

Fighting Contested Competency & Multiple Restoration Periods

Washington Defender Association
Legal Procedures and Strategic Arguments for Mental Health Advocacy
June 14, 2024
Clark College, Vancouver

Agenda

- Brief Overview of Competency Generally
- Raising Competency
- The Initial Competency Evaluation
- Reviewing Competency Reports
- Hearings - Challenging Competency
- Hearings - Challenging Restoration
- Other Miscellaneous Things



Brief Overview of Competency Generally



Due Process Requires Competency

- The United States Constitution has held that the 14th Amendment's due process clause prohibits the conviction of a person who is not competent to stand trial.



Mental Incapacity is a Bar to Proceedings in Washington

- In Washington, no person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.

Competency

A person charged with a crime in Washington is incompetent if:

They lack the capacity to understand the nature of the proceedings against them; or

They lack the capacity to assist in their own defense as a result of mental disease or defect.

Rationally Assisting Legal Counsel

- To rationally assist counsel in a client's defense, an accused:
 - Should possess an adequate recall of the factual events involved in the charge against them and should be able to communicate those recollections to their attorney;
 - Have both an intellectual and emotional appreciation of the ramifications and consequences of the crime charged

Plea v. Trial

- The competency standard is the same for:
 - Pleading Guilty
 - Waiving the Right to Counsel
 - Going to Trial

Raising Competency

Court of Washington, County of _____

_____ Plaintiff	Case No. _____
vs.	Order for Competency Evaluation under RCW 10.77.060 (ORCE)
_____ Defendant	[] Next hearing date: _____
DOB: _____	Clerk's Action Required: para. 3 (interpreter), 6, 8

This matter came before the court on the motion of [] the attorney for the defendant [] the prosecutor [] the court as to the defendant's competency based on sufficient facts that as a result of a mental disease or defect, the defendant may lack the capacity to understand the proceedings against them or to assist in their own defense.

The defendant is charged with:

- [] the felony crime/s listed in the charging document, dated _____
- [] the felony crime/s of _____

The highest charge against the defendant is a:

- [] Class A Felony
- [] Class B Felony
- [] Class C Felony
- [] Class C specifically listed in RCW 10.77.086(1)(b)

- [] the non-felony crime/s of _____ and:

[] **At least one of the non-felony charges** is a "serious offense" as defined in RCW 10.77.092

[] **None of the non-felony charges** are a "serious offense" as defined in RCW 10.77.092.

[] The court is reserving ruling on whether any of the non-felony crimes charged are a serious offense as defined in RCW 10.77.092.

Who Can Raise Competency?

- The Defense
- The Court
- The Prosecutor

When Should You Raise Competency?

Competency can be raised:

- 1) Before Trial;
- 2) During Trial;
- 3) After Conviction; or
- 4) After Sentencing.

There is a special box on the Order for Competency Evaluation for matters not pending trial.

This matter is not pending trial. The current probation report and/or other supplemental materials are attached.

Doubt as to Competency

- Upon the motion of any party or on the Court's own motion for a competency evaluation, the Court **shall** make a determination of whether sufficient facts have been provided to form a genuine doubt as to competency.
- If genuine doubt as to competency exist the Court **shall** appoint or request DSHS to designate a qualified expert of professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

Effects of Prior Adjudications of Incompetence

- Collateral Estoppel does not prohibit the State from relitigating the issue of competency.
- There is however a burden that someone who has been previously adjudicated to be incompetent, is presumed to be incompetent until a hearing is held and the individual is declared competent. This presumption is rebuttable.

State v. Hawkins, 70 Wn.2d 697, 425 P.2d 390 (1967); *State v. Minnix*, 63 Wn.App. 494, 499, 820 P.2d 956, 959 (1991); *State v. Duffloth*, 19 Wn. App. 2d 347, 496 P.3d 317 (2021);

Factors a Judge Can Consider in Determining Whether or Not to Order a Formal Inquiry into Competency.

- Information provided by the parties;
- Judicial Colloquy
- Records
 - Personal and Family History
 - Past Behavior
 - Medical Records
 - Psychiatric Records
- Direct Observation
 - Defendant's appearance
 - Defendant's Demeanor and Conduct

Information Provided By Counsel

- Defense counsel can meet the requirements for requesting a competency evaluation by filing a declaration stating that they have reason to believe that a competency evaluation is necessary, and stating the basis on which the defendant is believed to be incompetent.
- The Statue is not intended to require a waiver of attorney-client privilege.

Hiring Your Own Expert

- Whenever any person is subjected to an examination pursuant to RCW 10.77, they may retain an expert or professional person to perform a competency evaluation on their behalf.
- If the person is indigent, the court shall assist in obtaining an expert.
- The Court may direct that the defense expert be permitted to witness an evaluation completed by a court appointed evaluator.
- The Defense Expert should have access to the same information as the court appointed expert has access to.
- The Defense Expert also has the right to file their own competency report with the Court.

Procedures in RCW 10.77 Are Mandatory

- Once there is a reason to doubt an individual's competency, the Court must follow the statute to determine the individual's competency to stand trial.
- Failure to observe procedures adequate to protect an accused's right not to be tried while incompetent to stand trial is a denial of due process.

State v. Wicklund, 96 Wn. 2d 798, 805, 638 P.2d 1241 (1982); *City of Seattle v. Gordon*, 39 Wash. App. 437, 441, 693 P.2d 741 (1985). *State v. O'Neal*, 23 Wash. App. 899, 901, 600 P.2d 570, (1979) (citing *Drope*, 420 U.S. 162, 95 S. Ct. 896; *Pate*, 383 U.S. 375, 86 S. Ct. 836).

Notifying DSHS of a Signed Order

- Within 24 hours of the signing of a court order requesting DSHS to provide a competency evaluation or restoration treatment the following people need to provide the following to the State Hospital:

Court Clerk	Prosecutor	Jail Administrator
<ul style="list-style-type: none">• The Court Order• Charging Documents (Including bail orders and the PC Statement)• A Copy of the Evaluation if the evaluator was not designated by DSHS.	<ul style="list-style-type: none">• The Discovery• The Criminal History of the Individual	<ul style="list-style-type: none">• If the court order requires transportation, the individual's medical clearance information

RCW 10.77.075

Stay of Proceedings

- From the time an order for a competency evaluation enters until the Court enters an order finding the defendant to be competent to proceed, the proceedings are stayed.
- For post-sentencing cases, jurisdiction is tolled.

CrR 3.3, CrRLJ 3.3, RCW 10.77.050, *State v. Campbell*, 95 Wn. 2d 954, 957 (1981)

The Initial Competency Evaluation



Evaluator Access

- Once a competency evaluation is ordered the evaluator is given access to:
 - All records held by any mental health, medical, long-term services or supports, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant.
 - If the court is advised the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional and the evaluator should have access to records of the Developmental Disabilities Administration of DSHS.
 - If the court is advised the defendant may have dementia or another relevant neurocognitive disorder, the evaluator shall have access to records of the Aging and Long-term Support Administration of DSHS.

Right to Counsel

- An individual subject to examination for competency has a right to counsel at all stages of the proceeding.
- This includes the right to counsel during a competency evaluation.
- Your client also has the right to refuse to answer incriminating questions asked of them by a court appointed expert.

Make Sure You Get Notice of the Evaluation

- Make sure you indicate in the order for competency evaluation that you must be present.

defendant must obtain medical clearance prior to admission to the facility.

3. **Evaluation Requirements.** The following requirements supplement those found in chapter 10.77 RCW:
- Developmental Disabilities Professional.** Based upon advisement that the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional.
 - Interpreter.** The defendant requires the services of an interpreter in the following language: _____
 - Defense Attorney Presence.** *(Only check this box if defense counsel wants notice and opportunity to be present).* The defense attorney requests notification of the time and place of the evaluation at the contact information provided below. **The defense attorney may be contacted at:** _____
 - The evaluation may proceed without the defense attorney present if notice has been provided.
 - The evaluation may not proceed without the defense attorney present. The current criminal charge/s shall not be discussed with the defendant outside the forensic interview, unless immunity has been granted.
 - Defense Expert.** A defense expert has been appointed under RCW 10.77.060, and DSHS is directed to contact the defense attorney to determine whether the expert will be witnessing DSHS's evaluation.
 - Additional Evaluation Requirements** _____

Attend Your Client's Evaluation

- Attorneys should be present for competency evaluations.
- This assures your client is not asked, nor do they make, any incriminating statements.
- This allows you to properly document and record what happens at the evaluation.
- It helps build the attorney-client relationship.
- It makes you able to better contest competency issues down the road.

Things Your Client Should Know: Purpose of the Evaluation & the Role of the Evaluator

- **Purpose of the Evaluation:** Explain to your client why the competency evaluation is being conducted.
- **Role of the Evaluator:** Help your client understand the role of the evaluator and the nature of the evaluation. The evaluator is supposed to be a neutral professional.
- **Who Will Get a Copy of the Report:** The Jail, the Court, the Defense Attorney, The Prosecutor, The County Designated Crises Responder, the Hospital, etc.

Things Your Client Should Know: Voluntary Participation & Confidentiality

- **Voluntary Participation:** Inform the client that while they may be ordered by the court to undergo a competency evaluation, their participation is voluntary.
 - They can skip any questions they do not want to answer.
 - They can end the interview at any time.
 - If they do not participate, the forensic evaluator will need to make a decision without their input, typically by reviewing the records they have access to.
- **Confidentiality:** The evaluation is not private. Whatever your client tells the evaluator may end up in a written report that will be filed with the Court.

Things Your Client Should Know: Right to An Attorney

- **Right to an Attorney:** If at any time, your client wants to speak to you privately during the evaluation, the doctor can be asked to step out for that purpose.
- **Questions and Concerns:** Encourage the client to ask any questions or raise any concerns they may have about the evaluation process at any time.
- **Tell Them What You Will Be Doing the Evaluation:** Let your client know what you will be doing the evaluation. How will you be documenting the evaluation? What will you do if you do not want them to answer a question or talk about something?

The Court Can Order an Inpatient Competency Evaluation

- The Court may commit the defendant for evaluation to a hospital or secure mental health facility if:
 1. The Defendant is charged with Murder in the First Degree or Murder in the Second Degree;
 2. The Court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation; or
 3. The Court finds the evaluation outside of the Jail Setting is necessary for the health, safety, or welfare of the defendant.

Performance Targets

Inpatient Competency Evaluations

- 7 days

In-Custody Competency Evaluations

- 14 days

Competency Evaluation in the Community

- 21 days

Reviewing Competency Reports



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

BEHAVIORAL HEALTH AND SERVICE INTEGRATION ADMINISTRATION

• Centennial Building 1949 South State Street Tacoma, WA 98405 Mail Stop: N27-41 •

June 10, 2024

COMMUNITY FORENSIC EVALUATION SERVICE

COMPETENCY EVALUATION REPORT

Check for Inaccurate / Missing Information



Compare the Report to your own notes / Recording



If you see anything inconsistent with your own notes, reach out to the doctor and ask to have them amend the report.




If the doctor will not amend the report, file your own declaration.



If you think the report is inadequate, ask the Court to reject it.

Adequacy of the Evaluation

A trial court has the discretion to accept or reject an evaluation in satisfaction of the statute thus the power and the obligation to ensure that a statutory competency evaluation is conducted in a qualified manner.



If the Court find the evaluation was not conducted in a qualified manner, a new evaluation should be ordered.



Red Flag: Psychologist v. Psychiatrist

Mr. [REDACTED] has a history of restoring to competency in 2019 after a first 45-day period and second 90-day period of competency restoration. At the time he was opined competent by Dr. [REDACTED], he was prescribed and adherent with the atypical antipsychotic aripiprazole and the antipsychotic haloperidol to treat symptoms of psychosis. Mr. [REDACTED] treating psychiatrist, Dr. [REDACTED], indicated that Mr. [REDACTED] has not reported delusional beliefs or hallucinations, nor has he appeared to be internally preoccupied or responding to unseen stimuli during their interactions. Dr. [REDACTED] indicated that he did not believe that additional time on his current medication would significantly change Mr. [REDACTED] presentation. However, given that Mr. [REDACTED] has demonstrated adherence to his psychiatric medication thus far, and he has a history of restoring to competency, it is possible that a reconsideration of his current medications may result in further improvement of his psychiatric symptoms. **Therefore, in consideration of the totality of information, if the Court**

Hearings – Challenging Competency



The Court Determines Competency – Not the Evaluator

- The Trial Court is the ultimate decider of whether a client is competent or not
- The appointed expert's competency evaluation and report is only one consideration among many in a trial court's determination of the defendant's competency to stand trial.
- The expert's examination and report may be of relatively little important to the trial court in making its competency determination in a given case.

Burden of Proof

- When competency is challenged, including in both competency hearings and restoration hearings, our state statute places the burden on the party challenging competency to prove by a preponderance of the evidence that the defendant is incompetent.

Factors a Judge Can Consider in Determining Competency.

- Information provided by the parties;
- Judicial Colloquy
- Records
 - Personal and Family History
 - Past Behavior
 - Medical Records
 - Psychiatric Records including prior competency reports
- Direct Observation
 - Defendant's Appearance
 - Defendant's Demeanor and Conduct

Call Your Own Expert

- If you disagree with the Court appointed Expert, the Court should grant your request for a continuance to allow you to hire an Expert to conduct a second evaluation.

Possible Scenarios	Possible Resolutions
Expert finds your client competent.	You can feel better about proceeding
Expert finds your client not competent.	State agrees with your expert and agrees to enter the appropriate order If not, You call your expert as a witness at the contested competency hearing & use the testimony of your expert to help convince the Court your client is not competent.

Opinion of Counsel

- While not determinative, a lawyer's opinion as to their client's competency and ability to assist in their own defense is a factor which should be considered and to which the Court must give considerable weight.

“Although we do not, of course, suggest that courts must accept without question a lawyer's representations concerning the competence of his client, see *United States ex rel. Rizzi v. Follette*, 367 F.2d 559, 561 (CA2 1966), an expressed doubt in that regard by one with ‘the closest contact with the defendant,’ *Pate v. Robinson*, 383 U.S. 375, 391, 86 S.Ct. 836, 15 L. Ed. 2d 815, (1966) (Harlan, J., dissenting), is unquestionably a factor which should be considered.”

State v. Israel, 19 Wn. App. 773, 779, 577 P.2d 631 (1978).

File a Declaration

- Your opinion is important!
- Create a record!

(35) Lastly, I have been an attorney for over ten years and have worked in public defense since 2005. I feel strongly that Mr. [REDACTED] does not have the capacity to understand the nature of the proceedings against him. I feel even stronger that Mr. [REDACTED] cannot assist in his own defense due to his mental health symptoms. I have now represented Mr. [REDACTED] for two months and during that time I have not had one productive conversation with Mr. [REDACTED] that would allow me to assist him in his defense. I feel that Mr. [REDACTED] mental health is deteriorating in the jail and that every interaction I have with him only confirms for me that Mr. [REDACTED] is not competent to stand trial. I cannot have a logical conversation with Mr. [REDACTED] let alone could I ever imagine Mr. [REDACTED] having the capacity to sit through a jury trial in his current mental state. I am respectfully asking this court to find Mr. [REDACTED] not competent and for this Court to enter an order for restoration. I see no other means to move this case forward.

Other Possible Things to Include in a Declaration

Notes from the competency evaluation

Questions the Evaluator Did Not Ask

The length of the Evaluation

Observed Behaviors

Information you have learned from others:

- Other attorneys
- Jail Staff
- Prior Competency Proceedings

Conversations you have had with your client (Taking into consideration Attorney-Client Privilege of course!).

Hearings – Challenging Restoration

Superior Court of Washington, County of _____

State of Washington Plaintiff vs. Defendant DOB: _____	Case No. _____ Order for Felony Competency Restoration Treatment (CRORIP, CROROP) <input type="checkbox"/> Out of Custody <input type="checkbox"/> In Custody <input type="checkbox"/> Next hearing date: _____ Clerk's action required: 4, <input type="checkbox"/> 5, 9, <input type="checkbox"/> 10
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The court enters the following regarding the defendant's competency:

Findings of Fact:

1. **Incompetency.** By a preponderance of the evidence that, as a result of mental disease or defect, the defendant lacks the capacity to:
 - understand the nature of the proceedings against them, and/or
 - assist in their own defense.
 The defendant is incompetent, pursuant to RCW 10.77.010 and RCW 10.77.050.
2. **Eligibility for Restoration.** The court finds that the defendant is eligible for restoration under chapter 10.77 RCW.
3. **Applicable Charge.** The highest charge against the defendant is a (only check the applicable box):
 - Class A felony or a Class B violent felony
 - Class B non-violent felony
 - Class C felony specifically listed in RCW 10.77.098(1)(b)
 - Class C felony other than those specifically listed in RCW 10.77.098(1)(b).
 The Court has considered all available and appropriate alternatives to inpatient competency restoration. There is no agreed and appropriate alternative at this time.

Conclusions of Law:

4. Competency restoration treatment should be provided.

RCW 10.77.010, .050, .060, .065, _____ Order for Felony Competency

_____ Court of Washington, County of _____

Plaintiff vs. Defendant DOB: _____	Case No. _____ Order for Misdemeanor Competency Restoration Treatment (CRORIP, CROROP, CROR) <input type="checkbox"/> Out of Custody <input type="checkbox"/> In Custody <input type="checkbox"/> Next hearing date: _____ Clerk's action required: 6, 7, 11, <input type="checkbox"/> 12
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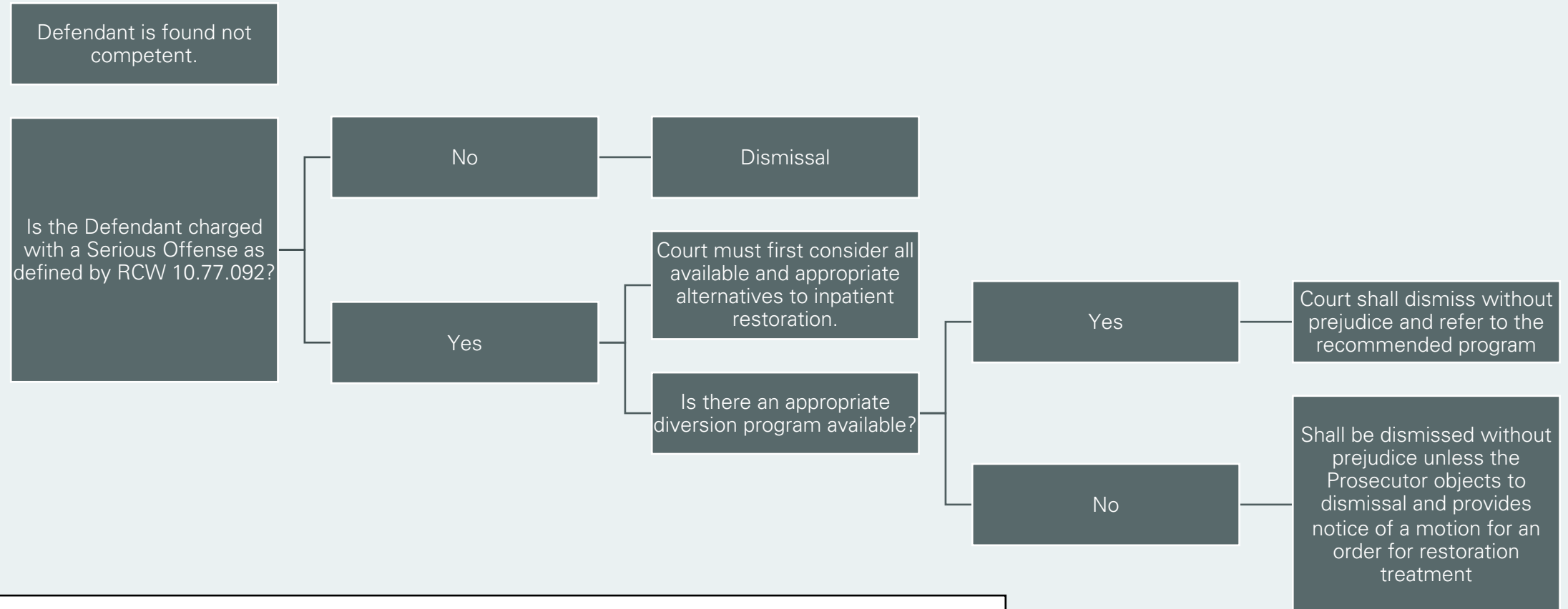
The court finds the following facts:

Findings of Fact and Procedural Setting:

1. **Incompetency.** The court finds by a preponderance of the evidence that, as a result of mental disease or defect, the defendant lacks the capacity to:
 - understand the nature of the proceedings against them, and/or
 - assist in their own defense.
 The defendant is not competent to stand trial, pursuant to RCW 10.77.010 and RCW 10.77.050.
2. **Compelling State Interest.** The prosecutor has objected to dismissal and moved for an Order of Competency Restoration. Following a hearing, the court finds by a preponderance of the evidence that there is a compelling state interest to order competency restoration treatment for the defendant.
3. **Procedural Setting.** The court finds by a preponderance of the evidence that the defendant is charged with a non-felony offense that is a serious offense as defined in RCW 10.77.092.
 - The defendant is charged in this case with a crime listed in RCW 10.77.092(1) as a serious offense;
 Or

RCW 10.77.010, .050, .060, .088, .092; _____ Order for Misdemeanor
 CrLJ 3.3; JuCR 7.8 _____ Competency Restoration
 (07/2023) _____ Treatment

Restoration – Procedure for a Nonfelony Charge



When the Prosecutor Objects to Dismissal – Nonfelony Charge

- The court shall note a hearing within 7 days.
- At the hearing, the prosecutor must establish that there is a compelling state interest to order competency restoration treatment for the defendant.
- The court may consider: prior criminal history, history in treatment, prior history of violence, quality and severity of the pending charges, any history that suggests restoration is likely to be successful, as well as the factors in RCW 10.77.092.

RCW 10.77.092 Factors

(i) The charge includes an allegation that the defendant actually inflicted bodily or emotional harm on another person or that the defendant created a reasonable apprehension of bodily or emotional harm to another;

(ii) The extent of the impact of the alleged offense on the basic human need for security of the citizens within the jurisdiction;

(iii) The number and nature of related charges pending against the defendant;

(iv) The length of potential confinement if the defendant is convicted; and

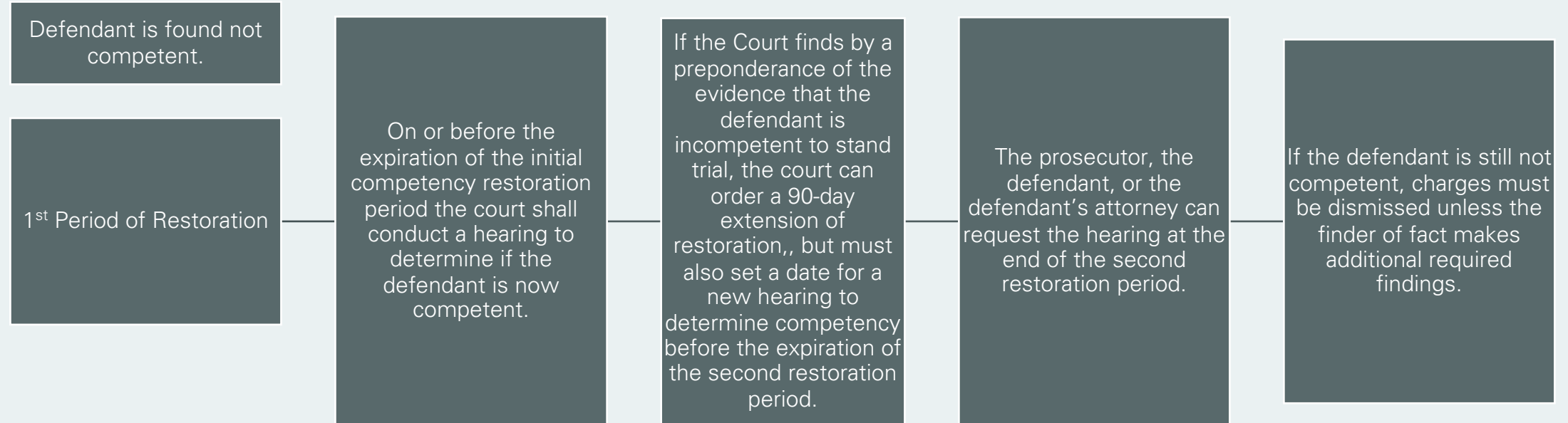
(v) The number of potential and actual victims or persons impacted by the defendant's alleged acts.

Compelling State Interest – Nonfelony Charge

- If the Court finds a Compelling State Interest in pursuing restoration treatment, the Court shall order the defendant to receive outpatient competency restoration unless the Court finds an order for outpatient competency restoration is inappropriate considering the health and safety of the defendant and risks to public safety.
- Nonfelony Charge Restoration Maximum Time Limits:

Inpatient Competency Restoration	Outpatient Competency Restoration	Combination of Inpatient & Outpatient
29 Days	90 days	90 days, with the total period of inpatient not exceeding 29 days.

Restoration – Procedure for a Felony Charge



Review 10.77.086(1)(b) regarding alternative procedures if your client's highest charge is a Class Felony other than the following:

- Assault III – 1(d) and 1(f)
- Felony Hit & Run
- Felony Physical Control
- A Hate Crime Offense under RCW 9.94A.929
- A Class C Felony with a domestic violence or sexual motivation designation
- A class C sex offense

Inpatient Restoration Time Limits – Felony Charges

Period	Highest Charge	Maximum Time Limit
First Period of Restoration	Class A	90 Days
	Class B Violent under RCW 9.94A.030	90 Days
	Class B Non-Violent	45 Days
	Class C	45 Days
Second Period of Restoration	Any Felony	90 Days
Third Period of Restoration	Any Felony	Up to 6 months

Class C Felonies & Involuntary Medication

If the highest charge is a Class C Felony, other than the following felonies, and the defendant is admitted with an accompanying order for involuntary medication under RCW 10.77.092, and the defendant is found not competent following a period of restoration, the Court shall dismiss the charge(s) without prejudice and refer the defendant for civil commitment proceedings.

Felonies not included here:

- Assault III – 1(d) and 1(f)
- Felony Hit & Run
- Felony Physical Control
- A Hate Crime Offense under RCW 9.94A.929
- A Class C Felony with a domestic violence or sexual motivation designation
- A class C sex offense

If a Client is Found to be Not Restorable

- If at anytime during 10.77 proceedings, the Court finds, following notice and a hearing, a defendant is not likely to regain competency, the Court shall dismiss the proceedings without prejudice and refer the defendant for civil commitment evaluation or proceedings if appropriate.
- Individuals not competent to stand trial and not restorable shall not be referred for competency restoration services.

State v. Kiddler

- A trial court can dismiss a case without prejudice based on the Court finding a defendant is not likely to be restored; The fact that restoration services are not provided in a period exceeding the time allowed by statute for restoration can be the basis for a finding a defendant is not likely to be restored

Third Period of Restoration

A third period of restoration is only available if a finder of fact makes the following findings:

The Defendant:

(A) is a substantial danger to other persons; or

(B) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security.

AND

There is a substantial probability that the defendant will regain competency within a reasonable period of time.

Third Period of Restoration – Burden of Proof

- If the State wishes to commit a defendant to a third period of competency restoration, the burden is on the State.
- The statute itself is silent on the burden of proof required, but the Washington State Supreme Court has interpreted the silence of the statute to infer preponderance of the evidence is the proper standard of proof.



Who is the Fact Finder?

Trials pursuant to RCW 10.77 can be before a Judge or a Jury!

Demand a Jury!

Here's why...

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ELECTRONICALLY FILED
Heidi Percy
County Clerk
Snohomish County, WASH
Case Number [REDACTED]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,) Case No. [REDACTED]
Plaintiff,)
vs.) DEFENDANT'S DEMAND FOR JURY
[REDACTED])
Defendant.)

[REDACTED] by and through his attorney, Christine Olson, demands a jury for determination of future competency issues pursuant to RCW 10.77.086.

/s/ Christine M. Olson
CHRISTINE M. OLSON – WSBA # 46378
Attorney [REDACTED]

DEFENDANT'S DEMAND FOR JURY
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Snohomish County Public Defenders
2722 Colby Ave – Suite 200
Everett, WA 98201
(425) 339-6300

Whether to Commit a Defendant for a Third Period of Restoration is an Issue of Law

- RCW 10.77.086(7)(b) requires a fact finder to make findings before a defendant is committed for a third period of restoration.
- Whether to commit a defendant for a third period is however a question of law and is ultimately up to the Court.
- A verdict of “yes” from the Jury simply vests in the Court the authority to decide whether to commit an incompetent individual to a third period of restoration or not.

“If the court or jury make such a finding, the court may extend the period of commitment for up to an additional six months.”

The Length of the Third Restoration Period

- A jury does not decide whether to commit a defendant, nor does the jury decide for how long a defendant should be committed for.
- Even when a jury returns a verdict of “yes,” the Court can in fact decide not to impose any further restoration at all.
- If the Court does decide to impose a third period of restoration, the Court is also free to use its discretion and determine what a reasonable time should be, limited by a 180-day statutory maximum set by the legislature.

What is a “Reasonable Period of Time?”

- The Washington Court of Appeals, Division One, has defined “a reasonable period” as used in RCW 10.77 as the:

“period of time which is necessarily required to effectuate the overriding state interest in prosecuting felonies and protecting the public.”

Restoration Trials are subject to the Criminal Discovery Rules

- Proceedings to determine whether a defendant is competent to stand trial on criminal charges and whether further commitment is necessary is a criminal, not a civil proceeding.
- The criminal rules of discovery apply to restoration proceedings in a criminal case.

These proceedings have been determined to be criminal in nature because of the “fundamental liberty interests of pretrial detainees awaiting competency restoration.”

State v. Vevea, 23 Wn. App. 2d 171, 179-80, 514 P.2d 779 (2022)

Other Miscellaneous Things



Make Sure You Are Creating a Good Record For Appeal

- The party presenting an issue for review has the burden of providing an adequate record to establish such error and should seek to supplement the record when necessary.

Expired Court Orders

- Defendants cannot be held at the State Hospital without authority of law.
- Patients must be released from the hospital once a court order authorizing their detention expires unless a judge has signed a new order.

The State May Be Able to Refile Charges

- The statutory scheme of RCW 10.77 purposely allows the Court to revisit prior determinations of competency and the Court to reacquire criminal jurisdiction in cases previously dismissed pursuant to RCW 10.77 if there is a good faith basis to believe that the procedures outlined in RCW 10.77 will likely lead to the restoration of a defendant's competency to stand trial.
- By requiring that “charges shall be dismissed without prejudice,” the legislature reserved the State's ability to refile charges after a case is dismissed without prejudice pursuant to RCW 10.77.

Our Contact Information

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