
HOUSE BILL 2649

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Jinkins and Rodne; by request of Department of Social and Health Services

Read first time 01/23/14. Referred to Committee on Judiciary.

1 AN ACT Relating to placement of a defendant determined to be
2 incompetent; amending RCW 10.77.086, 10.77.088, and 10.77.220; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that there are
6 currently no alternatives to competency restoration provided in the
7 state hospitals. Subject to the availability of amounts appropriated
8 for this specific purpose, the legislature encourages the department to
9 develop, on a phased-in basis, alternative locations and increased
10 access to competency restoration services under chapter 10.77 RCW for
11 individuals who do not require in-patient psychiatric hospitalization
12 level services. This may include services within county-operated jails.

13 **Sec. 2.** RCW 10.77.086 and 2013 c 289 s 2 are each amended to read
14 as follows:

15 (1)(a) If the defendant is charged with a felony and determined to
16 be incompetent, until he or she has regained the competency necessary
17 to understand the proceedings against him or her and assist in his or

1 her own defense, or has been determined unlikely to regain competency
2 pursuant to RCW 10.77.084(1)(b), but in any event for a period of no
3 longer than ninety days, the court:

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

7 (ii) May alternatively order the defendant to undergo evaluation
8 and treatment at some other facility as determined by the department,
9 or under the guidance and control of a professional person. Such
10 facilities may include county jails.

11 (b) For a defendant whose highest charge is a class C felony, or a
12 class B felony that is not classified as violent under RCW 9.94A.030,
13 the maximum time allowed for the initial period of commitment for
14 competency restoration is forty-five days.

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

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

32 (4) For persons charged with a felony, at the hearing upon the
33 expiration of the second restoration period or at the end of the first
34 restoration period, in the case of a defendant with a developmental
35 disability, if the jury or court finds that the defendant is
36 incompetent, the charges shall be dismissed without prejudice, and the
37 court shall order the defendant be committed to a state hospital as
38 defined in RCW 72.23.010 for up to seventy-two hours starting from

1 admission to the facility, excluding Saturdays, Sundays, and holidays,
2 for evaluation for the purpose of filing a civil commitment petition
3 under chapter 71.05 RCW. The criminal charges shall not be dismissed
4 if the court or jury finds that: (a) The defendant (i) is a
5 substantial danger to other persons; or (ii) presents a substantial
6 likelihood of committing criminal acts jeopardizing public safety or
7 security; and (b) there is a substantial probability that the defendant
8 will regain competency within a reasonable period of time. In the
9 event that the court or jury makes such a finding, the court may extend
10 the period of commitment for up to an additional six months.

11 **Sec. 3.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to read
12 as follows:

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

17 (i) At a secure mental health facility in the custody of the
18 department or an agency designated by the department for mental health
19 treatment and restoration of competency. Such agencies may include
20 county jails. The placement shall not exceed fourteen days in addition
21 to any unused time of the evaluation under RCW 10.77.060. The court
22 shall compute this total period and include its computation in the
23 order. The fourteen-day period plus any unused time of the evaluation
24 under RCW 10.77.060 shall be considered to include only the time the
25 defendant is actually at the facility and shall be in addition to
26 reasonable time for transport to or from the facility;

27 (ii) On conditional release for up to ninety days for mental health
28 treatment and restoration of competency; or

29 (iii) Any combination of this subsection.

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

35 (ii) If the defendant was in custody and not on conditional release
36 at the time of dismissal, the defendant shall be detained and sent to
37 an evaluation and treatment facility for up to seventy-two hours,

1 excluding Saturdays, Sundays, and holidays, for evaluation for purposes
2 of filing a petition under chapter 71.05 RCW. The seventy-two-hour
3 period shall commence upon the next nonholiday weekday following the
4 court order and shall run to the end of the last nonholiday weekday
5 within the seventy-two-hour period.

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

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

15 **Sec. 4.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to read
16 as follows:

17 No person confined pursuant to this chapter shall be incarcerated
18 in a state correctional institution or facility: PROVIDED, That
19 nothing herein shall prohibit (1) confinement in a mental health
20 facility located wholly within a correctional institution, or (2)
21 confinement in a county jail or other local facility if ordered for the
22 purposes of competency restoration treatment. Confinement in a county
23 jail or other local facility while awaiting either placement in a
24 treatment program or a court hearing pursuant to this chapter is
25 permitted for no more than seven days.

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