

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, and 10.77.088; reenacting and
7 amending RCW 10.77.010; adding a new section to chapter 10.77 RCW;
8 providing effective dates; and declaring an emergency.

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

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

12 As used in this chapter:

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

15 (2) "Alternative therapeutic unit" means a jail-based competency
16 restoration unit as certified by the department, which includes
17 standards to ensure the unit is sufficiently safe and therapeutic for
18 defendants.

19 (3) "Authority" means the Washington state health care authority.

1 (~~(3)~~) (4) "Commitment" means the determination by a court that
2 a person should be detained for a period of either evaluation or
3 treatment, or both, in an inpatient or a less-restrictive setting.

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

7 (~~(5)~~) (6) "Conditional release" means modification of a court-
8 ordered commitment, which may be revoked upon violation of any of its
9 terms.

10 (~~(6)~~) (7) A "criminally insane" person means any person who has
11 been acquitted of a crime charged by reason of insanity, and
12 thereupon found to be a substantial danger to other persons or to
13 present a substantial likelihood of committing criminal acts
14 jeopardizing public safety or security unless kept under further
15 control by the court or other persons or institutions.

16 (~~(7)~~) (8) "Department" means the state department of social and
17 health services.

18 (~~(8)~~) (9) "Designated crisis responder" has the same meaning as
19 provided in RCW 71.05.020.

20 (~~(9)~~) (10) "Detention" or "detain" means the lawful confinement
21 of a person, under the provisions of this chapter, pending
22 evaluation.

23 (~~(10)~~) (11) "Developmental disabilities professional" means a
24 person who has specialized training and (~~(three years of)~~) experience
25 in directly treating or working with persons with developmental
26 disabilities and is a psychiatrist or psychologist, or a social
27 worker, and such other developmental disabilities professionals as
28 may be defined by rules adopted by the secretary.

29 (~~(11)~~) (12) "Developmental disability" means the condition as
30 defined in RCW 71A.10.020(~~(5)~~).

31 (~~(12)~~) (13) "Discharge" means the termination of hospital
32 medical authority. The commitment may remain in place, be terminated,
33 or be amended by court order.

34 (~~(13)~~) (14) "Furlough" means an authorized leave of absence for
35 a resident of a state institution operated by the department
36 designated for the custody, care, and treatment of the criminally
37 insane, consistent with an order of conditional release from the
38 court under this chapter, without any requirement that the resident
39 be accompanied by, or be in the custody of, any law enforcement or
40 institutional staff, while on such unescorted leave.

1 ~~((14))~~ (15) "Genuine doubt as to competency" means that there
2 is reasonable cause to believe based upon actual interactions with
3 and/or observations of the defendant, that a defendant is
4 incompetent.

5 (16) "Habilitative services" means those services provided by
6 program personnel to assist persons in acquiring and maintaining life
7 skills and in raising their levels of physical, mental, social, and
8 vocational functioning. Habilitative services include education,
9 training for employment, and therapy. The habilitative process shall
10 be undertaken with recognition of the risk to the public safety
11 presented by the person being assisted as manifested by prior charged
12 criminal conduct.

13 ~~((15))~~ (17) "History of one or more violent acts" means violent
14 acts committed during: (a) The ten-year period of time prior to the
15 filing of criminal charges; plus (b) the amount of time equal to time
16 spent during the ten-year period in a mental health facility or in
17 confinement as a result of a criminal conviction.

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

21 ~~((17))~~ (19) "Incompetency" means a person lacks the capacity to
22 understand the nature of the proceedings against him or her or to
23 assist in his or her own defense as a result of mental disease or
24 defect.

25 ~~((18))~~ (20) "Indigent" means any person who is financially
26 unable to obtain counsel or other necessary expert or professional
27 services without causing substantial hardship to the person or his or
28 her family.

29 ~~((19))~~ (21) "Individualized service plan" means a plan prepared
30 by a developmental disabilities professional with other professionals
31 as a team, for an individual with developmental disabilities, which
32 shall state:

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

35 (b) The conditions and strategies necessary to achieve the
36 purposes of habilitation;

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

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

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

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

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

8 ~~((20))~~ (22) "Professional person" means:

9 (a) A psychiatrist licensed as a physician and surgeon in this
10 state who has, in addition, completed three years of graduate
11 training in psychiatry in a program approved by the American medical
12 association or the American osteopathic association and is certified
13 or eligible to be certified by the American board of psychiatry and
14 neurology or the American osteopathic board of neurology and
15 psychiatry;

16 (b) A psychologist licensed as a psychologist pursuant to chapter
17 18.83 RCW;

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

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

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

25 ~~((22))~~ (24) "Secretary" means the secretary of the department
26 of social and health services or his or her designee.

27 ~~((23))~~ (25) "Treatment" means any currently standardized
28 medical or mental health procedure including medication.

29 ~~((24))~~ (26) "Treatment records" include registration and all
30 other records concerning persons who are receiving or who at any time
31 have received services for mental illness, which are maintained by
32 the department, by behavioral health administrative services
33 organizations and their staffs, by managed care organizations and
34 their staffs, and by treatment facilities. Treatment records do not
35 include notes or records maintained for personal use by a person
36 providing treatment services for the department, behavioral health
37 administrative services organizations, managed care organizations, or
38 a treatment facility if the notes or records are not available to
39 others.

1 (~~(25)~~) (27) "Violent act" means behavior that: (a)(i) Resulted
2 in; (ii) if completed as intended would have resulted in; or (iii)
3 was threatened to be carried out by a person who had the intent and
4 opportunity to carry out the threat and would have resulted in,
5 homicide, nonfatal injuries, or substantial damage to property; or
6 (b) recklessly creates an immediate risk of serious physical injury
7 to another person. As used in this subsection, "nonfatal injuries"
8 means physical pain or injury, illness, or an impairment of physical
9 condition. "Nonfatal injuries" shall be construed to be consistent
10 with the definition of "bodily injury," as defined in RCW 9A.04.110.

11 **Sec. 2.** RCW 10.77.060 and 2022 c 288 s 2 are each amended to
12 read as follows:

13 (1)(a) Whenever a defendant has pleaded not guilty by reason of
14 insanity, (~~or there is reason to doubt his or her competency,~~) the
15 court on its own motion or on the motion of any party shall either
16 appoint or request the secretary to designate a qualified expert or
17 professional person, who shall be approved by the prosecuting
18 attorney, to evaluate and report upon the mental condition of the
19 defendant.

20 (b) Whenever there is a genuine doubt as to competency, the court
21 on its own motion or on the motion of any party shall first review
22 the allegations of incompetency. The court must make a determination
23 of whether a genuine doubt as to competency exists based upon
24 judicial colloquy or direct observation. If a genuine doubt as to
25 competency exists, the court shall either appoint or request the
26 secretary to designate a qualified expert or professional person, who
27 shall be approved by the prosecuting attorney, to evaluate and report
28 upon the mental condition of the defendant.

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

38 (~~(e)~~) (d) The evaluator shall assess the defendant in a jail,
39 detention facility, in the community, or in court to determine

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

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

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

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

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

3 (h) If the defendant ordered to be evaluated under this
4 subsection (1) is charged with a serious traffic offense under RCW
5 9.94A.030, or a felony version of a serious traffic offense, the
6 prosecutor may make a motion to prohibit the defendant from driving
7 during the pendency of the competency evaluation.

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

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

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

20 (b) A diagnosis or description of the current mental status of
21 the defendant;

22 (c) If the defendant suffers from a mental disease or defect, or
23 has a developmental disability, an opinion as to ((competency)) their
24 capacity to proceed;

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

37 (e) When directed by the court, if an evaluation and report by an
38 expert or professional person has been provided concluding that the
39 defendant lacked the capacity at the time of the offense to form the
40 mental state necessary to commit the charged offense, an opinion as

1 to the capacity of the defendant to have a particular state of mind
2 which is an element of the offense charged;

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

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

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

18 (6) If completion of the evaluation is not achieved after two
19 attempts at scheduling with the defendant, the department will submit
20 a report to the court and parties and include the date and time of
21 the next evaluation. If the evaluation is not achieved after this
22 third attempt, the court may issue a warrant for the defendant and
23 shall vacate the order for a competency evaluation.

24 **Sec. 3.** RCW 10.77.068 and 2022 c 288 s 3 are each amended to
25 read as follows:

26 (1)(a) The legislature establishes a performance target of seven
27 days or fewer to extend an offer of admission to a defendant in
28 pretrial custody for inpatient competency evaluation or inpatient
29 competency restoration services, when access to the services is
30 legally authorized.

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

34 (i) To complete a competency evaluation in jail and distribute
35 the evaluation report; and

36 (ii) To extend an offer of admission to a defendant ordered to be
37 committed (~~to a state hospital~~) to the custody of the department
38 following dismissal of charges based on incompetency to stand trial
39 under RCW 10.77.086.

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

4 (2) (a) A maximum time limit of seven days as measured from the
5 department's receipt of the court order, or a maximum time limit of
6 14 days as measured from signature of the court order, whichever is
7 shorter, is established to complete the services specified in
8 subsection (1) (a) of this section, subject to the limitations under
9 subsection (9) of this section.

10 (b) A maximum time limit of 14 days as measured from the
11 department's receipt of the court order, or a maximum time limit of
12 21 days as measured from signature of the court order, whichever is
13 shorter, is established to complete the services specified in
14 subsection (1) (b) of this section, subject to the limitations under
15 subsection (9) of this section.

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

21 (4) It shall be a defense to an allegation that the department
22 has exceeded the maximum time limits for completion of competency
23 services described in subsection (2) of this section if the
24 department can demonstrate by a preponderance of the evidence that
25 the reason for exceeding the maximum time limits was outside of the
26 department's control including, but not limited to, the following
27 circumstances:

28 (a) Despite a timely request, the department has not received
29 necessary medical information regarding the current medical status of
30 a defendant;

31 (b) The individual circumstances of the defendant make accurate
32 completion of an evaluation of competency to stand trial dependent
33 upon review of mental health, substance use disorder, or medical
34 history information which is in the custody of a third party and
35 cannot be immediately obtained by the department, provided that
36 completion shall not be postponed for procurement of information
37 which is merely supplementary;

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

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

3 (e) Completion of the referral requires additional time to
4 accommodate the availability or participation of counsel, court
5 personnel, interpreters, or the defendant;

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

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

12 (5) The department shall provide written notice to the court when
13 it will not be able to meet the maximum time limits under subsection
14 (2) of this section and identify the reasons for the delay and
15 provide a reasonable estimate of the time necessary to complete the
16 competency service. Good cause for an extension for the additional
17 time estimated by the department shall be presumed absent a written
18 response from the court or a party received by the department within
19 seven days.

20 (6) The department shall:

21 (a) Develop, document, and implement procedures to monitor the
22 clinical status of defendants admitted to a state hospital for
23 competency services that allow the state hospital to accomplish early
24 discharge for defendants for whom clinical objectives have been
25 achieved or may be achieved before expiration of the commitment
26 period;

27 (b) Investigate the extent to which patients admitted to a state
28 hospital under this chapter overstay time periods authorized by law
29 and take reasonable steps to limit the time of commitment to
30 authorized periods; and

31 (c) Establish written standards for the productivity of forensic
32 evaluators and utilize these standards to internally review the
33 performance of forensic evaluators.

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

1 (8) The department shall report annually to the legislature and
2 the executive on the timeliness of services related to competency to
3 stand trial and the timeliness with which court referrals accompanied
4 by charging documents, discovery, and criminal history information
5 are provided to the department relative to the signature date of the
6 court order. The report must be in a form that is accessible to the
7 public and that breaks down performance by county.

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

12 **Sec. 4.** RCW 10.77.074 and 2019 c 326 s 2 are each amended to
13 read as follows:

14 (1) Subject to the limitations described in (~~this section~~)
15 subsection (2) of this section, a court may appoint an impartial
16 forensic navigator employed by or contracted by the department to
17 assist individuals who have been referred for competency evaluation.

18 (2) A forensic navigator must assist the individual to access
19 services related to diversion and community outpatient competency
20 restoration. The forensic navigator must assist the individual,
21 prosecuting attorney, defense attorney, and the court to understand
22 the options available to the individual and be accountable as an
23 officer of the court for faithful execution of the responsibilities
24 outlined in this section.

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

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

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

32 (c) To present information to the court in order to assist the
33 court in understanding the treatment options available to the
34 individual to support the entry of orders for diversion from the
35 forensic mental health system or for community outpatient competency
36 restoration, and to facilitate that transition; (~~and~~)

37 (d) When the individual is ordered to receive community
38 outpatient restoration, to provide services to the individual
39 including:

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

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

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

5 (iv) Providing information to the court concerning the
6 individual's progress and compliance with court-ordered conditions of
7 release, which may include appearing at court hearings to provide
8 information to the court;

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

11 (vi) Assisting the individual with obtaining prescribed
12 medication and encouraging adherence with prescribed medication;

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

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

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

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

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

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

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

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

1 including health information, shall not be entered into the court
2 record without the consent of the individual or their defense
3 attorney.

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

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

11 (9) For individuals charged with a misdemeanor within counties
12 that have outpatient competency restoration, forensic navigator,
13 forensic projects for assistance in transition from homelessness, and
14 forensic housing and recovery through peer services programs, and
15 have had two or more competency evaluations in the preceding 24
16 months on separate charges/cause numbers, a forensic navigator will
17 do the following:

18 (a) Meet with, interview, observe the individual, and complete a
19 recommended diversion program plan;

20 (b) If the individual is enrolled into the diversion program,
21 provide monthly status updates to the court and report disengagement
22 of the person from diversion services; and

23 (c) Work with the individual for up to six months while engaging
24 in the program.

25 **Sec. 5.** RCW 10.77.084 and 2016 sp.s. c 29 s 410 are each amended
26 to read as follows:

27 (1)(a) If at any time during the pendency of an action and prior
28 to judgment the court finds, following a report as provided in RCW
29 10.77.060, a defendant is incompetent, the court shall order the
30 proceedings against the defendant be stayed except as provided in
31 subsection (4) of this section. If the defendant is charged with a
32 serious traffic offense under RCW 9.94A.030, or a felony version of a
33 serious traffic offense, the court shall order revocation of the
34 defendant's driver's license for a period of one year.

35 (b) The court may order a defendant who has been found to be
36 incompetent to undergo competency restoration treatment at a facility
37 designated by the department if the defendant is eligible under RCW
38 10.77.086 or 10.77.088. At the end of each competency restoration
39 period or at any time a professional person determines competency has

1 been, or is unlikely to be, restored, the defendant shall be returned
2 to court for a hearing, except that if the opinion of the
3 professional person is that the defendant remains incompetent and the
4 hearing is held before the expiration of the current competency
5 restoration period, the parties may agree to waive the defendant's
6 presence, to remote participation by the defendant at a hearing, or
7 to presentation of an agreed order in lieu of a hearing. The facility
8 providing competency restoration shall promptly notify the court and
9 all parties of the date on which the competency restoration period
10 commences and expires so that a timely hearing date may be scheduled.

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

21 (d) If at any time during the proceeding the court finds,
22 following notice and hearing, a defendant is not likely to regain
23 competency, the court shall dismiss the proceedings without prejudice
24 and refer the defendant for civil commitment evaluation or
25 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
26 10.77.088.

27 (e) If the defendant's driver's license is revoked under
28 subsection (1)(a) of this section, and the court subsequently finds
29 that the defendant's competency has been restored, the court shall
30 vacate the revocation order for the driver's license made under this
31 section. The court may vacate the revocation of the defendant's
32 driver's license before the end of one year for good cause upon the
33 petition of the defendant.

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

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

4 (4) A defendant receiving medication for either physical or
5 mental problems shall not be prohibited from standing trial, if the
6 medication either enables the defendant to understand the proceedings
7 against him or her and to assist in his or her own defense, or does
8 not disable him or her from so understanding and assisting in his or
9 her own defense.

10 (5) At or before the conclusion of any commitment period provided
11 for by this section, the facility providing evaluation and treatment
12 shall provide to the court a written report of evaluation which meets
13 the requirements of RCW 10.77.060(3). For defendants charged with a
14 felony, the report following the second competency restoration period
15 or first competency restoration period if the defendant's
16 incompetence is determined to be solely due to a developmental
17 disability or the evaluator concludes that the defendant is not
18 likely to regain competency must include an assessment of the
19 defendant's future dangerousness which is evidence-based regarding
20 predictive validity. An individual found not competent due to
21 intellectual or developmental disability shall be referred by the
22 behavioral health administration of the department to the
23 developmental disabilities administration and reviewed for
24 eligibility and services.

25 **Sec. 6.** RCW 10.77.086 and 2022 c 288 s 4 are each amended to
26 read as follows:

27 (1) If the defendant is charged with a felony and determined to
28 be incompetent, until he or she has regained the competency necessary
29 to 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 (a) To be eligible for an order for outpatient competency
37 restoration, a defendant must be clinically appropriate and be
38 willing to:

1 (i) Adhere to medications or receive prescribed intramuscular
2 medication;

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

4 (iii) Comply with urinalysis or breathalyzer monitoring if
5 needed.

6 (b) If the court orders inpatient competency restoration, the
7 department shall place the defendant in an appropriate facility of
8 the department for competency restoration.

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

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

1 obtain a placement for the defendant within seven days of the notice
2 of intent to terminate the outpatient competency restoration
3 placement.

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

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

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

29 (2) For a defendant whose highest charge is a class C felony, or
30 a class B felony that is not classified as violent under RCW
31 9.94A.030, the maximum time allowed for the initial competency
32 restoration period is 45 days if the defendant is referred for
33 inpatient competency restoration, or 90 days if the defendant is
34 referred for outpatient competency restoration, provided that if the
35 outpatient competency restoration placement is terminated and the
36 defendant is subsequently admitted to an inpatient facility, the
37 period of inpatient treatment during the first competency restoration
38 period under this subsection shall not exceed 45 days.

39 (3) If the court determines or the parties agree before the
40 initial competency restoration period or at any subsequent stage of

1 the proceedings that the defendant is unlikely to regain competency,
2 the court may dismiss the charges without prejudice without ordering
3 the defendant to undergo an initial or further period of competency
4 restoration treatment, in which case the court shall order that the
5 defendant be referred for evaluation for civil commitment in the
6 manner provided in subsection (5) of this section.

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

22 (5) At the hearing upon the expiration of the second competency
23 restoration period, or at the end of the first competency restoration
24 period if the defendant is ineligible for a second or third
25 competency restoration period under subsection (4) of this section,
26 if the jury or court finds that the defendant is incompetent to stand
27 trial, the court shall dismiss the charges without prejudice and
28 order the defendant to be committed to (~~a state hospital~~) the
29 department for up to 120 hours if the defendant has not undergone
30 competency restoration services or has engaged in outpatient
31 competency restoration services and up to 72 hours if the defendant
32 engaged in inpatient competency restoration services starting from
33 admission to the facility, excluding Saturdays, Sundays, and
34 holidays, for evaluation for the purpose of filing a civil commitment
35 petition under chapter 71.05 RCW. However, the court shall not
36 dismiss the charges if the court or jury finds that: (a) The
37 defendant (i) is a substantial danger to other persons; or (ii)
38 presents a substantial likelihood of committing criminal acts
39 jeopardizing public safety or security; and (b) there is a
40 substantial probability that the defendant will regain competency

1 within a reasonable period of time. If the court or jury makes such a
2 finding, the court may extend the period of commitment for up to an
3 additional six months.

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

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

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

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

23 (i) Adhere to medications or receive prescribed intramuscular
24 medication;

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

26 (iii) Comply with urinalysis or breathalyzer monitoring if
27 needed.

28 (b) If the court orders inpatient competency restoration, the
29 department shall place the defendant in an appropriate facility of
30 the department for competency restoration. This may include placement
31 in an alternative therapeutic unit.

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

1 The court may order regular urinalysis testing. The outpatient
2 competency restoration program shall monitor the defendant during the
3 defendant's placement in the program and report any noncompliance or
4 significant changes with respect to the defendant to the department
5 and, if applicable, the forensic navigator.

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

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

1 facility for inpatient competency restoration or for medical
2 clearance, or authorize admission of the defendant into jail.

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

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

14 (2) For a defendant whose highest charge is a class C felony, or
15 a class B felony that is not classified as violent under RCW
16 9.94A.030, the maximum time allowed for the initial competency
17 restoration period is 45 days if the defendant is referred for
18 inpatient competency restoration, or 90 days if the defendant is
19 referred for outpatient competency restoration, provided that if the
20 outpatient competency restoration placement is terminated and the
21 defendant is subsequently admitted to an inpatient facility, the
22 period of inpatient treatment during the first competency restoration
23 period under this subsection shall not exceed 45 days.

24 (3) 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) of this section.

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

1 and the prosecutor have the right to demand that the hearing be
2 before a jury. No extension shall be ordered for a second or third
3 competency restoration period if the defendant's incompetence has
4 been determined by the secretary to be solely the result of a
5 developmental disability which is such that competence is not
6 reasonably likely to be regained during an extension.

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

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

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

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

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

9 (b) At the hearing, the prosecuting attorney must establish that
10 there is a compelling state interest to order competency restoration
11 treatment for the defendant. The court may consider prior criminal
12 history, prior history in treatment, prior history of violence, the
13 quality and severity of the pending charges, any history that
14 suggests whether competency restoration treatment is likely to be
15 successful, in addition to the factors listed under RCW 10.77.092. If
16 the prosecuting attorney proves by a preponderance of the evidence
17 that there is a compelling state interest in ordering competency
18 restoration treatment, then the court shall issue an order in
19 accordance with subsection (2) of this section. If the defendant is
20 charged with a serious traffic offense under RCW 9.94A.030 the court
21 shall order revocation of the defendant's driver's license for a
22 period of one year. The court shall vacate this revocation order if
23 the defendant is restored to competency and may vacate the revocation
24 order at any time before the end of one year for good cause upon the
25 petition of the defendant.

26 (2) If a court finds pursuant to subsection (1)(b) of this
27 section that there is a compelling state interest in pursuing
28 competency restoration treatment, the court shall commit the
29 defendant to the custody of the secretary for inpatient competency
30 restoration, or may alternatively order the defendant to receive
31 outpatient competency restoration based on a recommendation from a
32 forensic navigator and input from the parties.

33 (a) To be eligible for an order for outpatient competency
34 restoration, a defendant must be clinically appropriate and be
35 willing to:

36 (i) Adhere to medications or receive prescribed intramuscular
37 medication;

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

39 (iii) Comply with urinalysis or breathalyzer monitoring if
40 needed.

1 (b) If the court orders inpatient competency restoration, the
2 department shall place the defendant in an appropriate facility of
3 the department for competency restoration under subsection (3) of
4 this section.

5 (c) The court shall enter an order for outpatient competency
6 restoration consistent with the recommendation of the forensic
7 navigator, unless the court makes a finding that an order for
8 outpatient competency restoration is inappropriate or inadequate. The
9 court will consider the opinions of the parties, risks to public
10 safety, appropriateness of the placement, health and safety of the
11 defendant, and any other relevant factors in making its decision.

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

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

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

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

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

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

32 (3) The placement under subsection (2) of this section shall not
33 exceed 29 days if the defendant is ordered to receive inpatient
34 competency restoration, and shall not exceed 90 days if the defendant
35 is ordered to receive outpatient competency restoration. The court
36 may order any combination of this subsection, but the total period of
37 inpatient competency restoration may not exceed 29 days.

38 (4) If the court has determined or the parties agree that the
39 defendant is unlikely to regain competency, the court may dismiss the
40 charges without prejudice without ordering the defendant to undergo

1 competency restoration treatment, in which case the court shall order
2 that the defendant be referred for evaluation for civil commitment in
3 the manner provided in subsection (5) of this section.

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

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

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

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

1 (8) Any period of competency restoration treatment under this
2 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 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.77
7 RCW to read as follows:

8 If the defendant is charged with a misdemeanor within counties
9 that have outpatient competency restoration, forensic navigator,
10 forensic projects for assistance in transition from homelessness, and
11 forensic housing and recovery through peer services programs, and
12 have had two or more competency evaluations in the preceding 24
13 months on separate charges/cause numbers and who have not been
14 referred for a competency evaluation, then:

15 (1) A forensic navigator will meet, interview, and observe the
16 individual and determine willingness to engage with the forensic
17 navigator and relevant other staff;

18 (2) The forensic navigator will provide a diversion program plan
19 that includes a recommendation on diversion options to defense
20 counsel and the prosecuting attorney;

21 (3) If the parties agree on a recommended option for diversion,
22 the prosecutor will determine if charges will be dismissed with or
23 without prejudice;

24 (4) The defendant may file a motion requesting enrollment in a
25 diversion option if the parties do not agree. The court will hold a
26 hearing on this motion within 10 days;

27 (a) At the hearing on the motion for diversion options, the court
28 will consider based upon a preponderance of the evidence whether the
29 defendant is amendable to diversion, is likely to comply with any
30 treatment recommendations, and whether they can be safely treated in
31 the community;

32 (b) If the court determines that diversion is an appropriate
33 option, the defendant will be enrolled in a diversion program as
34 recommended by the court and the charge(s) will be dismissed without
35 prejudice;

36 (5) Individuals whose charges are dismissed and enrolled in a
37 diversion program will have a forensic navigator assigned to them for
38 up to six months while engaging in the program;

1 (6) For an individual enrolled in a diversion program whose
2 charges are dropped without prejudice, the assigned forensic
3 navigator will provide monthly status updates to the court and the
4 parties regarding the individual's status in the diversion program.

5 NEW SECTION. **Sec. 10.** Section 6 of this act is necessary for
6 the immediate preservation of the public peace, health, or safety, or
7 support of the state government and its existing public institutions,
8 and takes effect immediately.

9 NEW SECTION. **Sec. 11.** Sections 3, 5, and 8 of this act take
10 effect July 1, 2024.

11 NEW SECTION. **Sec. 12.** Section 7 of this act takes effect July
12 1, 2025.

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