

**Proposed amendments from Disability Rights Washington, Washington Defender Association, and Washington Association of Criminal Defense Lawyers. SB 5664, Feb 21, 2022.**

**Sec. 3.** RCW 10.77.068 and 2015 c 5 s 1 are each amended to read as follows:

....

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

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

~~((iii)) (c) the department identifies specific and current psychological or medical reasons that it cannot complete the competency services described in subsection (2) of this section within the maximum time limits;~~

**Sec. 4.** RCW 10.77.086 and 2019 c 326 s 4 are each amended to read as follows:

....

(1)(d) ....The outpatient competency restoration program shall coordinate with the authority, the department, and any law enforcement personnel under (d)(i) of this subsection to ensure that the time period between termination and admission into the inpatient facility is as minimal as possible. The time period for inpatient competency restoration shall be the same as if the outpatient competency restoration had not occurred, starting from admission to the facility. The department shall obtain a placement for the defendant within seven days of the notice of intent to terminate the outpatient competency restoration program.

....

(1)(d)(ii) The department shall notify the court and parties of the ((change in placement)) defendant's admission for inpatient competency restoration before the close of the next

judicial day. The court shall schedule a hearing within five days of admission for inpatient competency restoration to review the ((placement and)) conditions of release of the defendant and anticipated release from treatment and issue appropriate orders. At this hearing the court must make a determination on the record about: the number of days that defendant completed in the outpatient competency restoration program; the number of completed days that the defendant shall receive credit for; and, by a preponderance of the evidence, whether a defendant is incompetent and likely to be restored to competency if ordered to inpatient competency restoration treatment. ~~((The standard of proof shall be a preponderance of the evidence, and the court may in its discretion render its decision based on written submissions, live testimony, or remote testimony.~~

**Sec. 5.** RCW 10.77.088 and 2020 c 18 s 4 are each amended to read as follows:

....

(2)(d).... The outpatient competency restoration program shall coordinate with the authority, the department, and any law enforcement personnel under (d)(i) of this subsection to ensure that the time period between termination and admission into the inpatient facility is as minimal as possible. The time period for inpatient competency restoration shall be the same as if the outpatient competency restoration had not occurred, starting from admission to the facility. The department shall obtain a placement for the defendant within seven days of the notice of intent to terminate of the outpatient competency restoration program.

....

(2)(d)(ii) The department shall notify the court and parties of the ((change in placement)) defendant's admission for inpatient competency restoration before the close of the next judicial day. The court shall schedule a hearing within five days of admission for inpatient competency restoration to review the ((placement and)) conditions of release of the defendant and anticipated release from treatment and issue appropriate orders. At this hearing the court must make a determination on the record about: the number of days that defendant completed in the outpatient competency restoration program; the number of completed days that the defendant shall receive credit for; and, by a preponderance of the evidence, whether a defendant is incompetent and likely to be restored to competency if ordered to inpatient

competency restoration treatment. ~~((The standard of proof shall be a preponderance of the evidence, and the court may in its discretion render its decision based on written submissions, live testimony, or remote testimony.~~

....

(3) The placement under ~~(((a)))~~ subsection (2) of this ~~((subsection))~~ section shall not exceed ~~((twenty nine))~~ 29 days if the defendant is ordered to receive inpatient competency restoration, ~~((or))~~ and shall not exceed ~~((ninety))~~ 90 days if the defendant is ordered to receive outpatient competency restoration. The court may order any combination of this subsection, so long as any period the defendant spends receiving inpatient competency restoration treatment does not exceed 29 days total. ~~not to exceed ninety days. This period must be considered to include only the time the defendant is actually at the facility and shall be in addition to reasonable time for transport to or from the facility)).~~

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

(1)(a) A task force is established on mental health issues in the criminal legal system to evaluate the current legislation and the on-going delays in providing competency evaluation, restoration services and other services related to 10.77 RCW, members as provided in this subsection.

(i) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(ii) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(iii) The governor shall appoint the following members:

(A) The director of the health care authority or his or her designee;

(B) The secretary of the department of social and health services or his or her designee;

(C) The director of the office of forensic mental health or his or her designee;

(D) The Washington state attorney general or his or her designee;

(E) An individual with lived experience of addressing mental health pursuant to RCW 10.77;

(F) An individual with lived experience as a family member of a person addressing mental health pursuant to RCW 10.77;

(G) A representative of The Washington association of prosecuting attorneys;

(H) A representative of The Washington defender association;

(I) A representative of plaintiff's counsel from federal suits in either A.B. by Trueblood v DSHS or Ross v. Inslee;

(J) The director of the Washington office of public defense or his or her designee;

(K) A representative of the superior court judges association;

(L) A representative of the municipal/district court judges association;

(M) A service provider for forensically involved individuals;

(N) A representative of a behavioral health provider; and

(O) Two at-large representative appointments.

(b) The task force shall choose as its cochairs one person from among its legislative members and one person from among the governor's appointments. The Department shall convene the first meeting of the task force by June 30, 2022.

(2) The task force shall review 10.77 RCW, information regarding the increasing demands on the Department of Social and Health Services, and the delays in access to treatment. The task force shall develop a list of priorities and shall provide recommendations for any suggested change to 10.77 RCW.

(3) Staff support for the task force must be provided by the department of social and health services.

(4) Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(5) Task force expenditures for legislative members are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The task force shall report preliminary findings and recommendations to the governor and appropriate committees of the legislature by October 15, 2022, and issue its final recommendations to the governor by the end of 2022.