
SECOND SUBSTITUTE SENATE BILL 5444

State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, O'Ban, Darneille, Wagoner, Frockt, Kuderer, and Nguyen; by request of Office of the Governor)

READ FIRST TIME 03/01/19.

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 10.31.110, 10.77.086, and
6 10.77.088; adding a new section to chapter 10.77 RCW; and creating a
7 new section.

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

9 NEW SECTION. **Sec. 1.** The legislature recognizes that there has
10 been a nationwide increase in the number of individuals with
11 behavioral health disorders in the criminal justice system. The
12 legislature also recognizes that reforms must be made to our own
13 behavioral health systems and services to meet the increasing demands
14 in our state, to provide timely competency evaluations and
15 restoration services, and to comply with federal court orders issued
16 in *A.B., by and through Trueblood, et al., v. DSHS, et al.*, No.
17 15-35462 ("Trueblood"). The legislature acknowledges that these
18 reforms will require the support of a broad range of stakeholders,
19 including local law enforcement, prosecuting attorneys, defense
20 attorneys, community members, and health care providers. The
21 legislature further acknowledges the significant efforts of the

1 parties to the Trueblood litigation to establish a roadmap and
2 framework within their settlement agreement for proposed systemic
3 reforms to the forensic mental health care system. It is the intent
4 of the legislature to enact appropriate reforms consistent with the
5 goals agreed to in the Trueblood settlement agreement, to continue to
6 engage with stakeholders and community partners to address the needs
7 of this vulnerable population, and to ensure that the public safety
8 needs of our communities are met.

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

11 (1) Subject to the limitations described in this subsection, a
12 court may appoint an impartial forensic navigator employed by or
13 contracted with the department to assist individuals who have been
14 referred for competency evaluation.

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

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

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

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

29 (c) To present information to the court in order to assist the
30 court in understanding the treatment options available to the
31 individual to support the entry of orders for diversion from the
32 forensic mental health system or for community outpatient competency
33 restoration; and

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

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

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

- 1 (iii) Meeting with the individual on a regular basis;
- 2 (iv) Providing information to the court concerning the
3 individual's progress and compliance with court-ordered conditions of
4 release, which may include appearing at court hearings to provide
5 information to the court;
- 6 (v) Coordinating the individual's access to community case
7 management services and mental health services;
- 8 (vi) Assisting the individual with obtaining prescribed
9 medication and encouraging adherence with prescribed medication;
- 10 (vii) Prior to the conclusion of outpatient restoration services,
11 facilitating a coordinated transition of the individual to a case
12 manager in the community behavioral health system;
- 13 (viii) Following up with the individual to check whether the
14 meeting with a community-based case manager took place;
- 15 (ix) When the individual is a high utilizer, attempting to
16 connect the individual with high utilizer services; and
- 17 (x) Checking up on the individual at least once per month for up
18 to sixty days after coordinated transition to community behavioral
19 health services, without duplicating the services of the community-
20 based case manager.
- 21 (4) Forensic navigators may submit nonclinical recommendations to
22 the court regarding treatment and restoration options for the
23 individual, which the court may consider and weigh in conjunction
24 with the recommendations of all of the parties.
- 25 (5) If, after the forensic navigator has advised the criminal
26 court, the court does not order the individual into outpatient
27 competency restoration services, the role of the navigator must end.
- 28 (6) Forensic navigators shall be deemed officers of the court for
29 the purpose of immunity from civil liability.
- 30 (7) The signed order for competency evaluation from the court
31 shall serve as authority for the forensic navigator to be given
32 access to all records held by a behavioral health, educational, or
33 law enforcement agency or a correctional facility that relates to an
34 individual. Information that is protected by state or federal law,
35 including health information, shall not be entered into the court
36 record without the consent of the individual or their defense
37 attorney.
- 38 (8) A prosecutor may dismiss charges against an individual
39 whenever mental illness or competency to stand trial has become an
40 issue.

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

5 **Sec. 3.** RCW 10.31.110 and 2014 c 225 s 57 are each amended to
6 read as follows:

7 (1) When a police officer has reasonable cause to believe that
8 the individual has committed acts constituting a (~~(nonfelony)~~) crime
9 (~~((that is not a serious offense as identified in RCW 10.77.092))~~), and
10 the individual is known by history or consultation with the
11 behavioral health organization, managed care organization, behavioral
12 health administrative services organization, crisis hotline, or local
13 crisis services providers to suffer from a mental disorder, the
14 arresting officer may:

15 (a) Take the individual to a crisis stabilization unit as defined
16 in RCW 71.05.020(~~((+6))~~). Individuals delivered to a crisis
17 stabilization unit pursuant to this section may be held by the
18 facility for a period of up to twelve hours. The individual must be
19 examined by a mental health professional within three hours of
20 arrival;

21 (b) Take the individual to a triage facility as defined in RCW
22 71.05.020. An individual delivered to a triage facility which has
23 elected to operate as an involuntary facility may be held up to a
24 period of twelve hours. The individual must be examined by a mental
25 health professional within three hours of arrival;

26 (c) Refer the individual to a mental health professional for
27 evaluation for initial detention and proceeding under chapter 71.05
28 RCW; or

29 (d) Release the individual upon agreement to voluntary
30 participation in outpatient treatment.

31 (2) If the individual is released to the community, the mental
32 health provider shall make reasonable efforts to inform the arresting
33 officer of the planned release (~~((within a reasonable period of time~~
34 ~~after the))~~) prior to release if the arresting officer has
35 specifically requested notification and provided contact information
36 to the provider.

37 (3) In deciding whether to refer the individual to treatment
38 under this section, the police officer (~~((shall))~~) must be guided by
39 (~~((standards))~~) local law enforcement diversion guidelines for

1 behavioral health developed and mutually agreed upon with the
2 prosecuting authority(~~(, which))~~ with an opportunity for consultation
3 and comment by the defense bar and disability community. These
4 guidelines must address, at a minimum, the length, seriousness, and
5 recency of the known criminal history of the individual, the mental
6 health history of the individual, (~~where~~) if available, the
7 opinions of a mental health professional, if available, and the
8 circumstances surrounding the commission of the alleged offense. The
9 guidelines must include a process for clearing outstanding warrants
10 or referring the individual for assistance in clearing outstanding
11 warrants, if any, and issuing a new court date, if appropriate,
12 without booking or incarcerating the individual or disqualifying him
13 or her from referral to treatment under this section, and define the
14 circumstances under which such action is permissible.

15 (4) Any agreement to participate in treatment shall not require
16 individuals to stipulate to any of the alleged facts regarding the
17 criminal activity as a prerequisite to participation in a mental
18 health treatment alternative. The agreement is inadmissible in any
19 criminal or civil proceeding. The agreement does not create immunity
20 from prosecution for the alleged criminal activity.

21 (5) If an individual violates such agreement and the mental
22 health treatment alternative is no longer appropriate:

23 (a) The mental health provider shall inform the referring law
24 enforcement agency of the violation; and

25 (b) The original charges may be filed or referred to the
26 prosecutor, as appropriate, and the matter may proceed accordingly.

27 (6) The police officer is immune from liability for any good
28 faith conduct under this section.

29 (7) The Washington association of sheriffs and police chiefs
30 shall collect and maintain a file of written local law enforcement
31 diversion guidelines for behavioral health developed pursuant to
32 subsection (3) of this section.

33 **Sec. 4.** RCW 10.77.086 and 2015 1st sp.s. c 7 s 5 are each
34 amended to read as follows:

35 (1)(a)(i) If the defendant is charged with a felony and
36 determined to be incompetent, until he or she has regained the
37 competency necessary to understand the proceedings against him or her
38 and assist in his or her own defense, but in any event for a period
39 of no longer than ninety days, the court(~~(÷~~

1 ~~(A)) shall commit the defendant to the custody of the secretary~~
2 ~~((who shall place such defendant in an appropriate facility of the~~
3 ~~department for evaluation and treatment; or~~

4 ~~(B) May alternatively order the defendant to undergo evaluation~~
5 ~~and treatment at some other facility or provider as determined by the~~
6 ~~department, or under the guidance and control of a professional~~
7 ~~person. The facilities or providers may include community mental~~
8 ~~health providers or other local facilities that contract with the~~
9 ~~department and are willing and able to provide treatment under this~~
10 ~~section. During the 2015-2017 fiscal biennium, the department may~~
11 ~~contract with one or more cities or counties to provide competency~~
12 ~~restoration services in a city or county jail if the city or county~~
13 ~~jail is willing and able to serve as a location for competency~~
14 ~~restoration services and if the secretary determines that there is an~~
15 ~~emergent need for beds and documents the justification, including a~~
16 ~~plan to address the emergency. Patients receiving competency~~
17 ~~restoration services in a city or county jail must be physically~~
18 ~~separated from other populations at the jail and restoration~~
19 ~~treatment services must be provided as much as possible within a~~
20 ~~therapeutic environment.))~~

21 for competency restoration. The court may
22 order the defendant to receive inpatient competency restoration or
23 outpatient competency restoration based on the clinical
24 recommendation in the competency evaluation.

25 (A) To be eligible for an order for outpatient competency
26 restoration, a defendant must be:

27 (I) Adherent to medications or willing to receive prescribed
28 intravenous medication;

29 (II) Abstinent from alcohol or unprescribed drugs; and

30 (III) Clinically stable.

31 (B) If the court orders inpatient competency restoration, the
32 department shall place the defendant in an appropriate facility of
33 the department for evaluation and treatment.

34 (C) If the court orders outpatient competency restoration, the
35 court shall modify conditions of release as needed to authorize the
36 department to place the person in approved housing, which may include
37 access to supported housing, affiliated with a contracted outpatient
38 competency restoration program. The department must establish
39 conditions of participation in the outpatient competency restoration
40 program which must include the defendant being subject to medication
 monitoring and daily urinalysis. The outpatient competency

1 restoration program shall monitor the defendant during the
2 defendant's placement in the program and report any noncompliance or
3 significant changes with respect to the defendant to the department
4 and, if applicable, the forensic navigator.

5 (D) If a defendant fails to comply with the restrictions of the
6 outpatient restoration program, such that restoration is no longer
7 possible in that setting, the department shall remove the defendant
8 from the outpatient restoration program and place the defendant
9 instead in an appropriate facility of the department for inpatient
10 competency restoration. The department shall promptly notify the
11 court and parties and the forensic navigator, if applicable, of the
12 change in placement. The inpatient competency restoration period
13 following a change in placement under this subsection must be for the
14 time remaining on the current competency restoration order.

15 (E) The court may not issue an order for outpatient competency
16 restoration unless the department certifies that there is an
17 available appropriate outpatient competency restoration program that
18 has adequate space for the person at the time the order is issued.

19 (ii) The ninety day period for ~~((evaluation and treatment))~~
20 competency restoration under this subsection (1) includes only the
21 time the defendant is actually at the facility and is in addition to
22 reasonable time for transport to or from the facility.

23 (b) For a defendant whose highest charge is a class C felony, or
24 a class B felony that is not classified as violent under RCW
25 9.94A.030, the maximum time allowed for the initial period of
26 commitment for competency restoration is forty-five days. The forty-
27 five day period includes only the time the defendant is actually at
28 the facility and is in addition to reasonable time for transport to
29 or from the facility.

30 (c) If the court determines ~~((or the parties agree))~~ that the
31 defendant is unlikely to regain competency, the court may dismiss the
32 charges without prejudice without ordering the defendant to undergo
33 restoration treatment, in which case the court shall order that the
34 defendant be referred for evaluation for civil commitment in the
35 manner provided in subsection (4) of this section.

36 (2) On or before expiration of the initial period of commitment
37 under subsection (1) of this section the court shall conduct a
38 hearing, at which it shall determine whether or not the defendant is
39 incompetent.

1 (3) If the court finds by a preponderance of the evidence that a
2 defendant charged with a felony is incompetent, the court shall have
3 the option of extending the order of commitment or alternative
4 treatment for an additional period of ninety days, but the court must
5 at the time of extension set a date for a prompt hearing to determine
6 the defendant's competency before the expiration of the second
7 restoration period. The defendant, the defendant's attorney, or the
8 prosecutor has the right to demand that the hearing be before a jury.
9 No extension shall be ordered for a second or third restoration
10 period as provided in subsection (4) of this section if the
11 defendant's incompetence has been determined by the secretary to be
12 solely the result of a developmental disability which is such that
13 competence is not reasonably likely to be regained during an
14 extension. The ninety-day period includes only the time the defendant
15 is actually at the facility and is in addition to reasonable time for
16 transport to or from the facility.

17 (4) For persons charged with a felony, at the hearing upon the
18 expiration of the second restoration period or at the end of the
19 first restoration period in the case of a defendant with a
20 developmental disability, if the jury or court finds that the
21 defendant is incompetent, or if the court or jury at any stage finds
22 that the defendant is incompetent and the court determines that the
23 defendant is unlikely to regain competency, the charges shall be
24 dismissed without prejudice, and the court shall order the defendant
25 be committed to a state hospital as defined in RCW 72.23.010 for up
26 to seventy-two hours starting from admission to the facility,
27 excluding Saturdays, Sundays, and holidays, for evaluation for the
28 purpose of filing a civil commitment petition under chapter 71.05
29 RCW. The criminal charges shall not be dismissed if the court or jury
30 finds that: (a) The defendant (i) is a substantial danger to other
31 persons; or (ii) presents a substantial likelihood of committing
32 criminal acts jeopardizing public safety or security; and (b) there
33 is a substantial probability that the defendant will regain
34 competency within a reasonable period of time. In the event that the
35 court or jury makes such a finding, the court may extend the period
36 of commitment for up to an additional six months. The six-month
37 period includes only the time the defendant is actually at the
38 facility and is in addition to reasonable time for transport to or
39 from the facility.

1 **Sec. 5.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended
2 to read as follows:

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

6 (a) Shall dismiss the proceedings without prejudice and detain
7 the defendant for sufficient time to allow the designated crisis
8 responder to evaluate the defendant and consider initial detention
9 proceedings under chapter 71.05 RCW, unless the prosecutor objects to
10 the dismissal and provides notice of a motion for an order for
11 competency restoration, in which case the court must schedule a
12 hearing to determine whether to enter an order of competency
13 restoration.

14 (b) At the hearing, the prosecuting attorney must establish that
15 there is a compelling state interest to order competency restoration
16 treatment for the defendant. The court may consider prior criminal
17 history, prior history in treatment, prior history of violence, the
18 quality and severity of the pending charges, and any history that
19 suggests whether or not competency restoration treatment is likely to
20 be successful. If the prosecuting attorney proves by a preponderance
21 of the evidence that there is a compelling state interest in ordering
22 competency restoration, then the court shall order competency
23 restoration in accordance with subsection (2)(a) of this section.

24 (2)(a) If a court finds pursuant to subsection (1)(b) of this
25 section that there is a compelling state interest in pursuing
26 competency restoration treatment, then the court ~~((i))~~ shall commit
27 the defendant to the custody of the secretary ~~((who shall place such~~
28 defendant in an appropriate facility of the department for evaluation
29 and treatment;

30 ~~((ii))~~ May alternatively order the defendant to undergo evaluation
31 and treatment at some other facility or provider as determined by the
32 department, or under the guidance and control of a professional
33 person. The facilities or providers may include community mental
34 health providers or other local facilities that contract with the
35 department and are willing and able to provide treatment under this
36 section. During the 2015-2017 fiscal biennium, the department may
37 contract with one or more cities or counties to provide competency
38 restoration services in a city or county jail if the city or county
39 jail is willing and able to serve as a location for competency
40 restoration services and if the secretary determines that there is an

1 ~~emergent need for beds and documents the justification, including a~~
2 ~~plan to address the emergency. Patients receiving competency~~
3 ~~restoration services in a city or county jail must be physically~~
4 ~~separated from other populations at the jail and restoration~~
5 ~~treatment services must be provided as much as possible within a~~
6 ~~therapeutic environment.)~~) for competency restoration. The court may
7 order the defendant to receive inpatient competency restoration or
8 outpatient competency restoration based on the clinical
9 recommendation in the competency evaluation.

10 (i) To be eligible for an order for outpatient competency
11 restoration, a defendant must be:

12 (A) Adherent to medications or willing to receive prescribed
13 intravenous medication;

14 (B) Abstinent from alcohol or unprescribed drugs; and

15 (C) Clinically stable.

16 (ii) If the court orders inpatient competency restoration, the
17 department shall place the defendant in an appropriate facility of
18 the department for evaluation and treatment under (b) of this
19 subsection.

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

32 (iv) If a defendant fails to comply with the restrictions of the
33 outpatient competency restoration program, such that restoration is
34 no longer possible in that setting, the department shall remove the
35 defendant from the outpatient restoration program and place the
36 defendant instead in an appropriate facility of the department for
37 inpatient competency restoration. The department shall promptly
38 notify the court and parties and the forensic navigator, if
39 applicable, of the change in placement. The inpatient competency
40 restoration period following a change in placement under this

1 subsection must be for the time remaining on the current competency
2 restoration order.

3 (v) The court may not issue an order for outpatient competency
4 restoration unless the department certifies that there is an
5 available appropriate outpatient restoration program that has
6 adequate space for the person at the time the order is issued.

7 (b) The placement under (a) (~~(i) and (ii)~~) of this subsection
8 shall not exceed (~~fourteen~~) twenty-nine days (~~(in addition to any~~
9 unused time of the evaluation under RCW 10.77.060. The court shall
10 compute this total period and include its computation in the order.
11 The ~~fourteen-day period plus any unused time of the evaluation under~~
12 RCW 10.77.060 shall)) if the defendant is ordered to receive
13 inpatient competency restoration, or shall not exceed ninety days if
14 the defendant is ordered to receive outpatient competency
15 restoration. The court may order any combination of this subsection.
16 This period must be considered to include only the time the defendant
17 is actually at the facility and shall be in addition to reasonable
18 time for transport to or from the facility(~~(~~

19 ~~(iii) May alternatively order that the defendant be placed on~~
20 ~~conditional release for up to ninety days for mental health treatment~~
21 ~~and restoration of competency; or~~

22 ~~(iv) May order any combination of this subsection))~~.

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

29 ~~((e))~~ (d)(i) If the proceedings are dismissed under RCW
30 10.77.084 and the defendant was on conditional release at the time of
31 dismissal, the court shall order the designated crisis responder
32 within that county to evaluate the defendant pursuant to chapter
33 71.05 RCW. The evaluation may be conducted in any location chosen by
34 the professional.

35 (ii) If the defendant was in custody and not on conditional
36 release at the time of dismissal, the defendant shall be detained and
37 sent to an evaluation and treatment facility for up to seventy-two
38 hours, excluding Saturdays, Sundays, and holidays, for evaluation for
39 purposes of filing a petition under chapter 71.05 RCW. The seventy-
40 two hour period shall commence upon the next nonholiday weekday

1 following the court order and shall run to the end of the last
2 nonholiday weekday within the seventy-two-hour period.

3 ~~((2))~~ (3) If the defendant is charged with a nonfelony crime
4 that is not a serious offense as defined in RCW 10.77.092:

5 The court may stay or dismiss proceedings and detain the
6 defendant for sufficient time to allow the designated crisis
7 responder to evaluate the defendant and consider initial detention
8 proceedings under chapter 71.05 RCW. The court must give notice to
9 all parties at least twenty-four hours before the dismissal of any
10 proceeding under this subsection, and provide an opportunity for a
11 hearing on whether to dismiss the proceedings.

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