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October 30, 2019

TO: Judges, Commissioners, County Clerks, Court Administrators, Libraries, Attorneys, and Public

FROM: Ashley Tam, AOC Sr. Legal Analyst

RE: Summary of Changes to 10.77 RCW Forms (July 2019)

The Washington Pattern Forms Committee updated the 10.77 RCW mandatory and optional pattern forms to implement sections of legislation effective July 28, 2019, specifically:

* Laws of 2019, ch. 248, SB 5205, Persons Incompetent to Stand Trial—Firearm Possession.
* Laws of 2019, ch. 326, 2ESSB 5444, Forensic Mental Health Care—Competency Evaluations and Restoration.

These forms were also updated for other reasons, including to account for changes in law, address user feedback, improve form accuracy, and increase the clarity of information contained on these forms.

Note: This guide shows what changes have been made to the forms. Strikethroughs indicate deletions and underlines indicate additions. Please refer to the current version of each form to ensure proper formatting, including indentation, spacing, and font size.

**Changes**

**1. All Updated Forms**

Checkboxes “[ ] ” have been replaced with brackets “[ ]” in all updated forms for accessibility reasons. These changes are only identified in the Summary of Changes when other updates were also made in the same section of the form.

 Dates in the footers were changed to reflect the last revised date, which is 07/2019 unless noted otherwise below.

**2. DOB (Date of Birth) in Caption and Uniform Signature Block**

A “DOB” field has been added if it was previously missing in the caption of the updated forms. Note: The DOB change will only be identified in the Summary of Changes on a form, if other changes were made to the caption on that same form.

 A uniform judge and attorney signature block has been added to updated forms, except for on form MP 001.

 Generally, the signature block on these forms has been updated to include fields for the judge and attorneys to “Print Name.” “[ ]  Agreed” and the checkbox before “Approved as to form” have been removed. Note: See the current version of form MP 201 as a sample of the new signature block.

**3. MP 001 – Notice of Ineligibility to Possess a Firearm**

This form is used for both 71.05 RCW and 10.77 RCW proceedings. The changes to this form were primarily related to changes to 10.77 RCW.

The left side of the caption was changed on this form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Plaintiff/Petitioner~~,~~

~~and~~ vs.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Defendant/Respondent~~.~~

DOB:\_\_\_\_\_\_\_\_\_\_\_\_

At the beginning of the form, we have made the following changes:

[ ] the court committed you for mental health treatment under ~~C~~chapter 71.05 RCW, ~~C~~chapter 71.34 RCW, or ~~C~~chapter 10.77 RCW.

[ ] the court dismissed the criminal charges against you under RCW 10.77.088, and the court has found that you have a history of one or more violent acts.

***You are required to immediately surrender any concealed pistol licenses. You may not possess a firearm until your right to do so has been restored by a court of record.***

This notice has been read to the ~~d~~Defendant/~~r~~Respondent.

Under The date of commitment, we have made the following changes:

The date of dismissal under RCW 10.77.088:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

~~[ ]~~ [ ] A copy of the Defendant/Respondent’s ~~D~~driver’s ~~L~~license or identicard is . . .

At the end of the form, we have made this change:

**The Court Clerk** **Submits to** . . .

**4. MP 201 – Order for Competency Evaluation**

This form was updated twice in July.

RCW 10.77.073 (Competency to stand trial—Evaluation—Appointment of qualified expert or professional person) expired on June 30, 2019. On July 1, 2019, the following option was removed from section 2. Evaluator:

~~[ ]  County appointed evaluator: a qualified independent expert appointed under
RCW 10.77.073 to perform an in-custody evaluation. All terms of the remainder of this order, including timelines, access to records, the contents of the report, and access to the defenda~~n~~t, shall apply if the independent expert is used for the evaluation.~~

At that time, MP 201 was updated with a footer date of 07/01/2019.

 This form was updated again at the end of July with the following changes.

 The caption was updated:

|  |  |
| --- | --- |
|  , Plaintiff~~,~~vs. , DefendantDOB:\_\_\_\_\_\_\_\_\_\_\_\_ | **No.****Order for Competency Evaluation under RCW 10.77.060** **(ORCE)** **Clerk’s Action Required: para.43 (interpreter), ~~7, 9~~6, 8**  |

In the introductory paragraph of the form, a comma was removed:

**This matter** came before the court on the motion of ~~[ ]~~ [ ] the attorney for the defendant ~~[ ]~~  [ ] the prosecutor ~~[ ]~~  [ ] the court~~,~~ who has reason to doubt. . .

Under “The defendant is charged with:” the spelling of “non-felony” has been corrected to match the statutory spelling of “nonfelony” in three places.

Combine sections and renumbering:

Former sections 1 and 2 have been combined into a new section 1. “Evaluator.” has been removed from the former section 2 heading.

All other section numbers have been reduced by one number in the new form.

 The heading of former section 3 was changed as follows:

 **Place of ~~Examination (~~*~~Check only one~~*~~):~~ Evaluation.** The evaluation shall occur at the following location (*check only one*):

 Under former section 3>option Evaluation in a **Jail/Detention Facility**:

The defendant is held in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Jail/Detention ~~Ff~~acility . . .

 Under former section 3>option **In-Patient Evaluation**:

 “or” is now “Or” in two places.

 Under former section 3>option **In-Patient Evaluation**>third suboption:

 If the defendant is released from Jail/Detention ~~F~~facility or released . . .

 At the bottom of former section 3:

 Remove hyphen (“-”) from “in-custody.”

Under former section 4, remove:

~~[ ]  Defense attorney is unavailable in the next \_\_\_\_ days. The court finds that there is good cause to delay the completion of the competency evaluation to permit the defense attorney to attend. The evaluation will be scheduled as soon as reasonably possible.~~

Under former section 5:

The colon (“:”) after the Report Content and Distribution heading was removed.

The period (“.”) was replaced with a semicolon (“;”) at the end of the NON-FELONY, SERIOUS OFFENSE section.

Former section 6 was changed as follows:

**Timing~~:~~**

Evaluation: The evaluation shall be completed and the report distributed within the timelines set out under RCW 10.77.065 and .068 and relevant legal authority~~.~~, including: *Trueblood v. Washington State Department of Social and Health Services,* 101 F. Supp. 3d 1010 (W.D. Wash. 2015), *vacated on other grounds,* 822 F.3d 1037 (9th Cir. 2016); [*Trueblood v. Washington State Department of Social and Health Services*, No. C14-1178 MJP](http://www.courts.wa.gov/forms/documents/Trueblood%20Order%20Adopting%20Parties%20Mediated%20Settlement%20Agreement%20C14-1178%20MJP.pdf), 2017 WL 1488479, 2017 U.S. Dist. LEXIS 65532 (W.D. Wash. Apr. 26, 2017) (Order Adopting (in Part) the Parties’ Mediated Settlement Agreement).

**In-jail Evaluations**: Defendant shall be evaluated in-jail and the evaluation report distributed within 14 days of the receipt of this order or 21 days from the signature date of this order, whichever is shorter.

**Inpatient Evaluations**: In-jail defendants who are ordered to receive an inpatient evaluation shall be admitted within 7 days of receipt of this order or 14 days from the signature date of this order, whichever is shorter. Distribution of an evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant.

**Out-of-custody Evaluations**: Pursuant to RCW 10.77.068, there is a performance target of 21 days or less for an out-of-custody evaluation and the distribution of the evaluation report.

In the first sentence of former section 7:

Remove the subsections from RCW 10.77.060~~(1)(b)~~.

In the second paragraph of former section 7, added “that”:

“In consideration of the urgent nature of this evaluation, it is ordered that all records. . .”

Under former section 11, the following changes were made:

[ ] All time from the entry of this order and during this examination period and until this court enters an order finding the defendant to be competent to proceed is excluded from the calculation of time for trial under CrR 3.3~~(g)(1)~~, CrRLJ 3.3~~(e)(1)~~, and JuCR 7.8~~(e)(1)~~.

[ ] The case is at the post-sentencing stage. Jurisdiction is tolled. RCW 10.77.050; *State v. Campbell,* 95 Wn.2d 954, 957 (1981)*.*

In the footer:

We have updated the revise date for the form to 07/28/2019 and added RCW citations: “RCW 10.77.060, 065, .068.”

**5. MP 210 – Order Amending Initial Order for Competency Evaluation and Appointing Independent Expert**

MP 210 has been removed from the court form website because the basis for the form, [RCW 10.77.073](https://app.leg.wa.gov/rcw/supdefault.aspx?cite=10.77&full=true#10.77.073) (Competency to stand trial—Evaluation—Appointment of qualified expert or professional person) expired on June 30, 2019.

**6.** **MP 220 – Order Finding Defendant Competent**

 Each section heading is now numbered: 1. Introduction, 2. Findings of Fact, and 3. Conclusions of Law.

The Introduction Section was simplified:

The findings, conclusions, and order are based ~~on~~ upon:

~~[ ]~~  [ ] an agreement of the parties.

~~[ ]~~ [ ] a hearing. The following people attended:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

 ~~[ ]  Plaintiff’s Lawyer.~~

 ~~[ ]  Defendant.~~

 ~~[ ]  Defendant’s Lawyer.~~

 ~~[ ]  Other:~~

~~The court considered the following:~~

~~[ ]~~ [ ] ~~R~~report(s) of .

~~[ ]~~ [ ] ~~T~~testimony of witnesses.

~~[ ]~~ [ ] ~~A~~admitted exhibits.

~~[ ]~~ [ ] ~~O~~other:

.

The options in the Conclusions of Law section were updated:

[ ] ~~The tolling provisions of~~ 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/JuC~~r~~R 7.8 ~~no longer apply~~.

[ ] 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).

**7.** **MP 240 – Order for Felony Competency Restoration Treatment**

This form was significantly updated to comply with the Laws of 2019, ch. 326, 2ESSB 5444, Forensic Mental Health Care—Competency Evaluations and Restoration, and *Trueblood v. Washington State Department of Social Health Services*.

We ask that you use the new version of this form.

**8. MP 250 – Order for Misdemeanor Competency Restoration Treatment**

This form was significantly updated to comply with the Laws of 2019, ch. 326, 2ESSB 5444, Forensic Mental Health Care—Competency Evaluations and Restoration, and *Trueblood v. Washington State Department of Social Health Services*.

We ask that you use the new version of this form.

**9. MP 260 – Order Dismissing Felony Charges and Directing Civil Commitment Evaluation**

In the caption, the following changes were made:

|  |  |
| --- | --- |
| **State of Washington** , Plaintiff~~,~~vs., Defendant~~.~~DOB: \_\_\_\_\_\_\_\_\_\_\_\_ | **No.****Order Dismissing Felony Charges and Directing Civil Commitment Evaluation****(ORDSMWO, ODIVTE)****Clerk’s Action Required**: **~~para~~ 4,** [ ] **7** **~~[ ]~~**  |

Under the Introduction section, the options were simplified and subsections removed (all options are aligned):

 The court considered the following:

[ ] The report dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of a “professional person” as defined in RCW 10.77.010.

~~[ ]~~  [ ] ~~By~~ The agreement of the parties.

~~[ ]  After notice and a hearing on the defendant’s competency following:~~

~~[ ]  the competency evaluation,~~

~~[ ]  restoration efforts by the Department of Social and Health Services (DSHS),~~

~~the court considered:~~

~~[ ]  The report of the competency evaluator who is a “professional person” as defined in RCW 10.77.010.~~

~~[ ]  The reports previously filed by~~

 ~~and the current report of .~~

~~[ ]~~  [ ] Other .

Under section 1. Competency to stand trial:

~~[ ]~~  [ ] understand the nature of the proceedings against him/herself~~.~~ ; and/or

~~[ ]~~  [ ] assist in his/her own defense.

Under section 2. Restorability:

~~The [ ]~~  [ ] The defendant has undergone competency restoration treatment~~.~~, and

~~[ ]~~  [ ] The ~~D~~defendant is unlikely to regain competency.

~~[ ]~~  [ ] The period of treatment has ended and defendant’s competency has not been restored. Further treatment is not likely to restore competency.

[ ] Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Under section 3. Felony Charge:

**Felony Charge**. The defendant is charged with the felony offense(s) of:

 ~~, a felony/felonies~~.

The heading for section 6 has been updated:

**Admission to ~~DSHS Facility~~ State Hospital.**

The first option for section 6 has been changed to incorporate additional RCW language:

~~[ ]~~ [ ] The defendant is remanded into custody to be detained, transported, and delivered to the designated DSHS facility.  The defendant may be held in custody no longer than ~~seven days~~ the time limits in RCW 10.77.068 and other applicable law before being transported to the DSHS facility and shall be released if not transported~~.~~  within the 14-day period. The defendant is remanded into custody to be detained, transported, and delivered to a state hospital. The defendant shall be transported within a target of seven days or less, but in no event more than fourteen days. The time period shall commence on the date on which the state hospital receives the court referral and charging documents, discovery, police reports, the names and addresses of the attorneys for the defendant and state or county, the name of the judge ordering the evaluation, information about the alleged crime, and criminal history information related to the defendant.

Under section 7:

The option for “~~[ ]  prosecuting attorney~~” has been removed.

The RCW references in the footer have been updated to:

RCW 10.77.068, 084, ~~.086~~

**10. MP 270 – Order Dismissing “Serious Nonfelony” Charge and Directing Referral or Release**

The caption has been updated:

|  |  |
| --- | --- |
|  , Plaintiff~~.~~vs. , Defendant~~.~~DOB: \_\_\_\_\_\_\_\_\_\_\_\_ | No.**Order Dismissing “Serious Nonfelony” Charge and Directing Referral or Release****(ORDSMIN, ORDSMWO, RIVTE, ORRL)**[ ] **Clerk’s Action Required: 4, 7** |

 The use note has been updated:

*Use this form for when competency restoration treatment was unsuccessful or unlikely to be successful.*

The Introduction section has been simplified:

~~[ ]  By agreement of the parties.~~

~~[ ]~~ After notice and a hearing on the defendant’s competency following:

~~[ ]~~ [ ] the competency evaluation, or

~~[ ]~~ [ ] restoration efforts by the Department of Social and Health Services (DSHS) or a facility or provider determined by DSHS or under the guidance and control of a professional person,

the court considered:

~~[ ]  The report of the competency evaluator who is a “professional person” as defined in RCW 10.77.010.~~

~~[ ]  The report/s of .~~

~~[ ]  Other~~

 .

 The heading has been updated:

 **Findings of ~~f~~Fact and ~~c~~Conclusions of ~~lL~~aw**

Under section 1. Nature of Charges:

The court finds by clear and convincing evidence that the defendant is charged with the serious nonfelony crime of , which is a serious offense because:

~~This is a serious offense because~~

~~[ ]~~  [ ] ~~i~~It is listed in RCW 10.77.092~~(1)~~ as a serious offense per se.

~~[ ]~~  [ ] ~~t~~The court determined it is a serious offense pursuant to RCW 10.77.092~~(2)~~. In making that determination, the court considered the following factors:

The heading of section 2 has been changed to reflect the statutory defined term in RCW 10.77.010(15):

**Incompetency to Stand Trial.**

Under section 3. Restorability:

~~[ ]~~ [ ] **No ~~t~~Treatment ~~o~~Ordered.** The defendant has not undergone any competency restoration treatment.

~~[ ]  The parties agree that:~~

~~[ ]~~ [ ] **Restoration Unlikely.** The court has determined that~~:~~ the defendant is unlikely to regain competency within the treatment period allowed by RCW 10.77.088~~(1)~~.

[ ] **Other:**

~~[ ]~~ [ ] **Treatment was pPreviously ~~o~~Ordered**. Defendant has undergone treatment in accordance with 10.77.088 as follows *(check all that apply)*:

~~[ ]~~ [ ] **Inpatient** competency restoration treatment ~~pursuant to
RCW 10.77.088(1)(a)~~.

~~[ ]~~ [ ] **Outpatient** mental health treatment and competency restoration ~~pursuant to RCW 10.77.088(1)(a)~~.

~~[ ]~~ [ ] **Combined** **~~i~~Inpatient and** **~~o~~Outpatient** mental health treatment and competency restoration ~~pursuant to RCW 10.77.088(1)(a)~~.

~~and:~~

 After receiving treatment:

~~[ ]~~  [ ] The court concludes that the ~~D~~defendant is not likely to regain competency.

or

~~[ ]~~  [ ] The maximum allowable period of treatment ~~of~~ for treatment . . .

For the heading of section **4.** **Dismissal Without Prejudice**:

Add the docket code “(ORDSMWO)” to the end of the heading.

For the heading of section 5, move RCW to the end:

 “~~RCW~~ Ch. 71.05 RCW.”

 Under section 5.:

The court refers the defendant for civil commitment evaluation under ~~RCW~~ ~~C~~ch. 71.05 RCW.

 Under section 5, for the option of Defendant in Custody**:**

“Jail/Detention Facility” changed to “Jail/Detention facility”.

 Under section 5, Defendant in Custody>Evaluation at Treatment Facility:

. . . on the next judicial day after this order is signed, and ends at a.m./ p.m. ~~O~~on (date) .

Under section 5, Defendant in Custody>Evaluation in Custody:

The subsection in RCW10.77.088~~(1)~~ has been removed in both suboptions.

Under section 5, Defendant on Conditional Release:

The defendant is on conditional release. The designated crisis responder (DCR) for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County shall evaluate the defendant pursuant to ~~chapter~~ ch. 71.05 RCW.

 The heading for section 6 has been changed to:

~~[ ]~~  [ ] **Release of ~~d~~Defendant ~~c~~Currently ~~s~~Subject to ~~RCW~~ Ch. 71.05 RCW ~~p~~Proceedings.**

We have added a new section 7 to implement the Laws of 2019, ch. 248, SB 5205, Persons Incompetent to Stand Trial—Firearm Possession.

**History of One or More Violent Acts.**

[ ] The defendant **does have** a history of one or more violent acts as defined in
RCW 10.77.010. The defendant shall immediately surrender any concealed pistol licenses and the defendant may not possess a firearm unless the defendant’s right to do so is restored by a court of record. The *Notice of Ineligibility to Possess a Firearm* is filed separately. **(ORDSMIN)**

[ ] The defendant **does not have** a history of one or more violent acts. **(ORDSMWO)**

The “Other” section:

We has been renumbered former section 7 to section 8, and added a colon (“:”) after the heading.

In the footer, we have added a docket code and removed the subsection from statutory citation:

Order Dismissing “Serious Nonfelony” Charge (ORDSMWO, ORDSMIN, RIVTE, ORRL) . . . . . .RCW 71.05.235~~(1)~~

**11. MP 275 – Order Dismissing Nonserious Nonfelony Charges – Order to Release or Detain**

The caption has updated:

|  |  |
| --- | --- |
|  , Plaintiff~~,~~vs. , Defendant~~.~~DOB: \_\_\_\_\_\_\_\_\_\_\_\_\_ | No.**Order Dismissing Nonserious Nonfelony Charges – Order to Release or Detain** **(ORDSMIN, ORDSMWO)****[ ] Clerk’s Action Required: 1**  |

Under section 1, we have updated the form to implement the Laws of 2019, ch. 248, SB 5205, Persons Incompetent to Stand Trial—Firearm Possession:

**1.** **Nonserious Offense**. The defendant is charged with the nonfelony crime(s) ~~of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_~~ which is/are not serious offense/s as defined in RCW 10.77.092.

[ ] The defendant **does have** a history of one or more violent acts as defined in RCW 10.77.010. The defendant shall immediately surrender any concealed pistol licenses and the defendant may not possess a firearm unless the defendant’s right to do so is restored by a court of record. The *Notice of Ineligibility to Possess a Firearm* is filed separately. **(ORDSMIN)**

[ ] The defendant **does not have** a history of one or more violent acts. **(ORDSMWO)**

Under section 4:

“Designated Mental Health Professional (DMHP)” has been updated to currentterminology, “designated crisis responder (DCR)”.

Under section 6:

“DMHP” has been replaced with “DCR” in two places.

In the footer:

We added docket code, ORDSMIN, before ORDSMWO.

In addition, the RCW citations have been shortened to remove statutory subsections and repetitive language, leaving “RCW 10.77.084, .088”.