



MEMORANDUM

July 21, 2023

TO: Superior Court and District Court Judges and Commissioners, Court Administrators, County Clerks, Prosecuting Attorneys, Defense Attorneys, and Law Libraries

FROM: Natasha Johnson, Sr. Legal Analyst
AOC, Legal Services and Appellate Court Support
Court Services Division (CSD)

RE: Summary of Changes for the Forensic Evaluation & Competency Restoration Forms, Based on [Laws of 2023, Ch. 453](#)

The table below outlines changes based upon newly enacted legislation.

Civil Commitment Forms & Proposed Changes:	
1.	<p>MP 201 Order for Competency Evaluation under RCW 10.77.060</p> <ul style="list-style-type: none"> ▪ This matter came before the court on the motion of <input type="checkbox"/> the attorney for the defendant <input type="checkbox"/> the prosecutor <input type="checkbox"/> the court <u>as to the defendant's competency based on sufficient facts</u> 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: <ul style="list-style-type: none"> <input type="checkbox"/> the felony crime/s listed in the charging document, dated _____ <input type="checkbox"/> the felony crime/s of _____ <p><u>The highest charge against the defendant is a</u></p> <ul style="list-style-type: none"> <input type="checkbox"/> Class A Felony <input type="checkbox"/> Class B Felony <input type="checkbox"/> Class C Felony <input type="checkbox"/> Class C specifically listed in RCW 10.77.086(1)(b)

	<p>Added at request of subcommittee members for use by state hospitals during evaluations</p> <ul style="list-style-type: none"> ▪ There is reason to believe that the defendant may have <u>an intellectual or developmental disability</u>. (Information regarding why it is believed the defendant may have <u>an intellectual or developmental disability</u> may be added here): ▪ <u>[] The court has been advised by a party that the defendant may have [], dementia [] traumatic brain injury or [] another relevant neurocognitive disorder.</u> ▪ <u>The court finds that there is a genuine doubt as to the defendant’s competency based on sufficient facts provided by counsel, judicial colloquy, and/or direct observation.</u> ▪ <u>The evaluator is also granted access to records of the Development Disabilities Administration of DSHS and to records of the Aging and Long-Term Support Administration of the Department, if the court has been advised the defendant may have a developmental disability, dementia, or another relevant neurocognitive disorder.</u> ▪ Updated the State Hospitals’ emails and include Forensic Navigators in the “Contact and Distribution List”
2.	<p>MP 203 Order Appointing a Forensic Navigator</p> <ul style="list-style-type: none"> ▪ Updated the State Hospitals’ emails in the “Contact and Distribution List”
3.	<p>MP 220 Order Finding Defendant Competent</p> <ul style="list-style-type: none"> ▪ 3. <u>Conclusions of Law. The defendant is competent to proceed in this matter. If the case is at the pre-trial stage, time is no longer excluded from the time for trial. If the case is at the post-trial stage, jurisdiction is no longer tolled.</u> [] If the case is at the pre-trial stage, time is no longer excluded from the time for trial pursuant to CrR 3.3/CrRLJ 3.3/JuCR 7.8. [] If the case is at the post-trial stage, jurisdiction is no longer tolled. RCW 10.77.050; State v. Campbell, 95 Wn.2d 954, 957 (1981). <p>Edited to consolidate conclusions based on subcommittee request</p> <ul style="list-style-type: none"> ▪ 4. <u>Within 24 hours of signing this order, the [] clerk [] prosecuting attorney or [] defense attorney shall provide this order to the jail facility where the defendant is currently held, if they are still in custody, and (check one of the following):</u>

DSHS Office of Forensic Mental Health Services/ Western State ofmhscourtorders@dshs.wa.gov
 Eastern State esh.eshfsuadmindeptemail@dshs.wa.gov
 Child Study and Treatment Center cstcforensicsteam@dshs.wa.gov

No. 4 was added at request of a subcommittee member who voiced concern with the State Hospitals not receiving these orders from the court because no one is directed to send it the appropriate hospital.

4.

MP 240 Order for Felony Competency Restoration Treatment

- Renumbered Clerk’s Action
- ~~2. Developmental Disability (check only if applicable).~~
 The court has been advised by _____ that the defendant may have a developmental disability.

2. Eligibility for Restoration. Intellectual Disability, Dementia, or Traumatic Brain Injury The court finds that the defendant is eligible for restoration under chapter 10.77 RCW.

No. 2 changed to reflect statutory changes. If a person is found to have an intellectual disability, dementia, or TBI and not restorable, then they cannot be referred for competency restoration services (and this order would be null and void) Subcommittee believes it’s important to the court and parties that the court notates in the order that the person is restorable.

- **3. Applicable Charge (only check the applicable box).** The highest charge against the defendant is a:
 - Class A felony or a Class B violent felony
 - Class B non-violent felony
 - Class C felony specifically listed in RCW 10.77.086(1)(b)
 - Class C felony other than those specifically listed in RCW RCW 10.77.086(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.
- Renumbered remaining sections
- **90 Days:** A second felony inpatient restoration period of 90 days and that the court finds that a second restoration period is appropriate under RCW 10.77.084 and RCW 10.77.086.
- Sec. 7: **Developmental Disabilities Professional.** DSHS shall appoint an evaluator who is a developmental disabilities professional because the court has been advised the defendant may have a developmental disability.

	<ul style="list-style-type: none"> ▪ Updated the State Hospitals' emails and include Forensic Navigators in the "Contact and Distribution List"
5.	<p>MP 250 Order for Misdemeanor Competency Restoration Treatment</p> <ul style="list-style-type: none"> ▪ 4. Developmental Disability. The court finds the defendant [] has [] does not have a developmental disability. ▪ <u>4. Eligibility for Restoration. The court finds that the defendant is eligible for restoration under chapter 10.77 RCW.</u> <p>No. 2 changed to reflect statutory changes. If a person is found to have an intellectual disability, dementia, or TBI and not restorable, then they cannot be referred for competency restoration services (and this order would be null and void) Subcommittee believes it's important to the court and parties that the court notates in the order that the person is restorable.</p> <ul style="list-style-type: none"> ▪ Sec. 6: Moved "Inpatient Treatment" option to follow "Outpatient Treatment" because the new presumptive for misdemeanor offenses is outpatient treatment <p>[] Outpatient Treatment (CROROP). The defendant shall be placed on conditional release for up to 90 days for mental health treatment and restoration of competency pursuant to RCW 10.77.088. DSHS has certified, as of the date of this order, that there is an available appropriate outpatient restoration program that has adequate space for the defendant at the following outpatient restoration program:</p> <p>The defendant is clinically appropriate for outpatient competency restoration treatment. The defendant must adhere to medications or receive prescribed intramuscular medication, abstain from alcohol and non-prescribed drugs, comply with any court ordered urinalysis or breathalyzer monitoring, and follow other rules and conditions for participation established by DSHS. The court must modify the conditions of release as needed to authorize the department to place the person in approved housing.</p> <ul style="list-style-type: none"> ▪ Sec. 8: [] <u>Developmental Disabilities Professional. DSHS shall appoint an evaluator who is a developmental disabilities professional because the court has been advised the defendant may have a developmental disability.</u> ▪ Updated the State Hospitals' emails and include Forensic Navigators in the "Contact and Distribution List"

6.

MP 260 Order Dismissing Felony Charges and Directing Civil Commitment Evaluation

- **5. Commitment for Civil Commitment Evaluation.** For the purpose of filing a civil commitment petition under chapter 71.05 RCW, the defendant is committed to the ~~state hospital~~facility chosen by the department for up to:

[] 72 hours for evaluation, if the defendant previously engaged in inpatient competency restoration services for this case,

OR

[] 120 hours for evaluation, if the defendant has not undergone competency restoration services or has engaged in outpatient competency restoration for this case.

The 72 or 120 hours starts from admission to ~~the state hospital~~a facility operated or contracted by DSHS, but excludes Saturdays, Sundays, and legal holidays. If at the time the order to dismiss the charges without prejudice is entered by the court the defendant is already in a facility operated or contracted by the department, the 72-hour or 120-hour period shall instead begin upon department receipt of the court order.

- **6. ~~Admission to State Hospital~~ Referral to the Department.**

[] The defendant shall be held in the jail/detention facility for a maximum of 14 days from DSHS receiving the court order, or a maximum of 21 days from signature of this order, pending ~~admission to the state hospital~~ referral to the department for placement in a facility operated or contracted by DSHS for civil commitment evaluation. The defendant shall be transported to the ~~state hospital~~facility as agreed by ~~it~~ the state hospital and the jail/detention facility.

[] The defendant is currently in ~~the state hospital~~ a facility operated or contracted by DSHS and no further transport is needed.

- Updated the State Hospitals' emails and include Forensic Navigators in the "Contact and Distribution List"