has been restored, the court shall order the  
3 clerk to transmit an order to the department of licensing for  
4 reinstatement of the defendant's driver's license. The court may  
5 direct the clerk to transmit an order reinstating the defendant's  
6 driver's license before the end of one year for good cause upon the  
7 petition of the defendant.

8 (2) If the defendant is referred for evaluation by a designated  
9 crisis responder under this chapter, the designated crisis responder  
10 shall provide prompt written notification of the results of the  
11 evaluation and whether the person was detained. The notification  
12 shall be provided to the court in which the criminal action was  
13 pending, the prosecutor, the defense attorney in the criminal action,  
14 and the facility that evaluated the defendant for competency.

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

18 (4) A defendant receiving medication for either physical or  
19 mental problems shall not be prohibited from standing trial, if the  
20 medication either enables the defendant to understand the proceedings  
21 against him or her and to assist in his or her own defense, or does  
22 not disable him or her from so understanding and assisting in his or  
23 her own defense.

24 (5) At or before the conclusion of any commitment period provided  
25 for by this section, the facility providing evaluation and treatment  
26 shall provide to the court a written report of evaluation which meets  
27 the requirements of RCW 10.77.060(3). For defendants charged with a  
28 felony, the report following the second competency restoration period  
29 or first competency restoration period if the defendant's  
30 incompetence is determined to be solely due to a developmental  
31 disability or the evaluator concludes that the defendant is not  
32 likely to regain competency must include an assessment of the  
33 defendant's future dangerousness which is evidence-based regarding  
34 predictive validity.

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

37 (1) If the defendant is charged with a felony and determined to  
38 be incompetent, until he or she has regained the competency necessary  
39 to understand the proceedings against him or her and assist in his or

1 her own defense, but in any event for a period of no longer than 90  
2 days, the court shall commit the defendant to the custody of the  
3 secretary for inpatient competency restoration, or may alternatively  
4 order the defendant to receive outpatient competency restoration  
5 based on a recommendation from a forensic navigator and input from  
6 the parties.

7 (a) To be eligible for an order for outpatient competency  
8 restoration, a defendant must be clinically appropriate and be  
9 willing to:

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

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

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

15 (b) If the court orders inpatient competency restoration, the  
16 department shall place the defendant in an appropriate facility of  
17 the department for competency restoration.

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

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

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

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

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

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

38 (2) For a defendant whose highest charge is a class C felony, or  
39 a class B felony that is not classified as violent under RCW  
40 9.94A.030, the maximum time allowed for the initial competency

1 restoration period is 45 days if the defendant is referred for  
2 inpatient competency restoration, or 90 days if the defendant is  
3 referred for outpatient competency restoration, provided that if the  
4 outpatient competency restoration placement is terminated and the  
5 defendant is subsequently admitted to an inpatient facility, the  
6 period of inpatient treatment during the first competency restoration  
7 period under this subsection shall not exceed 45 days.

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

16 (4) On or before expiration of the initial competency restoration  
17 period the court shall conduct a hearing to determine whether the  
18 defendant is now competent to stand trial. If the court finds by a  
19 preponderance of the evidence that the defendant is incompetent to  
20 stand trial, the court may order an extension of the competency  
21 restoration period for an additional period of 90 days, but the court  
22 must at the same time set a date for a new hearing to determine the  
23 defendant's competency to stand trial before the expiration of this  
24 second restoration period. The defendant, the defendant's attorney,  
25 and the prosecutor have the right to demand that the hearing be  
26 before a jury. No extension shall be ordered for a second or third  
27 competency restoration period if the defendant's incompetence has  
28 been determined by the secretary to be solely the result of a  
29 developmental disability which is such that competence is not  
30 reasonably likely to be regained during an extension.

31 (5) ~~((A~~t~~))~~ (a) Except as provided in (b) of this subsection, at  
32 the hearing upon the expiration of the second competency restoration  
33 period, or at the end of the first competency restoration period if  
34 the defendant is ineligible for a second or third competency  
35 restoration period under subsection (4) of this section, if the jury  
36 or court finds that the defendant is incompetent to stand trial, the  
37 court shall dismiss the charges without prejudice and order the  
38 defendant to be committed to ~~((a state hospital))~~ the department for  
39 placement in a facility operated or contracted by the department for  
40 up to 120 hours if the defendant has not undergone competency

1 restoration services or has engaged in outpatient competency  
2 restoration services and up to 72 hours if the defendant engaged in  
3 inpatient competency restoration services starting from admission to  
4 the facility, excluding Saturdays, Sundays, and holidays, for  
5 evaluation for the purpose of filing a civil commitment petition  
6 under chapter 71.05 RCW. (~~However, the~~) If at the time the order to  
7 dismiss the charges without prejudice is entered by the court the  
8 defendant is already in a facility operated or contracted by the  
9 department, the 72-hour or 120-hour period shall instead begin upon  
10 department receipt of the court order.

11 (b) The court shall not dismiss the charges if the court or jury  
12 finds that: (~~(a)~~) (i) The defendant (~~(i)~~) (A) is a substantial  
13 danger to other persons; or (~~(ii)~~) (B) presents a substantial  
14 likelihood of committing criminal acts jeopardizing public safety or  
15 security; and (~~(b)~~) (ii) there is a substantial probability that  
16 the defendant will regain competency within a reasonable period of  
17 time. If the court or jury makes such a finding, the court may extend  
18 the period of commitment for up to an additional six months.

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

24 **Sec. 8.** RCW 10.77.086 and 2022 c 288 s 4 are each amended to  
25 read as follows:

26 (1) (~~(1)~~) (a) Except as otherwise provided in this section, if  
27 the defendant is charged with a felony and determined to be  
28 incompetent, until he or she has regained the competency necessary to  
29 understand the proceedings against him or her and assist in his or  
30 her own defense, but in any event for a period of no longer than 90  
31 days, the court shall commit the defendant to the custody of the  
32 secretary for inpatient competency restoration, or may alternatively  
33 order the defendant to receive outpatient competency restoration  
34 based on a recommendation from a forensic navigator and input from  
35 the parties.

36 (b) For a defendant who is determined to be incompetent and whose  
37 highest charge is a class C felony other than assault in the third  
38 degree under RCW 9A.36.031(1) (d) or (f), felony physical control of  
39 a vehicle under RCW 46.61.504(6), felony hit and run resulting in

1 injury under RCW 46.52.020(4)(b), a hate crime offense under RCW  
2 9A.36.080, a class C felony with a domestic violence designation, a  
3 class C felony sex offense as defined in RCW 9.94A.030, or a class C  
4 felony with a sexual motivation allegation, the court shall first  
5 consider all available and appropriate alternatives to inpatient  
6 competency restoration. The court shall dismiss the proceedings  
7 without prejudice upon agreement of the parties if the forensic  
8 navigator has found an appropriate and available diversion program  
9 willing to accept the defendant.

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

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

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

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

18 (b) If the court orders inpatient competency restoration, the  
19 department shall place the defendant in an appropriate facility of  
20 the department for competency restoration.

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

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

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

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

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

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



1       ~~((2))~~ (3) For a defendant whose highest charge is a class C  
2 felony, or a class B felony that is not classified as violent under  
3 RCW 9.94A.030, the maximum time allowed for the initial competency  
4 restoration period is 45 days if the defendant is referred for  
5 inpatient competency restoration, or 90 days if the defendant is  
6 referred for outpatient competency restoration, provided that if the  
7 outpatient competency restoration placement is terminated and the  
8 defendant is subsequently admitted to an inpatient facility, the  
9 period of inpatient treatment during the first competency restoration  
10 period under this subsection shall not exceed 45 days.

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

24       (5) If the court determines or the parties agree before the  
25 initial competency restoration period or at any subsequent stage of  
26 the proceedings that the defendant is unlikely to regain competency,  
27 the court may dismiss the charges without prejudice without ordering  
28 the defendant to undergo an initial or further period of competency  
29 restoration treatment, in which case the court shall order that the  
30 defendant be referred for evaluation for civil commitment in the  
31 manner provided in subsection ~~((5))~~ (7) of this section.

32       ~~((4))~~ (6) On or before expiration of the initial competency  
33 restoration period the court shall conduct a hearing to determine  
34 whether the defendant is now competent to stand trial. If the court  
35 finds by a preponderance of the evidence that the defendant is  
36 incompetent to stand trial, the court may order an extension of the  
37 competency restoration period for an additional period of 90 days,  
38 but the court must at the same time set a date for a new hearing to  
39 determine the defendant's competency to stand trial before the  
40 expiration of this second restoration period. The defendant, the

1 defendant's attorney, and the prosecutor have the right to demand  
2 that the hearing be before a jury. No extension shall be ordered for  
3 a second or third competency restoration period if the defendant is  
4 ineligible for a subsequent competency restoration period under  
5 subsection (4) of this section or the defendant's incompetence has  
6 been determined by the secretary to be solely the result of ((a)) an  
7 intellectual or developmental disability, dementia, or traumatic  
8 brain injury which is such that competence is not reasonably likely  
9 to be regained during an extension.

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

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

1        ~~((+6))~~ (8) Any period of competency restoration treatment under  
2 this section includes only the time the defendant is actually at the  
3 facility or is actively participating in an outpatient competency  
4 restoration program and is in addition to reasonable time for  
5 transport to or from the facility.

6        **Sec. 9.** RCW 10.77.088 and 2022 c 288 s 5 are each amended to  
7 read as follows:

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

18        (a) Shall dismiss the proceedings without prejudice and detain  
19 the defendant (~~for sufficient time to allow the designated crisis~~  
20 ~~responder to evaluate the defendant and consider initial detention~~  
21 ~~proceedings under chapter 71.05 RCW)) pursuant to subsection (6) of  
22 this section, unless the prosecutor objects to the dismissal and  
23 provides notice of a motion for an order for competency restoration  
24 treatment, in which case the court shall schedule a hearing within  
25 seven days.~~

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

1 treatment, then the court shall issue an order in accordance with  
2 subsection (2) of this section.

3 (2) ~~(a)~~ If a court finds pursuant to subsection (1)(b) of this  
4 section that there is a compelling state interest in pursuing  
5 competency restoration treatment, the court shall ~~((commit the~~  
6 ~~defendant to the custody of the secretary for inpatient competency~~  
7 ~~restoration, or may alternatively))~~ order the defendant to receive  
8 outpatient competency restoration ~~((based on a recommendation from a~~  
9 ~~forensic navigator and input from the parties))~~ consistent with the  
10 recommendation of the forensic navigator, unless the court finds that  
11 an order for outpatient competency restoration is inappropriate  
12 considering the health and safety of the defendant and risks to  
13 public safety.

14 ~~((a))~~ (b) To be eligible for an order for outpatient competency  
15 restoration, a defendant must be ~~((clinically appropriate and be))~~  
16 willing to:

17 (i) Adhere to medications or receive prescribed intramuscular  
18 medication;

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

20 (iii) Comply with urinalysis or breathalyzer monitoring if  
21 needed.

22 ~~((b))~~ (c) If the court orders inpatient competency restoration,  
23 the department shall place the defendant in an appropriate facility  
24 of the department for competency restoration under subsection (3) of  
25 this section.

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

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

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

37        (ii) The department shall notify the court and parties of the  
38 defendant's admission for inpatient competency restoration before the  
39 close of the next judicial day. The court shall schedule a hearing

1 within five days to review the conditions of release of the defendant  
2 and anticipated release from treatment and issue appropriate orders.

3 ~~((e))~~ (f) The court may not issue an order for outpatient  
4 competency restoration unless the department certifies that there is  
5 an available appropriate outpatient restoration program that has  
6 adequate space for the person at the time the order is issued or the  
7 court places the defendant under the guidance and control of a  
8 professional person identified in the court order.

9 (g) If the court does not order the defendant to receive  
10 outpatient competency restoration under (a) of this subsection, the  
11 court shall commit the defendant to the department for placement in a  
12 facility operated or contracted by the department for inpatient  
13 competency restoration.

14 (3) The placement under subsection (2) of this section shall not  
15 exceed 29 days if the defendant is ordered to receive inpatient  
16 competency restoration, and shall not exceed 90 days if the defendant  
17 is ordered to receive outpatient competency restoration. The court  
18 may order any combination of this subsection, but the total period of  
19 inpatient competency restoration may not exceed 29 days.

20 (4) Beginning October 1, 2023, if the defendant is charged with a  
21 serious traffic offense under RCW 9.94A.030, the court may order the  
22 clerk to transmit an order to the department of licensing for  
23 revocation of the defendant's driver's license for a period of one  
24 year. The court shall direct the clerk to transmit an order to the  
25 department of licensing reinstating the defendant's driver's license  
26 if the defendant is subsequently restored to competency, and may do  
27 so at any time before the end of one year for good cause upon the  
28 petition of the defendant.

29 (5) If the court has determined or the parties agree that the  
30 defendant is unlikely to regain competency, the court may dismiss the  
31 charges without prejudice without ordering the defendant to undergo  
32 competency restoration treatment, in which case the court shall order  
33 that the defendant be referred for evaluation for civil commitment in  
34 the manner provided in subsection ~~((5))~~ (6) of this section.

35 ~~((5))~~ (6)(a) If the proceedings are dismissed under RCW  
36 10.77.084 and the defendant was on conditional release at the time of  
37 dismissal, the court shall order the designated crisis responder  
38 within that county to evaluate the defendant pursuant to chapter  
39 71.05 RCW. The evaluation may be conducted in any location chosen by  
40 the professional.

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

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

21 ~~((7))~~ (8) If at any time the court dismisses charges under  
22 subsections (1) through ~~((6))~~ (7) of this section, the court shall  
23 make a finding as to whether the defendant has a history of one or  
24 more violent acts. If the court so finds, the defendant is barred  
25 from the possession of firearms until a court restores his or her  
26 right to possess a firearm under RCW 9.41.047. The court shall state  
27 to the defendant and provide written notice that the defendant is  
28 barred from the possession of firearms and that the prohibition  
29 remains in effect until a court restores his or her right to possess  
30 a firearm under RCW 9.41.047.

31 ~~((8))~~ (9) Any period of competency restoration treatment under  
32 this section includes only the time the defendant is actually at the  
33 facility or is actively participating in an outpatient competency  
34 restoration program and is in addition to reasonable time for  
35 transport to or from the facility.

36 NEW SECTION. **Sec. 10.** A new section is added to chapter 10.77  
37 RCW to read as follows:

38 (1) In counties with a forensic navigator program, a forensic  
39 navigator shall:

1 (a) Meet, interview, and observe all defendants charged with a  
2 nonfelony, or a class C felony other than assault in the third degree  
3 under RCW 9A.36.031(1) (d) or (f), felony physical control of a  
4 vehicle under RCW 46.61.504(6), felony hit and run resulting in  
5 injury under RCW 46.52.020(4)(b), a hate crime offense under RCW  
6 9A.36.080, a class C felony with a domestic violence designation, a  
7 class C felony sex offense as defined in RCW 9.94A.030, or a class C  
8 felony with a sexual motivation allegation, who have had two or more  
9 cases dismissed due to a finding of incompetency to stand trial in  
10 the preceding 24 months and who are at risk for a finding of  
11 incompetency under their current charge. The forensic navigator shall  
12 determine the defendants' willingness to engage with services under  
13 this section; and

14 (b) Provide a diversion program plan to the parties in each case  
15 that includes a recommendation for a diversion program to defense  
16 counsel and the prosecuting attorney. Services under a diversion  
17 program may include a referral for assisted outpatient treatment  
18 under chapter 71.05 RCW.

19 (2) The court shall dismiss the criminal charges upon agreement  
20 of the parties that the defendant has been accepted into the  
21 diversion program recommended by the forensic navigator.

22 (3)(a) For defendants charged with a nonfelony, the court may  
23 order the defendant to a diversion program if recommended by the  
24 forensic navigator. Upon engagement with the diversion program, the  
25 defense may move to dismiss the charges without prejudice. The court  
26 shall hold a hearing on this motion within 10 days. The court shall  
27 grant the defense motion if it finds by a preponderance of the  
28 evidence that the defendant is amenable to the services described in  
29 the diversion program and can safely receive services in the  
30 community.

31 (b) For defendants charged with a class C felony other than  
32 assault in the third degree under RCW 9A.36.031(1) (d) or (f), felony  
33 physical control of a vehicle under RCW 46.61.504(6), felony hit and  
34 run resulting in injury under RCW 46.52.020(4)(b), a hate crime  
35 offense under RCW 9A.36.080, a class C felony with a domestic  
36 violence designation, a class C felony sex offense as defined in RCW  
37 9.94A.030, or a class C felony with a sexual motivation allegation,  
38 the defense may move for dismissal of the charges without prejudice  
39 if the defendant is currently subject to a civil commitment order  
40 under chapter 71.05 RCW. The court shall grant the defense motion



1 upon confirmation of an available treatment plan under chapter 71.05  
2 RCW.

3 (4) Individuals who are referred to a diversion program described  
4 in this section shall have a forensic navigator assigned to assist  
5 them for up to six months while engaging in the services described in  
6 the diversion program.

7 (5) Forensic navigators shall collaborate with available  
8 *Trueblood* settlement diversion programs if they are accessible in the  
9 geographic location where criminal charges are currently filed.

10 **Sec. 11.** RCW 10.77.092 and 2014 c 10 s 2 are each amended to  
11 read as follows:

12 (1) For purposes of determining whether a court may authorize  
13 involuntary medication for the purpose of competency restoration  
14 pursuant to RCW 10.77.084 and for maintaining the level of  
15 restoration in the jail following the restoration period, a pending  
16 charge involving any one or more of the following crimes is a serious  
17 offense per se in the context of competency restoration:

18 (a) Any violent offense, sex offense, serious traffic offense,  
19 and most serious offense, as those terms are defined in RCW  
20 9.94A.030;

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

23 (c) Any offense contained in chapter 9.41 RCW (firearms and  
24 dangerous weapons);

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

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

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

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

32 (2) Any time a petition is filed seeking a court order  
33 authorizing the involuntary medication for purposes of competency  
34 restoration pursuant to RCW 10.77.084, the petition must also seek  
35 authorization to continue involuntary medication for purposes of  
36 maintaining the level of restoration in the jail or juvenile  
37 detention facility following the restoration period.

38 (3)(a) In a particular case, a court may determine that a pending  
39 charge not otherwise defined as serious by state or federal law or by

1 a city or county ordinance is, nevertheless, a serious offense within  
2 the context of competency restoration treatment when the conduct in  
3 the charged offense falls within the standards established in (b) of  
4 this subsection.

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

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

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

15 (iii) The number and nature of related charges pending against  
16 the defendant;

17 (iv) The length of potential confinement if the defendant is  
18 convicted; and

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

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

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

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

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

38 (2) This section includes but is not limited to situations in  
39 which the individual returns to a jail or juvenile detention facility

1 directly after undergoing treatment at a state hospital, behavioral  
2 health agency, outpatient competency restoration program, or prison.

3 (3) The department shall establish a program to reimburse jails  
4 and juvenile detention facilities for the costs of any drugs the jail  
5 or juvenile detention facility does not otherwise have available and  
6 must continue prescribing under this section.

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

9 (1) Following a competency evaluation under RCW 10.77.060,  
10 individuals who are found not competent to stand trial and not  
11 restorable due to an intellectual or developmental disability,  
12 dementia, or traumatic brain injury, shall not be referred for  
13 competency restoration services.

14 (2) The department shall develop a process for connecting  
15 individuals who have been found not competent to stand trial due to  
16 an intellectual or developmental disability, dementia, or traumatic  
17 brain injury to available wraparound services and supports in  
18 community-based settings, which may include residential supports. The  
19 process shall include provisions for individuals who are current  
20 clients of the department's developmental disabilities administration  
21 or aging and long-term support administration and for individuals who  
22 are not current clients of the department.

23 (a) For current clients of the developmental disabilities  
24 administration and aging and long-term support administration, the  
25 department's assigned case manager shall:

26 (i) Coordinate with the individual's services providers to  
27 determine if the individual can return to the same or like services,  
28 or determine appropriate new community-based services. This shall  
29 include updating the individual's service plan and identifying and  
30 coordinating potential funding for any additional supports to  
31 stabilize the individual in community-based settings funded by the  
32 developmental disabilities administration or aging and long-term  
33 support administration so that the individual does not lose existing  
34 services, including submitting any exceptions to rule for additional  
35 services;

36 (ii) Conduct a current service eligibility assessment and send  
37 referral packets to all community-based service providers for  
38 services for which the individual is eligible; and

1 (iii) Connect with the individual's assigned forensic navigator  
2 and determine if the individual is eligible for any diversion,  
3 supportive housing, or case management programs as a *Trueblood* class  
4 member, and assist the individual to access these services.

5 (b) For individuals who have not established eligibility for the  
6 department's support services, the department shall:

7 (i) Conduct an eligibility determination for services and send  
8 referral packets to service providers for all relevant community-  
9 based services for which the individual is eligible. This process  
10 must include identifying and coordinating funding for any additional  
11 supports that are needed to stabilize the individual in any  
12 community-based setting funded by the developmental disabilities  
13 administration or aging and long-term support administration,  
14 including submitting any necessary exceptions to rule for additional  
15 services; and

16 (ii) Connect with the individual's assigned forensic navigator  
17 and determine if the individual is eligible for any diversion,  
18 supportive housing, or case management programs as a *Trueblood* class  
19 member, if additional specialized services are available to  
20 supplement diversion program services, and assist the individual to  
21 access these services.

22 (3) The department shall offer to transition the individual in  
23 services either directly from the jail or as soon thereafter as may  
24 be practicable, without maintaining the individual at an inpatient  
25 facility for longer than is clinically necessary. Nothing in this  
26 subsection prohibits the department from returning the individual to  
27 their home or to another less restrictive setting if such setting is  
28 appropriate, which may include provision of supportive services to  
29 help the person maintain stability. The individual is not required to  
30 accept developmental disabilities administration, aging and long-term  
31 support administration, or other diversionary services as a condition  
32 of having the individual's criminal case dismissed without prejudice,  
33 provided the individual meets the criteria of subsection (1) of this  
34 section.

35 (4) Subject to the availability of funds appropriated for this  
36 specific purpose, the department shall develop a program for  
37 individuals who have been involved with the criminal justice system  
38 and who have been found under RCW 10.77.084 as incompetent to stand  
39 trial due to an intellectual or developmental disability, traumatic  
40 brain injury, or dementia and who do not meet criteria under other

1 programs in this section. The program must involve wraparound  
2 services and housing supports appropriate to the needs of the  
3 individual. It is sufficient to meet the criteria for participation  
4 in this program if the individual has recently been the subject of  
5 criminal charges and was found incompetent to stand trial due to an  
6 intellectual or developmental disability, traumatic brain injury, or  
7 dementia.

8 NEW SECTION. **Sec. 14.** The University of Washington shall  
9 implement a pilot project to provide short-term stabilization and  
10 transition support for individuals found incompetent to stand trial  
11 due to an intellectual or developmental disability who are or have  
12 been *Trueblood* class members. The project will be implemented in  
13 three phases, beginning December 1, 2023, using an interdisciplinary  
14 approach across various settings and overlapping with existing  
15 resources, including those available to *Trueblood* class members and  
16 services and supports they are eligible to receive from the  
17 department of social and health services. The department of social  
18 and health services shall collaborate with the University of  
19 Washington on this project, including assistance in identifying  
20 resources available to class members and determination of  
21 eligibility. By November 30, 2026, the University of Washington shall  
22 submit a report to the appropriate fiscal and policy committees of  
23 the legislature on the pilot project, including the pilot project's  
24 outcomes, data analysis, evaluation, and recommendations for  
25 improvement. In addition, the University of Washington shall report  
26 on the background of current and former *Trueblood* class members with  
27 intellectual and developmental disabilities. The department of social  
28 and health services shall share data as needed to assist in report  
29 development.

30 NEW SECTION. **Sec. 15.** Subject to the availability of funds  
31 appropriated for this specific purpose, the health care authority  
32 shall require the programs it contracts with to increase compensation  
33 for staff in outpatient competency restoration programs to provide  
34 compensation at competitive levels to improve recruitment and allow  
35 for the full implementation of outpatient competency restoration  
36 programs.

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

3        An outpatient competency restoration program must include access  
4    to a prescriber.

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

7        (1) Subject to the security and background investigation  
8    requirements of the jail, jails shall allow clinical intervention  
9    specialists to have access to individuals who are referred to receive  
10   services under this chapter and to all records relating to the health  
11   or conduct of the individual while incarcerated. Clinical  
12   intervention specialists shall support jail health services in  
13   providing direct services, enhanced oversight and monitoring of the  
14   behavioral health status of participating individuals. Clinical  
15   intervention specialists shall work collaboratively with jail health  
16   services to ensure appropriate prescriptions, medication compliance  
17   monitoring, and access to supportive behavioral health services to  
18   the individuals. Clinical intervention specialists shall coordinate  
19   with forensic navigators and the department to assist forensic  
20   navigators in making recommendations for appropriate placements,  
21   which may include recommendations for participation in an outpatient  
22   competency restoration program or a diversion program designed for  
23   the needs of the individual. The clinical intervention specialist  
24   shall notify the department if a participating individual appears to  
25   have stabilized in their behavioral health such that a new competency  
26   evaluation is appropriate to reassess the individual's need for  
27   competency restoration treatment.

28        (2) The department shall establish a memorandum of understanding  
29   and any contracts needed with the jail to address the terms and  
30   conditions of allowing access to defendants and their records subject  
31   to the requirements of this section.

32        NEW SECTION.    **Sec. 18.**    A new section is added to chapter 10.77  
33    RCW to read as follows:

34        The department shall collect data so that information can be  
35   retrieved based on unique individuals, their complete Washington  
36   criminal history and referrals for forensic services.

1        NEW SECTION.    **Sec. 19.**    A new section is added to chapter 10.77

2    RCW to read as follows:

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

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

12        **Sec. 20.**    RCW 10.77.065 and 2019 c 325 s 5006 are each amended to  
13   read as follows:

14        (1)(a)(i)    The expert conducting the evaluation shall provide his  
15   or her report and recommendation to the court in which the criminal  
16   proceeding is pending. For a competency evaluation of a defendant who  
17   is released from custody, if the evaluation cannot be completed  
18   within twenty-one days due to a lack of cooperation by the defendant,  
19   the evaluator shall notify the court that he or she is unable to  
20   complete the evaluation because of such lack of cooperation.

21        (ii)    A copy of the report and recommendation shall be provided to  
22   the designated crisis responder, the prosecuting attorney, the  
23   defense attorney, and the professional person at the local  
24   correctional facility where the defendant is being held, or if there  
25   is no professional person, to the person designated under (a)(iv) of  
26   this subsection. Upon request, the evaluator shall also provide  
27   copies of any source documents relevant to the evaluation to the  
28   designated crisis responder.

29        (iii)    Any facility providing inpatient services related to  
30   competency shall discharge the defendant as soon as the facility  
31   determines that the defendant is competent to stand trial. Discharge  
32   shall not be postponed during the writing and distribution of the  
33   evaluation report. Distribution of an evaluation report by a facility  
34   providing inpatient services shall ordinarily be accomplished within  
35   two working days or less following the final evaluation of the  
36   defendant. If the defendant is discharged to the custody of a local  
37   correctional facility, the local correctional facility must continue  
38   the medication regimen prescribed by the facility, when clinically  
39   appropriate, unless the defendant refuses to cooperate with

1 medication and an involuntary medication order by the court has not  
2 been entered.

3 (iv) If there is no professional person at the local correctional  
4 facility, the local correctional facility shall designate a  
5 professional person as defined in RCW 71.05.020 or, in cooperation  
6 with the behavioral health administrative services organization, a  
7 professional person at the behavioral health administrative services  
8 organization to receive the report and recommendation.

9 (v) Upon commencement of a defendant's evaluation in the local  
10 correctional facility, the local correctional facility must notify  
11 the evaluator of the name of the professional person, or person  
12 designated under (a)(iv) of this subsection, to receive the report  
13 and recommendation.

14 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the  
15 person should be evaluated by a designated crisis responder under  
16 chapter 71.05 RCW, the court shall order such evaluation be conducted  
17 prior to release from confinement when the person is acquitted or  
18 convicted and sentenced to confinement for twenty-four months or  
19 less, or when charges are dismissed pursuant to a finding of  
20 incompetent to stand trial.

21 (2) The designated crisis responder shall provide written  
22 notification within twenty-four hours of the results of the  
23 determination whether to commence proceedings under chapter 71.05  
24 RCW. The notification shall be provided to the persons identified in  
25 subsection (1)(a) of this section.

26 (3) The prosecuting attorney shall provide a copy of the results  
27 of any proceedings commenced by the designated crisis responder under  
28 subsection (2) of this section to the secretary.

29 (4) A facility conducting a civil commitment evaluation under RCW  
30 10.77.086(~~((4))~~) (7) or 10.77.088(~~((1)(e)(ii))~~) (6)(b) that makes a  
31 determination to release the person instead of filing a civil  
32 commitment petition must provide written notice to the prosecutor and  
33 defense attorney at least twenty-four hours prior to release. The  
34 notice may be given by email, facsimile, or other means reasonably  
35 likely to communicate the information immediately.

36 (5) The fact of admission and all information and records  
37 compiled, obtained, or maintained in the course of providing services  
38 under this chapter may also be disclosed to the courts solely to  
39 prevent the entry of any evaluation or treatment order that is  
40 inconsistent with any order entered under chapter 71.05 RCW.



1       **Sec. 21.** RCW 71.05.235 and 2020 c 302 s 36 are each amended to  
2 read as follows:

3       (1) If an individual is referred to a designated crisis responder  
4 under RCW 10.77.088(~~((2)(d)(i))~~) (6)(a), the designated crisis  
5 responder shall examine the individual within forty-eight hours. If  
6 the designated crisis responder determines it is not appropriate to  
7 detain the individual or petition for a ninety-day less restrictive  
8 alternative under RCW 71.05.230(4), that decision shall be  
9 immediately presented to the superior court for hearing. The court  
10 shall hold a hearing to consider the decision of the designated  
11 crisis responder not later than the next judicial day. At the hearing  
12 the superior court shall review the determination of the designated  
13 crisis responder and determine whether an order should be entered  
14 requiring the person to be evaluated at an evaluation and treatment  
15 facility. No person referred to an evaluation and treatment facility  
16 may be held at the facility longer than one hundred twenty hours.

17       (2) If an individual is placed in an evaluation and treatment  
18 facility under RCW 10.77.088(~~((2)(d)(ii))~~) (6)(b), a professional  
19 person shall evaluate the individual for purposes of determining  
20 whether to file a ninety-day inpatient or outpatient petition under  
21 this chapter. Before expiration of the one hundred twenty hour  
22 evaluation period authorized under RCW 10.77.088(~~((2)(d)(ii))~~)  
23 (6)(b), the professional person shall file a petition or, if the  
24 recommendation of the professional person is to release the  
25 individual, present his or her recommendation to the superior court  
26 of the county in which the criminal charge was dismissed. The  
27 superior court shall review the recommendation not later than forty-  
28 eight hours, excluding Saturdays, Sundays, and holidays, after the  
29 recommendation is presented. If the court rejects the recommendation  
30 to unconditionally release the individual, the court may order the  
31 individual detained at a designated evaluation and treatment facility  
32 for not more than a one hundred twenty hour evaluation and treatment  
33 period. If the evaluation and treatment facility files a ninety-day  
34 petition within the one hundred twenty hour period, the clerk shall  
35 set a hearing after the day of filing consistent with RCW 71.05.300.  
36 Upon the individual's first appearance in court after a petition has  
37 been filed, proceedings under RCW 71.05.310 and 71.05.320 shall  
38 commence. For an individual subject to this subsection, the  
39 professional person may directly file a petition for ninety-day  
40 inpatient or outpatient treatment and no petition for initial

1 detention or fourteen-day detention is required before such a  
2 petition may be filed.

3 (3) If a designated crisis responder or the professional person  
4 and prosecuting attorney for the county in which the criminal charge  
5 was dismissed or attorney general, as appropriate, stipulate that the  
6 individual does not present a likelihood of serious harm or is not  
7 gravely disabled, the hearing under this section is not required and  
8 the individual, if in custody, shall be released.

9 **Sec. 22.** RCW 71.05.280 and 2022 c 210 s 15 are each amended to  
10 read as follows:

11 At the expiration of the fourteen-day period of intensive  
12 treatment, a person may be committed for further treatment pursuant  
13 to RCW 71.05.320 if:

14 (1) Such person after having been taken into custody for  
15 evaluation and treatment has threatened, attempted, or inflicted: (a)  
16 Physical harm upon the person of another or himself or herself, or  
17 substantial damage upon the property of another, and (b) as a result  
18 of a behavioral health disorder presents a likelihood of serious  
19 harm; or

20 (2) Such person was taken into custody as a result of conduct in  
21 which he or she attempted or inflicted physical harm upon the person  
22 of another or himself or herself, or substantial damage upon the  
23 property of others, and continues to present, as a result of a  
24 behavioral health disorder, a likelihood of serious harm; or

25 (3) Such person has been determined to be incompetent and  
26 criminal charges have been dismissed pursuant to RCW 10.77.086(~~(+4)~~)  
27 (7), and has committed acts constituting a felony, and as a result of  
28 a behavioral health disorder, presents a substantial likelihood of  
29 repeating similar acts.

30 (a) In any proceeding pursuant to this subsection it shall not be  
31 necessary to show intent, willfulness, or state of mind as an element  
32 of the crime;

33 (b) For any person subject to commitment under this subsection  
34 where the charge underlying the finding of incompetence is for a  
35 felony classified as violent under RCW 9.94A.030, the court shall  
36 determine whether the acts the person committed constitute a violent  
37 offense under RCW 9.94A.030; or

38 (4) Such person is gravely disabled.

1       **Sec. 23.** RCW 71.05.290 and 2022 c 210 s 16 are each amended to  
2 read as follows:

3       (1) At any time during a person's 14-day intensive treatment  
4 period, the professional person in charge of a treatment facility or  
5 his or her professional designee or the designated crisis responder  
6 may petition the superior court for an order requiring such person to  
7 undergo an additional period of treatment. Such petition must be  
8 based on one or more of the grounds set forth in RCW 71.05.280.

9       (2) (a) (i) The petition shall summarize the facts which support  
10 the need for further commitment and shall be supported by affidavits  
11 based on an examination of the patient and signed by:

12       (A) One physician, physician assistant, or psychiatric advanced  
13 registered nurse practitioner; and

14       (B) One physician, physician assistant, psychiatric advanced  
15 registered nurse practitioner, or mental health professional.

16       (ii) If the petition is for substance use disorder treatment, the  
17 petition may be signed by a substance use disorder professional  
18 instead of a mental health professional and by an advanced registered  
19 nurse practitioner instead of a psychiatric advanced registered nurse  
20 practitioner.

21       (b) The affidavits shall describe in detail the behavior of the  
22 detained person which supports the petition and shall explain what,  
23 if any, less restrictive treatments which are alternatives to  
24 detention are available to such person, and shall state the  
25 willingness of the affiant to testify to such facts in subsequent  
26 judicial proceedings under this chapter. If less restrictive  
27 alternative treatment is sought, the petition shall set forth any  
28 recommendations for less restrictive alternative treatment services.

29       (3) If a person has been determined to be incompetent pursuant to  
30 RCW 10.77.086(~~((4))~~) (7), then the professional person in charge of  
31 the treatment facility or his or her professional designee or the  
32 designated crisis responder may directly file a petition for 180-day  
33 treatment under RCW 71.05.280(3), or for 90-day treatment under RCW  
34 71.05.280 (1), (2), or (4). No petition for initial detention or 14-  
35 day detention is required before such a petition may be filed.

36       **Sec. 24.** RCW 71.05.300 and 2020 c 302 s 43 are each amended to  
37 read as follows:

38       (1) The petition for ninety day treatment shall be filed with the  
39 clerk of the superior court at least three days before expiration of

1 the fourteen-day period of intensive treatment. The clerk shall set a  
2 trial setting date as provided in RCW 71.05.310 on the next judicial  
3 day after the date of filing the petition and notify the designated  
4 crisis responder. The designated crisis responder shall immediately  
5 notify the person detained, his or her attorney, if any, and his or  
6 her guardian or conservator, if any, the prosecuting attorney, and  
7 the behavioral health administrative services organization  
8 administrator, and provide a copy of the petition to such persons as  
9 soon as possible. The behavioral health administrative services  
10 organization administrator or designee may review the petition and  
11 may appear and testify at the full hearing on the petition.

12 (2) The attorney for the detained person shall advise him or her  
13 of his or her right to be represented by an attorney, his or her  
14 right to a jury trial, and, if the petition is for commitment for  
15 mental health treatment, his or her loss of firearm rights if  
16 involuntarily committed. If the detained person is not represented by  
17 an attorney, or is indigent or is unwilling to retain an attorney,  
18 the court shall immediately appoint an attorney to represent him or  
19 her. The court shall, if requested, appoint a reasonably available  
20 licensed physician, physician assistant, psychiatric advanced  
21 registered nurse practitioner, psychologist, psychiatrist, or other  
22 professional person, designated by the detained person to examine and  
23 testify on behalf of the detained person.

24 (3) The court may, if requested, also appoint a professional  
25 person as defined in RCW 71.05.020 to seek less restrictive  
26 alternative courses of treatment and to testify on behalf of the  
27 detained person. In the case of a person with a developmental  
28 disability who has been determined to be incompetent pursuant to RCW  
29 10.77.086(~~(4)~~) (7), the appointed professional person under this  
30 section shall be a developmental disabilities professional.

31 **Sec. 25.** RCW 71.05.425 and 2021 c 264 s 19 are each amended to  
32 read as follows:

33 (1)(a) Except as provided in subsection (2) of this section, at  
34 the earliest possible date, and in no event later than thirty days  
35 before conditional release, final release, authorized leave under RCW  
36 71.05.325(2), or transfer to a facility other than a state mental  
37 hospital, the superintendent shall send written notice of conditional  
38 release, release, authorized leave, or transfer of a person committed  
39 under RCW 71.05.280(3) or 71.05.320(4)(c) following dismissal of a

1 sex, violent, or felony harassment offense pursuant to RCW  
2 10.77.086(~~(4)~~) (7) to the following:

3 (i) The chief of police of the city, if any, in which the person  
4 will reside;

5 (ii) The sheriff of the county in which the person will reside;  
6 and

7 (iii) The prosecuting attorney of the county in which the  
8 criminal charges against the committed person were dismissed.

9 (b) The same notice as required by (a) of this subsection shall  
10 be sent to the following, if such notice has been requested in  
11 writing about a specific person committed under RCW 71.05.280(3) or  
12 71.05.320(4)(c) following dismissal of a sex, violent, or felony  
13 harassment offense pursuant to RCW 10.77.086(~~(4)~~) (7):

14 (i) The victim of the sex, violent, or felony harassment offense  
15 that was dismissed pursuant to RCW 10.77.086(~~(4)~~) (7) preceding  
16 commitment under RCW 71.05.280(3) or 71.05.320(4)(c) or the victim's  
17 next of kin if the crime was a homicide;

18 (ii) Any witnesses who testified against the person in any court  
19 proceedings;

20 (iii) Any person specified in writing by the prosecuting  
21 attorney. Information regarding victims, next of kin, or witnesses  
22 requesting the notice, information regarding any other person  
23 specified in writing by the prosecuting attorney to receive the  
24 notice, and the notice are confidential and shall not be available to  
25 the person committed under this chapter; and

26 (iv) The chief of police of the city, if any, and the sheriff of  
27 the county, if any, which had jurisdiction of the person on the date  
28 of the applicable offense.

29 (c) The thirty-day notice requirements contained in this  
30 subsection shall not apply to emergency medical transfers.

31 (d) The existence of the notice requirements in this subsection  
32 will not require any extension of the release date in the event the  
33 release plan changes after notification.

34 (2) If a person committed under RCW 71.05.280(3) or  
35 71.05.320(4)(c) following dismissal of a sex, violent, or felony  
36 harassment offense pursuant to RCW 10.77.086(~~(4)~~) (7) escapes, the  
37 superintendent shall immediately notify, by the most reasonable and  
38 expedient means available, the chief of police of the city and the  
39 sheriff of the county in which the person escaped and in which the  
40 person resided immediately before the person's arrest and the

1 prosecuting attorney of the county in which the criminal charges  
2 against the committed person were dismissed. If previously requested,  
3 the superintendent shall also notify the witnesses and the victim of  
4 the sex, violent, or felony harassment offense that was dismissed  
5 pursuant to RCW 10.77.086(~~((4))~~) (7) preceding commitment under RCW  
6 71.05.280(3) or 71.05.320(4) or the victim's next of kin if the crime  
7 was a homicide. In addition, the secretary shall also notify  
8 appropriate parties pursuant to RCW 70.02.230(2)(o). If the person is  
9 recaptured, the superintendent shall send notice to the persons  
10 designated in this subsection as soon as possible but in no event  
11 later than two working days after the department of social and health  
12 services learns of such recapture.

13 (3) If the victim, the victim's next of kin, or any witness is  
14 under the age of sixteen, the notice required by this section shall  
15 be sent to the parent or legal guardian of the child.

16 (4) The superintendent shall send the notices required by this  
17 chapter to the last address provided to the department of social and  
18 health services by the requesting party. The requesting party shall  
19 furnish the department of social and health services with a current  
20 address.

21 (5) For purposes of this section the following terms have the  
22 following meanings:

23 (a) "Violent offense" means a violent offense under RCW  
24 9.94A.030;

25 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

26 (c) "Next of kin" means a person's spouse, state registered  
27 domestic partner, parents, siblings, and children;

28 (d) "Felony harassment offense" means a crime of harassment as  
29 defined in RCW 9A.46.060 that is a felony.

30 **Sec. 26.** RCW 71.09.025 and 2009 c 409 s 2 are each amended to  
31 read as follows:

32 (1)(a) When it appears that a person may meet the criteria of a  
33 sexually violent predator as defined in RCW 71.09.020(~~((16))~~), the  
34 agency with jurisdiction shall refer the person in writing to the  
35 prosecuting attorney of the county in which an action under this  
36 chapter may be filed pursuant to RCW 71.09.030 and the attorney  
37 general, three months prior to:

38 (i) The anticipated release from total confinement of a person  
39 who has been convicted of a sexually violent offense;

1 (ii) The anticipated release from total confinement of a person  
2 found to have committed a sexually violent offense as a juvenile;

3 (iii) Release of a person who has been charged with a sexually  
4 violent offense and who has been determined to be incompetent to  
5 stand trial pursuant to RCW 10.77.086(~~(+4)~~) (7); or

6 (iv) Release of a person who has been found not guilty by reason  
7 of insanity of a sexually violent offense pursuant to RCW  
8 10.77.020(3).

9 (b) The agency shall provide the prosecuting agency with all  
10 relevant information including but not limited to the following  
11 information:

12 (i) A complete copy of the institutional records compiled by the  
13 department of corrections relating to the person, and any such out-  
14 of-state department of corrections' records, if available;

15 (ii) A complete copy, if applicable, of any file compiled by the  
16 indeterminate sentence review board relating to the person;

17 (iii) All records relating to the psychological or psychiatric  
18 evaluation and/or treatment of the person;

19 (iv) A current record of all prior arrests and convictions, and  
20 full police case reports relating to those arrests and convictions;  
21 and

22 (v) A current mental health evaluation or mental health records  
23 review.

24 (c) The prosecuting agency has the authority, consistent with RCW  
25 72.09.345(~~(+3)~~) (4), to obtain all records relating to the person if  
26 the prosecuting agency deems such records are necessary to fulfill  
27 its duties under this chapter. The prosecuting agency may only  
28 disclose such records in the course of performing its duties pursuant  
29 to this chapter, unless otherwise authorized by law.

30 (d) The prosecuting agency has the authority to utilize the  
31 inquiry judge procedures of chapter 10.27 RCW prior to the filing of  
32 any action under this chapter to seek the issuance of compulsory  
33 process for the production of any records necessary for a  
34 determination of whether to seek the civil commitment of a person  
35 under this chapter. Any records obtained pursuant to this process may  
36 only be disclosed by the prosecuting agency in the course of  
37 performing its duties pursuant to this chapter, or unless otherwise  
38 authorized by law.

39 (2) The agency, its employees, and officials shall be immune from  
40 liability for any good-faith conduct under this section.

1 (3) As used in this section, "agency with jurisdiction" means  
2 that agency with the authority to direct the release of a person  
3 serving a sentence or term of confinement and includes the department  
4 of corrections, the indeterminate sentence review board, and the  
5 department of social and health services.

6 **Sec. 27.** RCW 71.09.030 and 2009 c 409 s 3 are each amended to  
7 read as follows:

8 (1) A petition may be filed alleging that a person is a sexually  
9 violent predator and stating sufficient facts to support such  
10 allegation when it appears that: (a) A person who at any time  
11 previously has been convicted of a sexually violent offense is about  
12 to be released from total confinement; (b) a person found to have  
13 committed a sexually violent offense as a juvenile is about to be  
14 released from total confinement; (c) a person who has been charged  
15 with a sexually violent offense and who has been determined to be  
16 incompetent to stand trial is about to be released, or has been  
17 released, pursuant to RCW 10.77.086(~~((4))~~) (7); (d) a person who has  
18 been found not guilty by reason of insanity of a sexually violent  
19 offense is about to be released, or has been released, pursuant to  
20 RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (e) a person  
21 who at any time previously has been convicted of a sexually violent  
22 offense and has since been released from total confinement and has  
23 committed a recent overt act.

24 (2) The petition may be filed by:

25 (a) The prosecuting attorney of a county in which:

26 (i) The person has been charged or convicted with a sexually  
27 violent offense;

28 (ii) A recent overt act occurred involving a person covered under  
29 subsection (1)(e) of this section; or

30 (iii) The person committed a recent overt act, or was charged or  
31 convicted of a criminal offense that would qualify as a recent overt  
32 act, if the only sexually violent offense charge or conviction  
33 occurred in a jurisdiction other than Washington; or

34 (b) The attorney general, if requested by the county prosecuting  
35 attorney identified in (a) of this subsection. If the county  
36 prosecuting attorney requests that the attorney general file and  
37 prosecute a case under this chapter, then the county shall charge the  
38 attorney general only the fees, including filing and jury fees, that



1 would be charged and paid by the county prosecuting attorney, if the  
2 county prosecuting attorney retained the case.

3 **Sec. 28.** RCW 71.09.060 and 2009 c 409 s 6 are each amended to  
4 read as follows:

5 (1) The court or jury shall determine whether, beyond a  
6 reasonable doubt, the person is a sexually violent predator. In  
7 determining whether or not the person would be likely to engage in  
8 predatory acts of sexual violence if not confined in a secure  
9 facility, the fact finder may consider only placement conditions and  
10 voluntary treatment options that would exist for the person if  
11 unconditionally released from detention on the sexually violent  
12 predator petition. The community protection program under RCW  
13 71A.12.230 may not be considered as a placement condition or  
14 treatment option available to the person if unconditionally released  
15 from detention on a sexually violent predator petition. When the  
16 determination is made by a jury, the verdict must be unanimous.

17 If, on the date that the petition is filed, the person was living  
18 in the community after release from custody, the state must also  
19 prove beyond a reasonable doubt that the person had committed a  
20 recent overt act. If the state alleges that the prior sexually  
21 violent offense that forms the basis for the petition for commitment  
22 was an act that was sexually motivated as provided in RCW  
23 71.09.020(~~((15)(e))~~) (18)(c), the state must prove beyond a  
24 reasonable doubt that the alleged sexually violent act was sexually  
25 motivated as defined in RCW 9.94A.030.

26 If the court or jury determines that the person is a sexually  
27 violent predator, the person shall be committed to the custody of the  
28 department of social and health services for placement in a secure  
29 facility operated by the department of social and health services for  
30 control, care, and treatment until such time as: (a) The person's  
31 condition has so changed that the person no longer meets the  
32 definition of a sexually violent predator; or (b) conditional release  
33 to a less restrictive alternative as set forth in RCW 71.09.092 is in  
34 the best interest of the person and conditions can be imposed that  
35 would adequately protect the community.

36 If the court or unanimous jury decides that the state has not met  
37 its burden of proving that the person is a sexually violent predator,  
38 the court shall direct the person's release.

1 If the jury is unable to reach a unanimous verdict, the court  
2 shall declare a mistrial and set a retrial within forty-five days of  
3 the date of the mistrial unless the prosecuting agency earlier moves  
4 to dismiss the petition. The retrial may be continued upon the  
5 request of either party accompanied by a showing of good cause, or by  
6 the court on its own motion in the due administration of justice  
7 provided that the respondent will not be substantially prejudiced. In  
8 no event may the person be released from confinement prior to retrial  
9 or dismissal of the case.

10 (2) If the person charged with a sexually violent offense has  
11 been found incompetent to stand trial, and is about to be or has been  
12 released pursuant to RCW 10.77.086(~~((4))~~) (7), and his or her  
13 commitment is sought pursuant to subsection (1) of this section, the  
14 court shall first hear evidence and determine whether the person did  
15 commit the act or acts charged if the court did not enter a finding  
16 prior to dismissal under RCW 10.77.086(~~((4))~~) (7) that the person  
17 committed the act or acts charged. The hearing on this issue must  
18 comply with all the procedures specified in this section. In  
19 addition, the rules of evidence applicable in criminal cases shall  
20 apply, and all constitutional rights available to defendants at  
21 criminal trials, other than the right not to be tried while  
22 incompetent, shall apply. After hearing evidence on this issue, the  
23 court shall make specific findings on whether the person did commit  
24 the act or acts charged, the extent to which the person's  
25 incompetence or developmental disability affected the outcome of the  
26 hearing, including its effect on the person's ability to consult with  
27 and assist counsel and to testify on his or her own behalf, the  
28 extent to which the evidence could be reconstructed without the  
29 assistance of the person, and the strength of the prosecution's case.  
30 If, after the conclusion of the hearing on this issue, the court  
31 finds, beyond a reasonable doubt, that the person did commit the act  
32 or acts charged, it shall enter a final order, appealable by the  
33 person, on that issue, and may proceed to consider whether the person  
34 should be committed pursuant to this section.

35 (3) Except as otherwise provided in this chapter, the state shall  
36 comply with RCW 10.77.220 while confining the person. During all  
37 court proceedings where the person is present, the person shall be  
38 detained in a secure facility. If the proceedings last more than one  
39 day, the person may be held in the county jail for the duration of  
40 the proceedings, except the person may be returned to the

1 department's custody on weekends and court holidays if the court  
2 deems such a transfer feasible. The county shall be entitled to  
3 reimbursement for the cost of housing and transporting the person  
4 pursuant to rules adopted by the secretary. The department shall not  
5 place the person, even temporarily, in a facility on the grounds of  
6 any state mental facility or regional habilitation center because  
7 these institutions are insufficiently secure for this population.

8 (4) A court has jurisdiction to order a less restrictive  
9 alternative placement only after a hearing ordered pursuant to RCW  
10 71.09.090 following initial commitment under this section and in  
11 accord with the provisions of this chapter.

12 NEW SECTION. **Sec. 29.** Sections 7 and 9 of this act are  
13 necessary for the immediate preservation of the public peace, health,  
14 or safety, or support of the state government and its existing public  
15 institutions, and take effect immediately.

16 NEW SECTION. **Sec. 30.** Section 7 of this act expires when  
17 section 8 of this act takes effect.

18 NEW SECTION. **Sec. 31.** Section 13 of this act takes effect  
19 December 1, 2023.

20 NEW SECTION. **Sec. 32.** If specific funding for the purposes of  
21 this act, referencing this act by bill or chapter number, is not  
22 provided by June 30, 2023, in the omnibus appropriations act, this  
23 act is null and void.

Passed by the Senate April 22, 2023.  
Passed by the House April 21, 2023.  
Approved by the Governor May 15, 2023.  
Filed in Office of Secretary of State May 16, 2023.

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