

By Representative Farivar

**E2SSB 5440** - H COMM AMD

By Committee on Civil Rights & Judiciary

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that defendants  
4 referred for services related to competency to stand trial requiring  
5 admission into a psychiatric facility are currently facing  
6 unprecedented wait times in jail for admission. The situation has  
7 been exacerbated by closure of forensic beds and workforce shortages  
8 related to COVID-19, and treatment capacity limits related to social  
9 distancing requirements. Moreover, a backlog of criminal prosecutions  
10 that were held back during the first two years of the pandemic due to  
11 capacity limitations in courts, prosecuting attorneys offices, and  
12 jails, are now being filed, causing a surge in demand for competency  
13 services which exceeds the state's capacity to make a timely  
14 response. In partial consequence, as of January 2023, wait times for  
15 admission to western state hospital for competency services, directed  
16 to be completed within seven days by order of the United States  
17 district court for western Washington, have risen to over ten months,  
18 while wait times for admission to eastern state hospital for the same  
19 services have risen to over five months. The state's forensic bed  
20 capacity forecast model indicates that if the state continues to  
21 receive competency referrals from local superior, district, and  
22 municipal courts at the same volume, the state will rapidly fall  
23 farther behind.

24 The legislature further finds that historical investments and  
25 policy changes have been made in behavioral health services over the  
26 past five years, designed to both increase capacity to provide  
27 competency to stand trial services and to reduce the need for them by  
28 creating opportunities for diversion, prevention, and improved  
29 community health. New construction at western state hospital is  
30 expected to result in the opening of 58 forensic psychiatric beds in  
31 the first quarter of 2023, while emergency community hospital

1 contracts are expected to allow for the discharge or transfer of over  
2 50 civil conversion patients occupying forensic state hospital beds  
3 over the same period. Sixteen beds for civil conversion patients will  
4 open at Maple Lane school in the first quarter of 2023, with 30  
5 additional beds for patients acquitted by reason of insanity expected  
6 to open by late 2023 or early 2024. Over a longer time period, 350  
7 forensic beds are planned to open within a new forensic hospital on  
8 western state hospital campus between 2027 and 2029. Policy and  
9 budget changes have increased capacity for assisted outpatient  
10 treatment, 988 crisis response, use of medication for opioid use  
11 disorders in jails and community settings, reentry services, and  
12 mental health advance directives, and created new behavioral health  
13 facility types, supportive housing, and supportive employment  
14 services. Forensic navigator services, outpatient competency  
15 restoration programs, and other specialty forensic services are now  
16 available and continuing to be deployed in phase two *Trueblood*  
17 settlement regions.

18 The legislature further finds that despite these investments  
19 there is a need for everyone to come together to find solutions to  
20 both reduce demand for forensic services and to increase their  
21 supply. The state needs collaboration from local governments and  
22 other entities to identify any and all facilities that can be used to  
23 provide services to patients connected to the forensic system, to  
24 reduce the flow of competency referrals coming from municipal,  
25 district, and superior courts, and to improve availability and  
26 effectiveness of behavioral health services provided outside the  
27 criminal justice system.

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

30 As used in this chapter:

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

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

34 (3) "Clinical intervention specialist" means a licensed  
35 professional with prescribing authority who is employed by or  
36 contracted with the department to provide direct services, enhanced  
37 oversight and monitoring of the behavioral health status of in-  
38 custody defendants who have been referred for evaluation or  
39 restoration services related to competency to stand trial and who

1 coordinate treatment options with forensic navigators, the  
2 department, and jail health services.

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

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

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

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

18 ~~((7))~~ (8) "Department" means the state department of social and  
19 health services.

20 ~~((8))~~ (9) "Designated crisis responder" has the same meaning as  
21 provided in RCW 71.05.020.

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

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

31 ~~((11))~~ (12) "Developmental disability" means the condition as  
32 defined in RCW 71A.10.020~~((5))~~.

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

36 ~~((13))~~ (14) "Furlough" means an authorized leave of absence for  
37 a resident of a state institution operated by the department  
38 designated for the custody, care, and treatment of the criminally  
39 insane, consistent with an order of conditional release from the  
40 court under this chapter, without any requirement that the resident

1 be accompanied by, or be in the custody of, any law enforcement or  
2 institutional staff, while on such unescorted leave.

3 ~~((14))~~ (15) "Genuine doubt as to competency" means that there  
4 is reasonable cause to believe, based upon actual interactions with  
5 or observations of the defendant or information provided by counsel,  
6 that a defendant is incompetent to stand trial.

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

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

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

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

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

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

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

37 (b) The conditions and strategies necessary to achieve the  
38 purposes of habilitation;

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

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

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

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

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

10 (~~(20)~~) (22) "Professional person" means:

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

18 (b) A psychologist licensed as a psychologist pursuant to chapter  
19 18.83 RCW;

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

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

25 (~~(21)~~) (23) "Release" means legal termination of the court-  
26 ordered commitment under the provisions of this chapter.

27 (~~(22)~~) (24) "Secretary" means the secretary of the department  
28 of social and health services or his or her designee.

29 (~~(23)~~) (25) "Treatment" means any currently standardized  
30 medical or mental health procedure including medication.

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

1 a treatment facility if the notes or records are not available to  
2 others.

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

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

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

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

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

1 records of the developmental disabilities administration of the  
2 department. If the court is advised by any party that the defendant  
3 may have dementia or another relevant neurocognitive disorder, the  
4 evaluator shall have access to records of the aging and long-term  
5 support administration of the department.

6 ~~((e))~~ (d) The evaluator shall assess the defendant in a jail,  
7 detention facility, in the community, or in court to determine  
8 whether a period of inpatient commitment will be necessary to  
9 complete an accurate evaluation. If inpatient commitment is needed,  
10 the signed order of the court shall serve as authority for the  
11 evaluator to request the jail or detention facility to transport the  
12 defendant to a hospital or secure mental health facility for a period  
13 of commitment not to exceed fifteen days from the time of admission  
14 to the facility. Otherwise, the evaluator shall complete the  
15 evaluation.

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

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

35 ~~((f))~~ (g) When a defendant is ordered to be evaluated under  
36 this subsection (1), or when a party or the court determines at first  
37 appearance that an order for evaluation under this subsection will be  
38 requested or ordered if charges are pursued, the court may delay  
39 granting bail until the defendant has been evaluated for competency  
40 or sanity and appears before the court. Following the evaluation, in

1 determining bail the court shall consider: (i) Recommendations of the  
2 evaluator regarding the defendant's competency, sanity, or diminished  
3 capacity; (ii) whether the defendant has a recent history of one or  
4 more violent acts; (iii) whether the defendant has previously been  
5 acquitted by reason of insanity or found incompetent; (iv) whether it  
6 is reasonably likely the defendant will fail to appear for a future  
7 court hearing; and (v) whether the defendant is a threat to public  
8 safety.

9 (h) If the defendant ordered to be evaluated under this  
10 subsection (1) is charged with a serious traffic offense under RCW  
11 9.94A.030, or a felony version of a serious traffic offense, the  
12 prosecutor may make a motion to modify the defendant's conditions of  
13 release to include a condition prohibiting the defendant from driving  
14 during the pendency of the competency evaluation period.

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

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

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

27 (b) A diagnosis or description of the current mental status of  
28 the defendant;

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

31 (d) If the defendant suffers from an intellectual or  
32 developmental disability, traumatic brain injury, or dementia, an  
33 opinion as to restorability;

34 (e) If the defendant has indicated his or her intention to rely  
35 on the defense of insanity pursuant to RCW 10.77.030, and an  
36 evaluation and report by an expert or professional person has been  
37 provided concluding that the defendant was criminally insane at the  
38 time of the alleged offense, an opinion as to the defendant's sanity  
39 at the time of the act, and an opinion as to whether the defendant  
40 presents a substantial danger to other persons, or presents a



1 substantial likelihood of committing criminal acts jeopardizing  
2 public safety or security, unless kept under further control by the  
3 court or other persons or institutions, provided that no opinion  
4 shall be rendered under this subsection (3) ~~((d))~~ (e) unless the  
5 evaluator or court determines that the defendant is competent to  
6 stand trial;

7 ~~((e))~~ (f) When directed by the court, if an evaluation and  
8 report by an expert or professional person has been provided  
9 concluding that the defendant lacked the capacity at the time of the  
10 offense to form the mental state necessary to commit the charged  
11 offense, an opinion as to the capacity of the defendant to have a  
12 particular state of mind which is an element of the offense charged;

13 ~~((f))~~ (g) An opinion as to whether the defendant should be  
14 evaluated by a designated crisis responder under chapter 71.05 RCW.

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

18 (5) In the event that a person remains in jail more than 21 days  
19 after service on the department of a court order to transport the  
20 person to a facility designated by the department for inpatient  
21 competency restoration treatment, upon the request of any party and  
22 with notice to all parties, the department shall perform a competency  
23 to stand trial status check to determine if the circumstances of the  
24 person have changed such that the court should authorize an updated  
25 competency evaluation. The status update shall be provided to the  
26 parties and the court. Status updates may be provided at reasonable  
27 intervals.

28 (6) If a finding of the competency evaluation under this section  
29 or under RCW 10.77.084 is that the individual is not competent due to  
30 an intellectual or developmental disability or dementia, the  
31 evaluator shall notify the department, which shall refer the  
32 individual to the developmental disabilities administration or the  
33 aging and long-term support administration of the department for  
34 review of eligibility for services. Information about availability of  
35 services must be provided to the forensic navigator.

36 (7) If the expert or professional person appointed to perform a  
37 competency evaluation in the community is not able to complete the  
38 evaluation after two attempts at scheduling with the defendant, the  
39 department shall submit a report to the court and parties and include  
40 a date and time for another evaluation which must be at least four

1 weeks later. The court shall provide notice to the defendant of the  
2 date and time of the evaluation. If the defendant fails to appear at  
3 that appointment, the court shall issue a warrant for the failure to  
4 appear and recall the order for competency evaluation.

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

7 (1)(a) The legislature establishes a performance target of seven  
8 days or fewer to extend an offer of admission to a defendant in  
9 pretrial custody for inpatient competency evaluation or inpatient  
10 competency restoration services, when access to the services is  
11 legally authorized.

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

15 (i) To complete a competency evaluation in jail and distribute  
16 the evaluation report; and

17 (ii) To extend an offer of admission to a defendant ordered to be  
18 committed to (~~a state hospital~~) the department for placement in a  
19 facility operated by or contracted by the department following  
20 dismissal of charges based on incompetency to stand trial under RCW  
21 10.77.086.

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

25 (2)(a) A maximum time limit of seven days as measured from the  
26 department's receipt of the court order, or a maximum time limit of  
27 14 days as measured from signature of the court order, whichever is  
28 shorter, is established to complete the services specified in  
29 subsection (1)(a) of this section, subject to the limitations under  
30 subsection (9) of this section.

31 (b) A maximum time limit of 14 days as measured from the  
32 department's receipt of the court order, or a maximum time limit of  
33 21 days as measured from signature of the court order, whichever is  
34 shorter, is established to complete the services specified in  
35 subsection (1)(b) of this section, subject to the limitations under  
36 subsection (9) of this section.

37 (3) The legislature recognizes that these targets may not be  
38 achievable in all cases, but intends for the department to manage,  
39 allocate, and request appropriations for resources in order to meet

1 these targets whenever possible without sacrificing the accuracy and  
2 quality of competency services.

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

10 (a) Despite a timely request, the department has not received  
11 necessary medical information regarding the current medical status of  
12 a defendant;

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

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

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

25 (e) Completion of the referral requires additional time to  
26 accommodate the availability or participation of counsel, court  
27 personnel, interpreters, or the defendant;

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

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

34 (5) The department shall provide written notice to the court when  
35 it will not be able to meet the maximum time limits under subsection  
36 (2) of this section and identify the reasons for the delay and  
37 provide a reasonable estimate of the time necessary to complete the  
38 competency service. Good cause for an extension for the additional  
39 time estimated by the department shall be presumed absent a written

1 response from the court or a party received by the department within  
2 seven days.

3 (6) The department shall:

4 (a) Develop, document, and implement procedures to monitor the  
5 clinical status of defendants admitted to a state hospital for  
6 competency services that allow the state hospital to accomplish early  
7 discharge for defendants for whom clinical objectives have been  
8 achieved or may be achieved before expiration of the commitment  
9 period;

10 (b) Investigate the extent to which patients admitted to a state  
11 hospital under this chapter overstay time periods authorized by law  
12 and take reasonable steps to limit the time of commitment to  
13 authorized periods; and

14 (c) Establish written standards for the productivity of forensic  
15 evaluators and utilize these standards to internally review the  
16 performance of forensic evaluators.

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

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

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

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

37 (1) Subject to the limitations described in subsection (2) of  
38 this section, a court may appoint an impartial forensic navigator  
39 employed by or contracted by the department to assist individuals who

1 have been referred for competency evaluation and shall appoint a  
2 forensic navigator in circumstances described under section 9 of this  
3 act.

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

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

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

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

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

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

25 ~~(d))~~ (e) To provide regular updates to the court and parties of  
26 the status of the individual's participation in diversion services  
27 and be responsive to inquiries by the parties about treatment status;

28 (f) When the individual is ordered to receive community  
29 outpatient restoration, to provide services to the individual  
30 including:

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

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

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

35 (iv) Providing information to the court concerning the  
36 individual's progress and compliance with court-ordered conditions of  
37 release, which may include appearing at court hearings to provide  
38 information to the court;

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

1 (vi) Assisting the individual with obtaining prescribed  
2 medication and encouraging adherence with prescribed medication;

3 (vii) Assessing the individual for appropriateness for assisted  
4 outpatient treatment under chapter 71.05 RCW and coordinating the  
5 initiation of an assisted outpatient treatment order if appropriate  
6 as part of a diversion program plan;

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

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

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

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

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

25 (4) Forensic navigators may submit ~~((nonclinical))~~  
26 recommendations to the court regarding treatment and restoration  
27 options for the individual, which the court may consider and weigh in  
28 conjunction with the recommendations of all of the parties.

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

31 (6) The signed order for competency evaluation from the court  
32 shall serve as authority for the forensic navigator to be given  
33 access to all records held by a behavioral health, educational, or  
34 law enforcement agency or a correctional facility that relates to an  
35 individual. Information that is protected by state or federal law,  
36 including health information, shall not be entered into the court  
37 record without the consent of the individual or their defense  
38 attorney.

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

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

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

10 (1)(a) If at any time during the pendency of an action and prior  
11 to judgment the court finds, following a report as provided in RCW  
12 10.77.060, a defendant is incompetent, the court shall order the  
13 proceedings against the defendant be stayed except as provided in  
14 subsection (4) of this section. Beginning October 1, 2023, if the  
15 defendant is charged with a serious traffic offense under RCW  
16 9.94A.030, or a felony version of a serious traffic offense, the  
17 court may order the clerk to transmit an order to the department of  
18 licensing for revocation of the defendant's driver's license for a  
19 period of one year.

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

35 (c) The court's order for inpatient restoration, shall specify  
36 whether the department has the authority to change the defendant's  
37 placement to a step-down facility or outpatient competency  
38 restoration program if the department determines that such placement

1 is clinically appropriate given the defendant's progress in  
2 restoration services.

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

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

19 (f) Beginning October 1, 2023, if the court issues an order  
20 directing revocation of the defendant's driver's license under (a) of  
21 this subsection, and the court subsequently finds that the  
22 defendant's competency has been restored, the court shall order the  
23 clerk to transmit an order to the department of licensing for  
24 reinstatement of the defendant's driver's license. The court may  
25 direct the clerk to transmit an order reinstating the defendant's  
26 driver's license before the end of one year for good cause upon the  
27 petition of the defendant.

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

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

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



1 against him or her and to assist in his or her own defense, or does  
2 not disable him or her from so understanding and assisting in his or  
3 her own defense.

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

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

17 (1) If the defendant is charged with a felony that is not a  
18 qualifying class C felony, and that defendant is determined to be  
19 incompetent, until he or she has regained the competency necessary to  
20 understand the proceedings against him or her and assist in his or  
21 her own defense, but in any event for a period of no longer than 90  
22 days, the court shall commit the defendant to the custody of the  
23 secretary for inpatient competency restoration, or may alternatively  
24 order the defendant to receive outpatient competency restoration  
25 based on a recommendation from a forensic navigator and input from  
26 the parties.

27 (2)(a) If the defendant is charged with a qualifying class C  
28 felony as their highest charge and determined to be incompetent, and  
29 the court finds that there is a diversion program as recommended by a  
30 forensic navigator, the court shall dismiss the proceedings without  
31 prejudice and refer the defendant to the recommended diversion  
32 program, except that if the court has previously determined that a  
33 diversion program under section 9 of this act is not appropriate, the  
34 forensic navigator does not recommend diversion, or the prosecutor  
35 objects to the dismissal and provides notice of a motion for an order  
36 for competency restoration treatment, then the court shall schedule a  
37 hearing within seven days.

38 (b)(i) At the hearing, the prosecuting attorney must establish  
39 that there is a compelling state interest to order competency

1 restoration treatment for the defendant. The court may consider prior  
2 criminal history, prior history in treatment, prior history of  
3 violence, the quality and severity of the pending charges, and any  
4 history that suggests whether competency restoration treatment is  
5 likely to be successful, in addition to the factors listed under RCW  
6 10.77.092. If the prosecuting attorney proves by a preponderance of  
7 the evidence that there is a compelling state interest in ordering  
8 competency restoration treatment, then the court shall issue an order  
9 in accordance with (c) of this subsection.

10 (ii) If the defendant is subject to an order under chapter 71.05  
11 RCW or proceedings under chapter 71.05 RCW have been initiated, there  
12 is a rebuttable presumption that the state's compelling interest has  
13 been satisfied. Beginning October 1, 2023, if the defendant is  
14 charged with a serious traffic offense under RCW 9.94A.030, or a  
15 felony version of a serious traffic offense, the court may order the  
16 clerk to transmit an order to the department of licensing for  
17 revocation of the defendant's driver's license for a period of one  
18 year. The court shall direct the clerk to transmit an order to the  
19 department of licensing reinstating the defendant's driver's license  
20 if the defendant is subsequently restored to competency and may do so  
21 at any time before the end of one year for good cause upon the  
22 petition of the defendant.

23 (c) If a court finds pursuant to (b) of this subsection that  
24 there is a compelling state interest in pursuing competency  
25 restoration treatment or the court has previously determined that a  
26 diversion program under section 9 of this act is not appropriate for  
27 the defendant, the court shall order the defendant to receive  
28 outpatient competency restoration consistent with the recommendation  
29 of the forensic navigator, unless the court finds that an order for  
30 outpatient competency restoration is inappropriate considering the  
31 health and safety of the defendant and risks to public safety. If the  
32 court does not order the defendant to receive outpatient competency  
33 restoration, the court shall commit the defendant to the department  
34 for placement in a facility operated or contracted by the department  
35 for inpatient competency restoration.

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

39 (i) Adhere to medications or receive prescribed intramuscular  
40 medication;

1 (ii) Abstain from alcohol and unprescribed drugs; and  
2 (iii) Comply with urinalysis or breathalyzer monitoring if  
3 needed.

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

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

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

1 of intent to terminate the outpatient competency restoration  
2 placement.

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

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

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

28 (~~(+2)~~) (4) (a) For a defendant whose highest charge is a class C  
29 felony that is not a qualifying class C felony, or a class B felony  
30 that is not classified as violent under RCW 9.94A.030, the maximum  
31 time allowed for the initial competency restoration period is 45 days  
32 if the defendant is referred for inpatient competency restoration, or  
33 90 days if the defendant is referred for outpatient competency  
34 restoration, provided that if the outpatient competency restoration  
35 placement is terminated and the defendant is subsequently admitted to  
36 an inpatient facility, the period of inpatient treatment during the  
37 first competency restoration period under this subsection shall not  
38 exceed 45 days.

39 (~~(+3)~~) (b) For a defendant whose highest charge is a qualifying  
40 class C felony, the maximum time allowed for competency restoration

1 is 45 days if the defendant is referred for inpatient competency  
2 restoration, or 90 days if the defendant is referred for outpatient  
3 competency restoration. The court may order any combination of  
4 inpatient and outpatient competency restoration under this  
5 subsection, but the total period of inpatient competency restoration  
6 may not exceed 45 days.

7 (c) For any defendant with a felony charge that is admitted for  
8 competency restoration with an accompanying court order for  
9 involuntary medication under RCW 10.77.092, and the defendant is  
10 found not competent to stand trial following that period of  
11 restoration, charges shall be dismissed pursuant to subsection (7) of  
12 this section.

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

21 ((4) On) (6) For a defendant charged with a felony that is not  
22 a qualifying class C felony, on or before expiration of the initial  
23 competency restoration period the court shall conduct a hearing to  
24 determine whether the defendant is now competent to stand trial. If  
25 the court finds by a preponderance of the evidence that the defendant  
26 is incompetent to stand trial, the court may order an extension of  
27 the competency restoration period for an additional period of 90  
28 days, but the court must at the same time set a date for a new  
29 hearing to determine the defendant's competency to stand trial before  
30 the expiration of this second restoration period. The defendant, the  
31 defendant's attorney, and the prosecutor have the right to demand  
32 that the hearing be before a jury. No extension shall be ordered for  
33 a second or third competency restoration period if the defendant's  
34 incompetence has been determined by the secretary to be solely the  
35 result of ((a)) an intellectual or developmental disability,  
36 dementia, or traumatic brain injury which is such that competence is  
37 not reasonably likely to be regained during an extension.

38 ((5)) (7) At the hearing upon the expiration of the second  
39 competency restoration period, or at the end of the first competency  
40 restoration period if the defendant is ineligible for a second or

1 third competency restoration period under subsection (4) or (6) of  
2 this section, if the jury or court finds that the defendant is  
3 incompetent to stand trial, the court shall dismiss the charges  
4 without prejudice and order the defendant to be committed to (~~a~~  
5 ~~state hospital~~) the department for placement in a facility operated  
6 or contracted by the department for up to 120 hours, upon department  
7 receipt of the court order, if the defendant has not undergone  
8 competency restoration services or has engaged in outpatient  
9 competency restoration services, and up to 72 hours, upon department  
10 receipt of the court order, if the defendant engaged in inpatient  
11 competency restoration services starting from admission to the  
12 facility, excluding Saturdays, Sundays, and holidays, for evaluation  
13 for the purpose of filing a civil commitment petition under chapter  
14 71.05 RCW. However, for a defendant charged with a felony that is not  
15 a qualifying class C felony, the court shall not dismiss the charges  
16 if the court or jury finds that: (a) The defendant (i) is a  
17 substantial danger to other persons; or (ii) presents a substantial  
18 likelihood of committing criminal acts jeopardizing public safety or  
19 security; and (b) there is a substantial probability that the  
20 defendant will regain competency within a reasonable period of time.  
21 If the court or jury makes such a finding, the court may extend the  
22 period of commitment for up to an additional six months.

23 ~~((6))~~ (8) Any period of competency restoration treatment under  
24 this section includes only the time the defendant is actually at the  
25 facility or is actively participating in an outpatient competency  
26 restoration program and is in addition to reasonable time for  
27 transport to or from the facility.

28 (9) "Qualifying class C felony" means any class C felony offense  
29 except: (a) Assault in the third degree where bodily harm has  
30 occurred; (b) felony physical control of a vehicle under RCW  
31 46.61.504(6); (c) felony hit and run resulting in injury under RCW  
32 46.52.020(4) (b); and (d) any class C felony offense with a domestic  
33 violence designation.

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) (i) At the hearing, the prosecuting attorney must establish  
10 that there is a compelling state interest to order competency  
11 restoration treatment for the defendant. The court may consider prior  
12 criminal history, prior history in treatment, prior history of  
13 violence, the quality and severity of the pending charges, any  
14 history that suggests whether competency restoration treatment is  
15 likely to be successful, in addition to the factors listed under RCW  
16 10.77.092. If the prosecuting attorney proves by a preponderance of  
17 the evidence that there is a compelling state interest in ordering  
18 competency restoration treatment, then the court shall issue an order  
19 in accordance with subsection (2) of this section.

20 (ii) If the defendant is subject to an order under chapter 71.05  
21 RCW or proceedings under chapter 71.05 RCW have been initiated, there  
22 is a rebuttable presumption that the state's compelling interest has  
23 been satisfied. Beginning October 1, 2023, if the defendant is  
24 charged with a serious traffic offense under RCW 9.94A.030, the court  
25 may order the clerk to transmit an order to the department of  
26 licensing for revocation of the defendant's driver's license for a  
27 period of one year. The court shall direct the clerk to transmit an  
28 order to the department of licensing reinstating the defendant's  
29 driver's license if the defendant is subsequently restored to  
30 competency, and may do so at any time before the end of one year for  
31 good cause upon the petition of the defendant.

32 (2) (a) If a court finds pursuant to subsection (1)(b) of this  
33 section that there is a compelling state interest in pursuing  
34 competency restoration treatment, the court shall (~~commit the~~  
35 ~~defendant to the custody of the secretary for inpatient competency~~  
36 ~~restoration, or may alternatively~~) order the defendant to receive  
37 outpatient competency restoration (~~based on a recommendation from a~~  
38 ~~forensic navigator and input from the parties~~) consistent with the  
39 recommendation of the forensic navigator, unless the court finds that  
40 an order for outpatient competency restoration is inappropriate

1 considering the health and safety of the defendant and risks to  
2 public safety.

3 ~~((a))~~ (b) To be eligible for an order for outpatient competency  
4 restoration, a defendant must be ~~((clinically appropriate and be))~~  
5 willing to:

6 (i) Adhere to medications or receive prescribed intramuscular  
7 medication;

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

9 (iii) Comply with urinalysis or breathalyzer monitoring if  
10 needed.

11 ~~((b))~~ (c) If the court orders inpatient competency restoration,  
12 the department shall place the defendant in an appropriate facility  
13 of the department for competency restoration under subsection (3) of  
14 this section.

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

29 ~~((d))~~ (e) If a defendant fails to comply with the restrictions  
30 of the outpatient competency restoration program such that  
31 restoration is no longer appropriate in that setting or the defendant  
32 is no longer clinically appropriate for outpatient competency  
33 restoration, the director of the outpatient competency restoration  
34 program shall notify the authority and the department of the need to  
35 terminate the outpatient competency restoration placement and intent  
36 to request placement for the defendant in an appropriate facility of  
37 the department for inpatient competency restoration. The outpatient  
38 competency restoration program shall coordinate with the authority,  
39 the department, and any law enforcement personnel under ~~((d))~~ (e)  
40 (i) of this subsection to ensure that the time period between



1 termination and admission into the inpatient facility is as minimal  
2 as possible. The time period for inpatient competency restoration  
3 shall be reduced by the time period spent in active treatment within  
4 the outpatient competency restoration program, excluding time periods  
5 in which the defendant was absent from the program and all time from  
6 notice of termination of the outpatient competency restoration period  
7 through the defendant's admission to the facility. The department  
8 shall obtain a placement for the defendant within seven days of the  
9 notice of intent to terminate the outpatient competency restoration  
10 placement.

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

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

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

36 (g) If the court does not order the defendant to receive  
37 outpatient competency restoration under (a) of this subsection, the  
38 court shall commit the defendant to the department for placement in a  
39 facility operated or contracted by the department for inpatient  
40 competency restoration.

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

7 (4) If the court has determined or the parties agree that the  
8 defendant is unlikely to regain competency, the court may dismiss the  
9 charges without prejudice without ordering the defendant to undergo  
10 competency restoration treatment, in which case the court shall order  
11 that the defendant be referred for evaluation for civil commitment in  
12 the manner provided in subsection (5) of this section.

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

19 (b) If the defendant was in custody and not on conditional  
20 release at the time of dismissal, the defendant shall be detained and  
21 sent to an evaluation and treatment facility for up to 120 hours if  
22 the defendant has not undergone competency restoration services or  
23 has engaged in outpatient competency restoration services and up to  
24 72 hours if the defendant engaged in inpatient competency restoration  
25 services, excluding Saturdays, Sundays, and holidays, for evaluation  
26 for purposes of filing a petition under chapter 71.05 RCW. The 120-  
27 hour or 72-hour period shall commence upon the next nonholiday  
28 weekday following the court order and shall run to the end of the  
29 last nonholiday weekday within the 120-hour or 72-hour period.

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

39 (7) If at any time the court dismisses charges under subsections  
40 (1) through (6) of this section, the court shall make a finding as to

1 whether the defendant has a history of one or more violent acts. If  
2 the court so finds, the defendant is barred from the possession of  
3 firearms until a court restores his or her right to possess a firearm  
4 under RCW 9.41.047. The court shall state to the defendant and  
5 provide written notice that the defendant is barred from the  
6 possession of firearms and that the prohibition remains in effect  
7 until a court restores his or her right to possess a firearm under  
8 RCW 9.41.047.

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

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

16 (1) In counties with a forensic navigator program, a forensic  
17 navigator shall:

18 (a) Meet, interview, and observe all defendants charged with a  
19 qualifying class C felony as defined in RCW 10.77.086(9) or a  
20 nonfelony who have had two or more competency evaluations in the  
21 preceding 24 months on separate charges or cause numbers and  
22 determine the defendants' willingness to engage with services under  
23 this section; and

24 (b) Provide a diversion program plan to the parties in each case  
25 that includes a recommendation for a diversion program to defense  
26 counsel and the prosecuting attorney. Services under a diversion  
27 program may include a referral for assisted outpatient treatment  
28 under chapter 71.05 RCW.

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

32 (3) If the parties do not agree on the diversion program, the  
33 defense may move the court for an order dismissing the criminal  
34 charges without prejudice and referring the defendant to the services  
35 described in the diversion program. The court shall hold a hearing on  
36 this motion within 10 days. The court shall grant the defense motion  
37 if it finds by a preponderance of the evidence that the defendant is  
38 amenable to the services described in the diversion program and can  
39 safely receive services in the community.

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

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

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

15 (a) Any violent offense, sex offense, (~~serious—traffice~~  
16 ~~offense,~~) and most serious offense, as those terms are defined in  
17 RCW 9.94A.030;

18 (b) Any felony offense (~~(, —except—nonfelony—counterfeiting~~  
19 ~~offenses,~~) included in crimes against persons in RCW 9.94A.411;

20 (c) Any felony offense contained in chapter 9.41 RCW (firearms  
21 and dangerous weapons);

22 (d) Any felony or gross misdemeanor offense listed as domestic  
23 violence in RCW 10.99.020;

24 (e) Any felony offense listed as a harassment offense in chapter  
25 9A.46 RCW;

26 (f) Any violation of chapter 69.50 RCW that is a class B felony;  
27 (~~or~~)

28 (g) Any gross misdemeanor violation of RCW 46.61.502 or  
29 46.61.504;

30 (h) Any gross misdemeanor offense with a sexual motivation  
31 allegation; or

32 (i) Any city or county ordinance or statute that is equivalent to  
33 an offense referenced in this subsection.

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

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

5 (i) The charge includes an allegation that the defendant actually  
6 inflicted bodily or emotional harm on another person or that the  
7 defendant created a reasonable apprehension of bodily or emotional  
8 harm to another;

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

11 (iii) The number and nature of related charges pending against  
12 the defendant;

13 (iv) The length of potential confinement if the defendant is  
14 convicted; and

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

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

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

28 (a) The substitution is for a generic version of a name brand  
29 drug and the generic version is chemically identical to the name  
30 brand drug; or

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

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

1        NEW SECTION.    **Sec. 12.**    A new section is added to chapter 10.77

2    RCW to read as follows:

3        (1)    Following a competency evaluation under RCW 10.77.060,  
4    individuals who are found not competent to stand trial and not  
5    restorable due to an intellectual or developmental disability,  
6    dementia, or traumatic brain injury, shall not be referred for  
7    competency restoration services unless the highest current criminal  
8    charge is a violent offense or sex offense as defined in RCW  
9    9.94A.030. A defendant with a prior finding under this subsection may  
10   only be referred for competency restoration services if the highest  
11   charge under the new proceedings is a violent offense or sex offense  
12   as defined in RCW 9.94A.030.

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

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

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

33        (ii)    Conduct a current service eligibility assessment and send  
34   referral packets to service providers, both the developmental  
35   disabilities administration and aging and long-term support  
36   administration, for all services for which the individual is eligible  
37   if they do not have a current residential service and supports  
38   provider; and

39        (iii)    Connect with the individual's assigned forensic navigator  
40   and determine if the individual is eligible for any diversion,

1 supportive housing, or case management programs as a Trueblood class  
2 member, and assist the individual to access these services.

3 (b) For individuals who have not established eligibility for the  
4 department's residential and support services, the department shall:

5 (i) Conduct an eligibility determination for services of the  
6 developmental disabilities administration and aging and long-term  
7 support administration and send referral packets to residential  
8 service providers and both the developmental disabilities  
9 administration and aging and long-term support administration for all  
10 relevant services for which the individual is eligible. This process  
11 must include identifying and coordinating funding for any additional  
12 supports that are needed to stabilize the individual in any  
13 residential setting funded by the developmental disabilities  
14 administration or aging and long-term support administration,  
15 including pursuing any necessary exceptions to rule; 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 and not restorable due to an intellectual or developmental  
40 disability, traumatic brain injury, or dementia and who do not meet

1 criteria under other programs in this section. The program must  
2 involve wraparound services and housing supports appropriate to the  
3 needs of the individual. It is sufficient to meet the criteria for  
4 participation in this program if the individual has recently been the  
5 subject of criminal charges that were dismissed without prejudice and  
6 was found incompetent to stand trial due to an intellectual or  
7 developmental disability, traumatic brain injury, or dementia.

8 NEW SECTION. **Sec. 13.** Subject to the availability of funds  
9 appropriated for this specific purpose, the health care authority  
10 shall require the programs it contracts with to increase compensation  
11 for staff in outpatient competency restoration programs to provide  
12 compensation at competitive levels to improve recruitment and allow  
13 for the full implementation of outpatient competency restoration  
14 programs.

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

17 An outpatient competency restoration program must include access  
18 to a prescriber.

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

21 Jails shall allow clinical intervention specialists to have  
22 access to individuals who are referred to receive services under this  
23 chapter and to all records relating to the health or conduct of the  
24 individual while incarcerated. Clinical intervention specialists  
25 shall support jail health services in providing direct services,  
26 enhanced oversight and monitoring of the behavioral health status of  
27 participating individuals. Clinical intervention specialists shall  
28 work collaboratively with jail health services to ensure appropriate  
29 prescriptions, medication compliance monitoring, and access to  
30 supportive behavioral health services to the individuals. Clinical  
31 intervention specialists shall coordinate with forensic navigators  
32 and the department to assist forensic navigators in making  
33 recommendations for appropriate placements, which may include  
34 recommendations for participation in an outpatient competency  
35 restoration program or a diversion program designed for the needs of  
36 the individual. The clinical intervention specialist shall notify the  
37 department if a participating individual appears to have stabilized



1 in their behavioral health such that a new competency evaluation is  
2 appropriate to reassess the individual's need for competency  
3 restoration treatment.

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

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

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

11 (1) The department shall coordinate with cities, counties,  
12 hospitals, and other public and private entities to identify  
13 locations that may be commissioned or renovated for use in treating  
14 clients committed to the department for competency evaluation,  
15 competency restoration, civil conversion, or treatment following  
16 acquittal by reason of insanity.

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

20 NEW SECTION. **Sec. 18.** Sections 6 through 8 of this act are  
21 necessary for the immediate preservation of the public peace, health,  
22 or safety, or support of the state government and its existing public  
23 institutions, and take effect immediately.

24 NEW SECTION. **Sec. 19.** Section 12 of this act takes effect  
25 December 1, 2023."

26 Correct the title.

**EFFECT:** Allows access to records of the Aging and Long-Term Support Administration for purposes of competency evaluations and provides that an evaluation report must include an opinion as to restorability if the defendant suffers from an intellectual or developmental disability, traumatic brain injury, or dementia.

Delays until October 1, 2023, provisions allowing a court to order revocation of the driver's license of a person found incompetent to stand trial who is charged with specified traffic offenses.

Establishes new competency restoration procedures for any "qualifying class C felony," defined as any class C felony except: (1) Assault in the third degree where bodily harm occurred; (2)

felony Physical Control of a Vehicle; (3) felony Hit and Run resulting in injury; and (4) any class C felony offense with a domestic violence designation.

Requires a forensic navigator to be appointed for, and to meet with, any person charged with a qualifying felony offense who has had two or more competency evaluations in 24 months on separate charges to determine the person's willingness to engage with diversion and to propose a diversion plan where recommended.

Provides that if a person whose highest charge is a qualifying class C felony is found incompetent and the court finds that there is a diversion program as recommended by a forensic navigator, the court must dismiss the charges without prejudice and refer the person to the diversion program, except that if the court has previously determined that a diversion program is not appropriate, the forensic navigator does not recommend diversion, or the prosecutor objects to the dismissal, then the court must schedule a hearing within seven days to determine whether there is a compelling state interest in ordering competency restoration.

If the court finds a compelling state interest, the court must order outpatient competency restoration unless that it is not appropriate, in which case the court must order inpatient competency restoration.

Provides that competency restoration for a defendant charged with a qualifying class C felony is limited to one period of restoration treatment not exceeding 45 days if ordered to receive inpatient competency restoration and 90 days if ordered to receive outpatient competency restoration.

Provides that for any defendant with a felony charge admitted for competency restoration with an accompanying court order for involuntary medication, if the defendant is found not competent following that period of restoration, charges must be dismissed with prejudice and the defendant committed to the Department for evaluation under the Involuntary Treatment Act.

Limits the nonfelony offenses that are included as "serious offenses" for purposes of eligibility for competency restoration services and involuntary medication orders to the following: Any gross misdemeanor offense with a domestic violence designation or a sexual motivation allegation; and gross misdemeanor violations of Driving Under the Influence or Physical Control of a Vehicle.

Establishes additional requirements relating to persons found incompetent to stand trial due to an intellectual or developmental disability, dementia, or a traumatic brain injury, and delays these provisions until December 1, 2023, including:

(a) Providing that an individual found incompetent to stand trial and not restorable due to an intellectual or developmental disability, dementia, or traumatic brain injury, may not be referred for competency restoration services unless the highest current criminal charge is a violent offense or sex offense.

(b) Requiring the DSHS to develop a process for connecting these individuals to available wraparound services and residential supports. Specifies requirements for individuals who are current clients of the Developmental Disabilities Administration or Aging and Long-Term Support Administration, and for individuals who are not current clients, including connecting the person with the forensic navigator to determine if the person is eligible for any diversion,

supportive housing, or case management programs as a *Trueblood* class member.

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