

---

**SENATE BILL 5444**

---

**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Dhingra, O'Ban, Darneille, Wagoner, Frockt, Kuderer, and Nguyen; by request of Office of the Governor

Read first time 01/21/19. Referred to Committee on Health & Long Term Care.

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, community  
20 members, and health care providers. The legislature further  
21 acknowledges the significant efforts of the parties to the Trueblood

1 litigation to establish a roadmap and framework within their  
2 settlement agreement for proposed systemic reforms to the forensic  
3 mental health care system. It is the intent of the legislature to  
4 enact appropriate reforms consistent with the goals agreed to in the  
5 Trueblood settlement agreement, to continue to engage with  
6 stakeholders and community partners to address the needs of this  
7 vulnerable population, and to ensure that the public safety needs of  
8 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 approved by the  
13 department to assist individuals who have been referred for  
14 competency evaluation or restoration to both navigate the forensic  
15 legal process and access available behavioral health resources. A  
16 court may not issue an order appointing a forensic navigator unless  
17 there is adequate forensic navigator capacity to provide these  
18 services at the time the order is issued.

19 (2) Unless otherwise directed by the court, the duties of the  
20 forensic navigator include, but are not limited to, the following:

21 (a) To investigate and collect relevant information about the  
22 individual, including any relevant background, prior behavioral  
23 health history, and the circumstances that led to the current matter  
24 before the court, and report that information to the court;

25 (b) To meet with, interview, or observe the individual, and  
26 report to the court any views or positions expressed by the  
27 individual on options pending before the court;

28 (c) To monitor all court orders for compliance and to bring to  
29 the court's attention any change in circumstances that may require a  
30 modification of the court's order.

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

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

37 (5) Upon presentation of the court order of appointment by the  
38 forensic navigator, any agency, hospital, school organization,  
39 division or department of the state, doctor, nurse, or other health

1 care provider, psychologist, psychiatrist, police department, or  
2 behavioral health provider shall permit the forensic navigator to  
3 inspect and copy any records relating to the individual named in the  
4 order of appointment, without the consent of the individual.

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~~)  
10 misdemeanor, gross misdemeanor, class C felony, or a class B felony  
11 that is not classified as violent under RCW 9.94A.030, excluding sex  
12 offenses under RCW 9.94A.030, and the individual is known by history  
13 or consultation with the behavioral health organization, managed care  
14 organization, or behavioral health administrative services  
15 organization to suffer from a mental disorder, the arresting officer  
16 may:

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

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

28 (c) Refer the individual to a mental health professional for  
29 evaluation for initial detention and proceeding under chapter 71.05  
30 RCW, which may include detention pursuant to RCW 71.05.153 in  
31 facilities such as evaluation and treatment facilities, emergency  
32 departments of hospitals, or any other appropriate facilities; or

33 (d) Release the individual upon agreement to voluntary  
34 participation in outpatient treatment.

35 (2) If the individual is released to the community, the mental  
36 health provider shall inform the arresting officer of the release  
37 within a reasonable period of time after the release if the arresting  
38 officer has specifically requested notification and provided contact  
39 information to the provider.

1 (3) In deciding whether to refer the individual to treatment  
2 under this section, the police officer shall be guided by standards  
3 mutually agreed upon with the prosecuting authority, which address,  
4 at a minimum, the length, seriousness, and recency of the known  
5 criminal history of the individual, the mental health history of the  
6 individual, (~~where~~) if available, the opinions of a mental health  
7 professional, if available, and the circumstances surrounding the  
8 commission of the alleged offense. The standards must also permit an  
9 officer to refer an individual for treatment notwithstanding the  
10 existence of one or more outstanding warrants for that individual and  
11 must address the circumstances under which such a referral is  
12 permissible. Prosecuting attorneys must provide an opportunity for  
13 the defense bar and disability community to comment on the standards  
14 before they are adopted.

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

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

36 (A) Shall commit the defendant to the custody of the secretary  
37 who shall place such defendant in an appropriate facility of the  
38 department for (~~evaluation and treatment~~) inpatient competency  
39 restoration; or

1 (B) May alternatively order the defendant to undergo ((evaluation  
2 and treatment)) outpatient competency restoration at some other  
3 facility or provider as determined by the department, or under the  
4 guidance and control of a professional person. The facilities or  
5 providers may include community mental health providers or other  
6 local facilities that contract with the department and are willing  
7 and able to provide treatment under this section. ((During the  
8 2015-2017 fiscal biennium, the department may contract with one or  
9 more cities or counties to provide competency restoration services in  
10 a city or county jail if the city or county jail is willing and able  
11 to serve as a location for competency restoration services and if the  
12 secretary determines that there is an emergent need for beds and  
13 documents the justification, including a plan to address the  
14 emergency. Patients receiving competency restoration services in a  
15 city or county jail must be physically separated from other  
16 populations at the jail and restoration treatment services must be  
17 provided as much as possible within a therapeutic environment.)) When  
18 ordering a defendant to undergo outpatient restoration, the court  
19 shall set appropriate conditions of release and shall enforce those  
20 conditions as necessary. If the court revokes outpatient conditional  
21 release and orders that the treatment continue in a facility under  
22 (a)(i)(A) of this subsection, the treatment period may be for no  
23 longer than the remaining time period authorized in the original  
24 court order, not counting time periods in which the defendant was  
25 absent from the treatment program plus any additional periods  
26 authorized by this section. The court may not issue an order to  
27 undergo outpatient competency restoration unless there is an  
28 available appropriate outpatient restoration program that has  
29 adequate space for the person at the time the order is issued.

30 (ii) The ninety day period for ((evaluation and treatment))  
31 competency restoration under this subsection (1) includes only the  
32 time the defendant is actually at the facility and is in addition to  
33 reasonable time for transport to or from the facility.

34 (b) For a defendant whose highest charge is a class C felony, or  
35 a class B felony that is not classified as violent under RCW  
36 9.94A.030, the maximum time allowed for the initial period of  
37 commitment for competency restoration is forty-five days. The forty-  
38 five day period includes only the time the defendant is actually at  
39 the facility and is in addition to reasonable time for transport to  
40 or from the facility.

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

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

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

27 (4) For persons charged with a felony, at the hearing upon the  
28 expiration of the second restoration period or at the end of the  
29 first restoration period in the case of a defendant with a  
30 developmental disability, if the jury or court finds that the  
31 defendant is incompetent, or if the court or jury at any stage finds  
32 that the defendant is incompetent and the court determines that the  
33 defendant is unlikely to regain competency, the charges shall be  
34 dismissed without prejudice, and the court shall order the defendant  
35 be committed to a state hospital as defined in RCW 72.23.010 for up  
36 to seventy-two hours starting from admission to the facility,  
37 excluding Saturdays, Sundays, and holidays, for evaluation for the  
38 purpose of filing a civil commitment petition under chapter 71.05  
39 RCW. The criminal charges shall not be dismissed if the court or jury  
40 finds that: (a) The defendant (i) is a substantial danger to other

1 persons; or (ii) presents a substantial likelihood of committing  
2 criminal acts jeopardizing public safety or security; and (b) there  
3 is a substantial probability that the defendant will regain  
4 competency within a reasonable period of time. In the event that the  
5 court or jury makes such a finding, the court may extend the period  
6 of commitment for up to an additional six months. The six-month  
7 period includes only the time the defendant is actually at the  
8 facility and is in addition to reasonable time for transport to or  
9 from the facility.

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

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

15 (i) May dismiss proceedings and detain the defendant for  
16 sufficient time to allow the designated crisis responder to evaluate  
17 the defendant and consider initial detention proceedings under  
18 chapter 71.05 RCW. The court must give notice to all parties at least  
19 twenty-four hours before the dismissal of any proceeding under this  
20 subsection, and provide an opportunity for a hearing on whether to  
21 dismiss the proceedings. Unless the prosecuting attorney requests a  
22 hearing before the expiration of the twenty-four hour period, the  
23 charges shall be dismissed without prejudice.

24 (ii) At the hearing on whether to dismiss the proceedings, the  
25 prosecuting attorney may present evidence of a compelling state  
26 interest in pursuing competency restoration treatment for the  
27 defendant. The court may consider prior criminal history, prior  
28 history in treatment, prior history of violence, the quality and  
29 severity of the pending charges, and any history that suggests  
30 whether or not competency restoration treatment is likely to be  
31 successful. If the prosecuting attorney proves by a preponderance of  
32 the evidence that there is a compelling state interest in ordering  
33 restoration, then the court shall order competency restoration in  
34 accordance with subsection (2)(a) of this section.

35 (2)(a) If a court finds pursuant to subsection (1)(a)(ii) of this  
36 section that there is a compelling state interest in pursuing  
37 competency restoration treatment, then the court:

38 (i) Shall commit the defendant to the custody of the secretary  
39 who shall place such defendant in an appropriate facility of the

1 department for ~~((evaluation and treatment))~~ inpatient competency  
2 restoration;

3 (ii) May alternatively order the defendant to undergo  
4 ~~((evaluation and treatment))~~ outpatient competency restoration at  
5 some other facility or provider as determined by the department, or  
6 under the guidance and control of a professional person. The  
7 facilities or providers may include community mental health providers  
8 or other local facilities that contract with the department and are  
9 willing and able to provide treatment under this section. ~~((During~~  
10 ~~the 2015-2017 fiscal biennium, the department may contract with one~~  
11 ~~or more cities or counties to provide competency restoration services~~  
12 ~~in a city or county jail if the city or county jail is willing and~~  
13 ~~able to serve as a location for competency restoration services and~~  
14 ~~if the secretary determines that there is an emergent need for beds~~  
15 ~~and documents the justification, including a plan to address the~~  
16 ~~emergency. Patients receiving competency restoration services in a~~  
17 ~~city or county jail must be physically separated from other~~  
18 ~~populations at the jail and restoration treatment services must be~~  
19 ~~provided as much as possible within a therapeutic environment.))~~ When  
20 ordering a defendant to undergo outpatient restoration, the court  
21 shall set appropriate conditions of release and shall enforce those  
22 conditions as necessary. If the court revokes outpatient conditional  
23 release and orders that the treatment continue in a facility under  
24 (a)(i) of this subsection, the treatment period may be for no longer  
25 than the remaining time period authorized in the original court  
26 order. The placement under (a)(i) and (ii) of this subsection shall  
27 not exceed fourteen days in addition to any unused time of the  
28 evaluation under RCW 10.77.060. The court shall compute this total  
29 period and include its computation in the order. The fourteen-day  
30 period plus any unused time of the evaluation under RCW 10.77.060  
31 shall be considered to include only the time the defendant is  
32 actually at the facility and shall be in addition to reasonable time  
33 for transport to or from the facility;

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

37 (iv) May order any combination of this subsection.

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



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

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

10 (ii) If the defendant was in custody and not on conditional  
11 release at the time of dismissal, the defendant shall be detained and  
12 sent to an evaluation and treatment facility for up to seventy-two  
13 hours, excluding Saturdays, Sundays, and holidays, for evaluation for  
14 purposes of filing a petition under chapter 71.05 RCW. The seventy-  
15 two hour period shall commence upon the next nonholiday weekday  
16 following the court order and shall run to the end of the last  
17 nonholiday weekday within the seventy-two-hour period.

18 ~~((2))~~ (3) If the defendant is charged with a nonfelony crime  
19 that is not a serious offense as defined in RCW 10.77.092:

20 The court may stay or dismiss proceedings and detain the  
21 defendant for sufficient time to allow the designated crisis  
22 responder to evaluate the defendant and consider initial detention  
23 proceedings under chapter 71.05 RCW. The court must give notice to  
24 all parties at least twenty-four hours before the dismissal of any  
25 proceeding under this subsection, and provide an opportunity for a  
26 hearing on whether to dismiss the proceedings.

--- END ---