

---

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2060

---

State of Washington

64th Legislature

2015 Regular Session

By House Appropriations (originally sponsored by Representatives  
Jenkins and Ormsby)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to timeliness of competency evaluation and  
2 restoration services; amending RCW 10.77.068, 10.77.073, 10.77.086,  
3 10.77.088, 10.77.220, 71.05.235, and 10.77.065; reenacting and  
4 amending RCW 10.77.065; creating a new section; providing an  
5 effective date; providing expiration dates; and declaring an  
6 emergency.

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

8 **Sec. 1.** RCW 10.77.068 and 2012 c 256 s 2 are each amended to  
9 read as follows:

10 (1)(a) The legislature establishes the following performance  
11 targets and maximum time limits for the timeliness of the completion  
12 of accurate and reliable evaluations of competency to stand trial and  
13 admissions for inpatient restoration services related to competency  
14 to proceed or stand trial for adult criminal defendants. The  
15 legislature recognizes that these targets may not be achievable in  
16 all cases without compromise to the quality of competency evaluation  
17 and restoration services, but intends for the department to manage,  
18 allocate, and request appropriations for resources in order to meet  
19 these targets whenever possible without sacrificing the accuracy and  
20 quality of competency evaluations and restorations, and to otherwise

1 make sustainable improvements and track performance related to the  
2 timeliness of competency services:

3 (i) For a state hospital to extend an offer of admission to a  
4 defendant in pretrial custody for legally authorized ~~((treatment or))~~  
5 evaluation services related to competency, or to extend an offer of  
6 admission for legally authorized services following dismissal of  
7 charges based on ~~((incompetent))~~ incompetence to proceed or stand  
8 trial~~((τ))~~:

9 (A) A performance target of seven days or less; and

10 (B) A maximum time limit of fourteen days;

11 (ii) For a state hospital to extend an offer of admission to a  
12 defendant in pretrial custody for legally authorized inpatient  
13 restoration treatment related to competency:

14 (A) A performance target of seven days or less; and

15 (B) A maximum time limit of fourteen days;

16 (iii) For completion of a competency evaluation in jail and  
17 distribution of the evaluation report for a defendant in pretrial  
18 custody~~((τ))~~:

19 (A) A performance target of seven days or less; and

20 (B) A maximum time limit of fourteen days, plus an additional  
21 seven-day extension if needed for clinical reasons to complete the  
22 evaluation at the determination of the department;

23 ~~((iii))~~ (iv) For completion of a competency evaluation in the  
24 community and distribution of the evaluation report for a defendant  
25 who is released from custody and makes a reasonable effort to  
26 cooperate with the evaluation, a performance target of twenty-one  
27 days or less.

28 (b) The time periods measured in these performance targets and  
29 maximum time limits shall run from the date on which the state  
30 hospital receives the court referral and charging documents,  
31 discovery, mental health and medical records, police reports, the  
32 names and addresses of the attorneys for the defendant and state or  
33 county, the name of the judge ordering the evaluation, information  
34 about the alleged crime, a summary of the reasons for the evaluation  
35 request, and criminal history information related to the defendant.  
36 The ~~((targets))~~ maximum time limits in (a)~~((i) and (ii))~~ of this  
37 subsection shall be phased in over a ~~((six-month))~~ one-year period  
38 ~~((from May 1, 2012. The target in (a)(iii) of this subsection shall~~  
39 ~~be phased in over a twelve-month period from May 1, 2012.~~

1 ~~(c) The legislature recognizes the following nonexclusive list of~~  
2 ~~circumstances that may place achievement of targets for completion of~~  
3 ~~competency services described in (a) of this subsection out of the~~  
4 ~~department's reach in an individual case without aspersion to the~~  
5 ~~efforts of the department)) beginning July 1, 2015, in a manner that~~  
6 ~~results in measurable incremental progress toward meeting the time~~  
7 ~~limits over the course of the year.~~

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

14 (i) Despite a timely request, the department has not received  
15 necessary medical clearance information regarding the current medical  
16 status of a defendant in pretrial custody for the purposes of  
17 admission to a state hospital;

18 (ii) The individual circumstances of the defendant make accurate  
19 completion of an evaluation of competency to proceed or stand trial  
20 dependent upon review of medical history information which is in the  
21 custody of a third party and cannot be immediately obtained by the  
22 department. Completion of a competency evaluation shall not be  
23 postponed for procurement of medical history information which is  
24 merely supplementary to the competency determination;

25 (iii) Completion of the referral is frustrated by lack of  
26 availability or participation by counsel, jail or court personnel,  
27 interpreters, or the defendant;

28 (iv) The jail does not have access to appropriate private space  
29 to conduct a competency evaluation for a defendant in pretrial  
30 custody;

31 (v) The defendant asserts legal rights that result in a delay in  
32 the provision of competency services; or

33 ~~((iv))~~ (vi) An unusual spike in the receipt of evaluation  
34 referrals or in the number of defendants requiring restoration  
35 services has occurred, causing temporary delays until the unexpected  
36 excess demand for competency services can be resolved.

37 (2) The department shall:

38 (a) Develop, document, and implement procedures to monitor the  
39 clinical status of defendants admitted to a state hospital for  
40 competency services that allow the state hospital to accomplish early

1 discharge for defendants for whom clinical objectives have been  
2 achieved or may be achieved before expiration of the commitment  
3 period;

4 (b) Investigate the extent to which patients admitted to a state  
5 hospital under this chapter overstay time periods authorized by law  
6 and take reasonable steps to limit the time of commitment to  
7 authorized periods; and

8 (c) Establish written standards for the productivity of forensic  
9 evaluators and utilize these standards to internally review the  
10 performance of forensic evaluators.

11 (3) Following any quarter in which a state hospital has failed to  
12 meet one or more of the performance targets or maximum time limits in  
13 subsection (1) of this section after full implementation of the  
14 performance target or maximum time limit, the department shall report  
15 to the executive and the legislature the extent of this deviation and  
16 describe any corrective action being taken to improve performance.  
17 This report must be made publicly available. An average may be used  
18 to determine timeliness under this subsection.

19 (4) Beginning December 1, 2013, the department shall report  
20 annually to the legislature and the executive on the timeliness of  
21 services related to competency to proceed or stand trial and the  
22 timeliness with which court referrals accompanied by charging  
23 documents, discovery, and criminal history information are provided  
24 to the department relative to the signature date of the court order.  
25 The report must be in a form that is accessible to the public and  
26 that breaks down performance by county.

27 (5) This section does not create any new entitlement or cause of  
28 action related to the timeliness of competency evaluations or  
29 admission for inpatient restoration services related to competency to  
30 proceed or stand trial, nor can it form the basis for contempt  
31 sanctions under chapter 7.21 RCW or a motion to dismiss criminal  
32 charges.

33 **Sec. 2.** RCW 10.77.073 and 2013 c 284 s 1 are each amended to  
34 read as follows:

35 (1) The department shall reimburse a county for the cost of  
36 appointing a qualified expert or professional person under RCW  
37 10.77.060(1)(a) subject to subsections (2), (3), and (4) of this  
38 section if, at the time of a referral for an evaluation of competency  
39 to stand trial in a jail for an in-custody defendant, the department

1 ~~((has))~~: (a) During the most recent quarter, did not perform at least  
2 one-third of the number of jail-based competency evaluations for in-  
3 custody defendants as were performed by qualified experts or  
4 professional persons appointed by the court in the referring county;  
5 or (b) did not ~~((met))~~ meet the performance target for timely  
6 completion of competency evaluations under RCW 10.77.068(1)(a)  
7 ~~((ii))~~ (iii) during the most recent quarter in fifty percent of  
8 cases submitted by the referring county, as documented in the most  
9 recent quarterly report under RCW 10.77.068(3) or confirmed by  
10 records maintained by the department(~~(, the department shall~~  
11 ~~reimburse the county for the cost of appointing a qualified expert or~~  
12 ~~professional person under RCW 10.77.060(1)(a) subject to subsections~~  
13 ~~(2) and (3) of this section)~~).

14 (2) Appointment of a qualified expert or professional person  
15 under this section must be from a list of qualified experts or  
16 professional persons assembled with participation by representatives  
17 of the prosecuting attorney and the defense bar of the county. The  
18 qualified expert or professional person shall complete an evaluation  
19 and report that includes the components specified in RCW  
20 10.77.060(3).

21 (3) The county shall provide a copy of the evaluation report to  
22 the applicable state hospital upon referral of the defendant for  
23 admission to the state hospital. The county shall maintain data on  
24 the timeliness of competency evaluations completed under this  
25 section.

26 (4) A qualified expert or professional person appointed by a  
27 court under this section must be compensated for competency  
28 evaluations in an amount that will encourage in-depth evaluation  
29 reports. Subject to the availability of amounts appropriated for this  
30 specific purpose, the department shall reimburse the county in an  
31 amount determined by the department to be fair and reasonable with  
32 the county paying any excess costs. The amount of reimbursement  
33 established by the department must at least meet the equivalent  
34 amount for evaluations conducted by the department.

35 ~~((4)-(5))~~ (5) Nothing in this section precludes either party  
36 from objecting to the appointment of an evaluator on the basis that  
37 an inpatient evaluation is appropriate under RCW 10.77.060(1)(d).

38 ~~((5)-(6))~~ (6) This section expires June 30, ~~((2016))~~ 2018.

1        NEW SECTION.    **Sec. 3.**    (1) The legislature finds that there are  
2 currently no alternatives to competency restoration provided in the  
3 state hospitals and there is insufficient capacity within the state  
4 hospitals to meet the projected service needs of the state. Subject  
5 to the availability of amounts appropriated for this specific  
6 purpose, the legislature encourages the department of social and  
7 health services to develop, on a phased-in basis, alternative  
8 locations and increased access to competency restoration services  
9 under chapter 10.77 RCW for individuals who do not require inpatient  
10 psychiatric hospitalization level services.

11        (2) The department shall work with counties and the courts to  
12 develop a screening process to determine which individuals are safe  
13 to receive competency restoration treatment outside the state  
14 hospitals. The department also must develop a plan to sufficiently  
15 increase capacity to meet the projected ten-year need for both  
16 forensic and civil mental health bed demand.

17        **Sec. 4.**    RCW 10.77.086 and 2013 c 289 s 2 are each amended to  
18 read as follows:

19        (1)(a) If the defendant is charged with a felony and determined  
20 to be incompetent, until he or she has regained the competency  
21 necessary to understand the proceedings against him or her and assist  
22 in his or her own defense, (~~or has been determined unlikely to~~  
23 ~~regain competency pursuant to RCW 10.77.084(1)(b),~~) but in any event  
24 for a period of no longer than ninety days, the court:

25        (i) Shall commit the defendant to the custody of the secretary  
26 who shall place such defendant in an appropriate facility of the  
27 department for evaluation and treatment; or

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

1 emergency. Patients receiving competency restoration services in a  
2 city or county jail must be physically separated from other  
3 populations at the jail, must interact only with treatment staff and  
4 not jail staff, except for incidental interaction with jail staff for  
5 custodial service, food service, or similar services, and must be  
6 provided as much as possible with a therapeutic environment.  
7 Competency restoration services provided in a city or county jail  
8 must be performed by staff and professionals who have the skills and  
9 qualifications necessary to provide competency restoration services  
10 comparable to those provided at a state hospital. The ninety-day  
11 period for evaluation and treatment under this subsection (1)  
12 includes only the time the defendant is actually at the facility and  
13 is in addition to reasonable time for transport to or from the  
14 facility.

15 (b) For a defendant whose highest charge is a class C felony, or  
16 a class B felony that is not classified as violent under RCW  
17 9.94A.030, the maximum time allowed for the initial period of  
18 commitment for competency restoration is forty-five days. The forty-  
19 five day period includes only the time the defendant is actually at  
20 the facility and is in addition to reasonable time for transport to  
21 or from the facility.

22 (c) If the court determines that the defendant is unlikely to  
23 regain competency, the court may dismiss the charges without  
24 prejudice without ordering the defendant to undergo restoration  
25 treatment, in which case the court shall order that the defendant be  
26 referred for evaluation for civil commitment in the manner provided  
27 in subsection (4) of this section.

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

32 (3) If the court finds by a preponderance of the evidence that a  
33 defendant charged with a felony is incompetent, the court shall have  
34 the option of extending the order of commitment or alternative  
35 treatment for an additional period of ninety days, but the court must  
36 at the time of extension set a date for a prompt hearing to determine  
37 the defendant's competency before the expiration of the second  
38 restoration period. The defendant, the defendant's attorney, or the  
39 prosecutor has the right to demand that the hearing be before a jury.  
40 No extension shall be ordered for a second or third restoration

1 period as provided in subsection (4) of this section if the  
2 defendant's incompetence has been determined by the secretary to be  
3 solely the result of a developmental disability which is such that  
4 competence is not reasonably likely to be regained during an  
5 extension. The ninety-day period includes only the time the defendant  
6 is actually at the facility and is in addition to reasonable time for  
7 transport to or from the facility.

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

31 **Sec. 5.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to  
32 read as follows:

33 (1)(a) If the defendant is charged with a nonfelony crime which  
34 is a serious offense as identified in RCW 10.77.092 and found by the  
35 court to be not competent, then the court (~~shall order the secretary~~  
36 ~~to place the defendant~~):

37 (i) (~~At a secure mental health facility in the custody of the~~  
38 ~~department or an agency designated by the department for mental~~  
39 ~~health treatment and restoration of competency.)) Shall commit the~~

1 defendant to the custody of the secretary who shall place such  
2 defendant in an appropriate facility of the department for evaluation  
3 and treatment;

4 (ii) May alternatively order the defendant to undergo evaluation  
5 and treatment at some other facility as determined by the department,  
6 or under the guidance and control of a professional person. The  
7 facilities may include community mental health providers or other  
8 local facilities that contract with the department and are willing  
9 and able to provide treatment under this section. During the  
10 2015-2017 fiscal biennium, the department may contract with one or  
11 more cities or counties to provide competency restoration services in  
12 a city or county jail if the city or county jail is willing and able  
13 to serve as a location for competency restoration services and if the  
14 secretary determines that there is an emergent need for beds and  
15 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, must interact only with treatment staff and  
19 not jail staff, except for incidental interaction with jail staff for  
20 custodial service, food service, or similar services, and must be  
21 provided as much as possible with a therapeutic environment.  
22 Competency restoration services provided in a city or county jail  
23 must be performed by staff and professionals who have the skills and  
24 qualifications necessary to provide competency restoration services  
25 comparable to those provided at a state hospital.

26 The placement under (a)(i) and (ii) of this subsection shall not  
27 exceed fourteen days in addition to any unused time of the evaluation  
28 under RCW 10.77.060. The court shall compute this total period and  
29 include its computation in the order. The fourteen-day period plus  
30 any unused time of the evaluation under RCW 10.77.060 shall be  
31 considered to include only the time the defendant is actually at the  
32 facility and shall be in addition to reasonable time for transport to  
33 or from the facility;

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

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

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

1 treatment, in which case the court shall order that the defendant be  
2 referred for evaluation for civil commitment in the manner provided  
3 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 mental health professional  
7 within that county to evaluate the defendant pursuant to chapter  
8 71.05 RCW. The evaluation may be conducted in any location chosen by  
9 the 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) If the defendant is charged with a nonfelony crime that is  
19 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 mental health  
22 professional 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.

27 **Sec. 6.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to  
28 read as follows:

29 No person who is criminally insane confined pursuant to this  
30 chapter shall be incarcerated in a state correctional institution or  
31 facility: PROVIDED, That nothing herein shall prohibit confinement in  
32 a mental health facility located wholly within a correctional  
33 institution. Confinement of a person who is criminally insane in a  
34 county jail or other local facility while awaiting either placement  
35 in a treatment program or a court hearing pursuant to this chapter is  
36 permitted for no more than seven days.

37 **Sec. 7.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to  
38 read as follows:

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

16 (2) If an individual is placed in an evaluation and treatment  
17 facility under RCW 10.77.088(1)((~~b~~)) (c)(ii), a professional person  
18 shall evaluate the individual for purposes of determining whether to  
19 file a ninety-day inpatient or outpatient petition under chapter  
20 71.05 RCW. Before expiration of the seventy-two hour evaluation  
21 period authorized under RCW 10.77.088(1)((~~b~~)) (c)(ii), the  
22 professional person shall file a petition or, if the recommendation  
23 of the professional person is to release the individual, present his  
24 or her recommendation to the superior court of the county in which  
25 the criminal charge was dismissed. The superior court shall review  
26 the recommendation not later than forty-eight hours, excluding  
27 Saturdays, Sundays, and holidays, after the recommendation is  
28 presented. If the court rejects the recommendation to unconditionally  
29 release the individual, the court may order the individual detained  
30 at a designated evaluation and treatment facility for not more than a  
31 seventy-two hour evaluation and treatment period and direct the  
32 individual to appear at a surety hearing before that court within  
33 seventy-two hours, or the court may release the individual but direct  
34 the individual to appear at a surety hearing set before that court  
35 within eleven days, at which time the prosecutor may file a petition  
36 under this chapter for ninety-day inpatient or outpatient treatment.  
37 If a petition is filed by the prosecutor, the court may order that  
38 the person named in the petition be detained at the evaluation and  
39 treatment facility that performed the evaluation under this  
40 subsection or order the respondent to be in outpatient treatment. If

1 a petition is filed but the individual fails to appear in court for  
2 the surety hearing, the court shall order that a mental health  
3 professional or peace officer shall take such person or cause such  
4 person to be taken into custody and placed in an evaluation and  
5 treatment facility to be brought before the court the next judicial  
6 day after detention. Upon the individual's first appearance in court  
7 after a petition has been filed, proceedings under RCW 71.05.310 and  
8 71.05.320 shall commence. For an individual subject to this  
9 subsection, the prosecutor or professional person may directly file a  
10 petition for ninety-day inpatient or outpatient treatment and no  
11 petition for initial detention or fourteen-day detention is required  
12 before such a petition may be filed.

13 The court shall conduct the hearing on the petition filed under  
14 this subsection within five judicial days of the date the petition is  
15 filed. The court may continue the hearing upon the written request of  
16 the person named in the petition or the person's attorney, for good  
17 cause shown, which continuance shall not exceed five additional  
18 judicial days. If the person named in the petition requests a jury  
19 trial, the trial shall commence within ten judicial days of the date  
20 of the filing of the petition. The burden of proof shall be by clear,  
21 cogent, and convincing evidence and shall be upon the petitioner. The  
22 person shall be present at such proceeding, which shall in all  
23 respects accord with the constitutional guarantees of due process of  
24 law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

25 During the proceeding the person named in the petition shall  
26 continue to be detained and treated until released by order of the  
27 court. If no order has been made within thirty days after the filing  
28 of the petition, not including any extensions of time requested by  
29 the detained person or his or her attorney, the detained person shall  
30 be released.

31 (3) If a designated mental health professional or the  
32 professional person and prosecuting attorney for the county in which  
33 the criminal charge was dismissed or attorney general, as  
34 appropriate, stipulate that the individual does not present a  
35 likelihood of serious harm or is not gravely disabled, the hearing  
36 under this section is not required and the individual, if in custody,  
37 shall be released.

38 (4) The individual shall have the rights specified in RCW  
39 71.05.360 (8) and (9).

1       **Sec. 8.** RCW 10.77.065 and 2014 c 10 s 3 are each amended to read  
2 as follows:

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

10       (ii) A copy of the report and recommendation shall be provided to  
11 the designated mental health professional, the prosecuting attorney,  
12 the defense attorney, and the professional person at the local  
13 correctional facility where the defendant is being held, or if there  
14 is no professional person, to the person designated under (a)(iv) of  
15 this subsection. Upon request, the evaluator shall also provide  
16 copies of any source documents relevant to the evaluation to the  
17 designated mental health professional.

18       (iii) Any facility providing inpatient services related to  
19 competency shall discharge the defendant as soon as the facility  
20 determines that the defendant is competent to stand trial. Discharge  
21 shall not be postponed during the writing and distribution of the  
22 evaluation report. Distribution of an evaluation report by a facility  
23 providing inpatient services shall ordinarily be accomplished within  
24 two working days or less following the final evaluation of the  
25 defendant. If the defendant is discharged to the custody of a local  
26 correctional facility, the local correctional facility must continue  
27 the medication regimen prescribed by the facility, when clinically  
28 appropriate, unless the defendant refuses to cooperate with  
29 medication and an involuntary medication order by the court has not  
30 been entered.

31       (iv) If there is no professional person at the local correctional  
32 facility, the local correctional facility shall designate a  
33 professional person as defined in RCW 71.05.020 or, in cooperation  
34 with the regional support network, a professional person at the  
35 regional support network to receive the report and recommendation.

36       (v) Upon commencement of a defendant's evaluation in the local  
37 correctional facility, the local correctional facility must notify  
38 the evaluator of the name of the professional person, or person  
39 designated under (a)(iv) of this subsection, to receive the report  
40 and recommendation.

1 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the  
2 person should be evaluated by a designated mental health professional  
3 under chapter 71.05 RCW, the court shall order such evaluation be  
4 conducted prior to release from confinement when the person is  
5 acquitted or convicted and sentenced to confinement for twenty-four  
6 months or less, or when charges are dismissed pursuant to a finding  
7 of incompetent to stand trial.

8 (2) The designated mental health professional shall provide  
9 written notification within twenty-four hours of the results of the  
10 determination whether to commence proceedings under chapter 71.05  
11 RCW. The notification shall be provided to the persons identified in  
12 subsection (1)(a) of this section.

13 (3) The prosecuting attorney shall provide a copy of the results  
14 of any proceedings commenced by the designated mental health  
15 professional under subsection (2) of this section to the secretary.

16 (4) A facility conducting a civil commitment evaluation under RCW  
17 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a  
18 determination to release the person instead of filing a civil  
19 commitment petition must provide written notice to the prosecutor and  
20 defense attorney at least twenty-four hours prior to release. The  
21 notice may be given by electronic mail, facsimile, or other means  
22 reasonably likely to communicate the information immediately.

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

28 **Sec. 9.** RCW 10.77.065 and 2014 c 225 s 59 and 2014 c 10 s 3 are  
29 each reenacted and amended to read as follows:

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

37 (ii) A copy of the report and recommendation shall be provided to  
38 the designated mental health professional, the prosecuting attorney,  
39 the defense attorney, and the professional person at the local

1 correctional facility where the defendant is being held, or if there  
2 is no professional person, to the person designated under (a)(iv) of  
3 this subsection. Upon request, the evaluator shall also provide  
4 copies of any source documents relevant to the evaluation to the  
5 designated mental health professional.

6 (iii) Any facility providing inpatient services related to  
7 competency shall discharge the defendant as soon as the facility  
8 determines that the defendant is competent to stand trial. Discharge  
9 shall not be postponed during the writing and distribution of the  
10 evaluation report. Distribution of an evaluation report by a facility  
11 providing inpatient services shall ordinarily be accomplished within  
12 two working days or less following the final evaluation of the  
13 defendant. If the defendant is discharged to the custody of a local  
14 correctional facility, the local correctional facility must continue  
15 the medication regimen prescribed by the facility, when clinically  
16 appropriate, unless the defendant refuses to cooperate with  
17 medication and an involuntary medication order by the court has not  
18 been entered.

19 (iv) If there is no professional person at the local correctional  
20 facility, the local correctional facility shall designate a  
21 professional person as defined in RCW 71.05.020 or, in cooperation  
22 with the behavioral health organization, a professional person at the  
23 behavioral health organization to receive the report and  
24 recommendation.

25 (v) Upon commencement of a defendant's evaluation in the local  
26 correctional facility, the local correctional facility must notify  
27 the evaluator of the name of the professional person, or person  
28 designated under (a)(iv) of this subsection, to receive the report  
29 and recommendation.

30 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the  
31 person should be evaluated by a designated mental health professional  
32 under chapter 71.05 RCW, the court shall order such evaluation be  
33 conducted prior to release from confinement when the person is  
34 acquitted or convicted and sentenced to confinement for twenty-four  
35 months or less, or when charges are dismissed pursuant to a finding  
36 of incompetent to stand trial.

37 (2) The designated mental health professional shall provide  
38 written notification within twenty-four hours of the results of the  
39 determination whether to commence proceedings under chapter 71.05

1 RCW. The notification shall be provided to the persons identified in  
2 subsection (1)(a) of this section.

3 (3) The prosecuting attorney shall provide a copy of the results  
4 of any proceedings commenced by the designated mental health  
5 professional under subsection (2) of this section to the secretary.

6 (4) A facility conducting a civil commitment evaluation under RCW  
7 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a  
8 determination to release the person instead of filing a civil  
9 commitment petition must provide written notice to the prosecutor and  
10 defense attorney at least twenty-four hours prior to release. The  
11 notice may be given by electronic mail, facsimile, or other means  
12 reasonably likely to communicate the information immediately.

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

18 NEW SECTION. **Sec. 10.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 11.** Section 8 of this act expires April 1,  
23 2016.

24 NEW SECTION. **Sec. 12.** Section 9 of this act takes effect April  
25 1, 2016.

26 NEW SECTION. **Sec. 13.** Section 2 of this act is necessary for  
27 the immediate preservation of the public peace, health, or safety, or  
28 support of the state government and its existing public institutions,  
29 and takes effect immediately.

--- END ---