THE 2002 PRACTITIONER'S GUIDE TO HANDLING COMPETENCY AND INSANITY ISSUES IN COURTS OF LIMITED JURISDICTION

By Michael J. Finkle
Supervisor, Special Operations Unit
Criminal Division, Seattle City Attorney's Office[1]

Prepared for

Fall Conference of the
Washington State Association of Municipal Attorneys
October 2-4, 2002
Pasco, WA

and

Annual Conference of the
Washington Association of County Designated
Mental Health Professionals
October 4, 2002
Olympia, WA

[1] This paper reflects the views and conclusions of the author; those views and conclusions are not necessarily those of the Seattle City Attorney, the Seattle City Attorney's Office, or any division or section thereof. The author makes neither express or implied warranties in regard to the use of these materials and/or forms. Each attorney must depend upon his or her own legal knowledge and expertise in the use or modification of these materials. If you would like to receive e-mail copies of this paper or any of the form orders contained in the exhibits, please contact the author by telephone at 206-684-7734, or by e-mail at mike.finkle@seattle.gov.

TABLE OF CONTENTS

I. INTRODUCTION.

One of the most challenging areas of misdemeanor practice in courts of limited jurisdiction[2] is handling defendants with severe mental health issues. Previously, the applicable statutes dealing with competency and insanity in non-felony cases provided relatively few options to criminal prosecutors and judges. As practitioners should by now be well aware, the legislature has adopted a comprehensive set of amendments to the statutory scheme over the past few years. The challenge for misdemeanor prosecutors and municipal and district court judges is to understand and implement the competency and insanity statutes. Fortunately, we have seen a statewide increase in awareness of these issues by prosecutors, defense attorneys and judges. Unfortunately, the law is an evolving process, and we still have a way to go before all of the players in the system are comfortable handling these issues.

The purpose of this paper is to provide a basic approach to handling competency and insanity issues in courts of limited jurisdiction, in light of the evolving legal and public safety issues. This is the fifth iteration of the guide since 1997, and it is extremely likely that subsequent updates will be appropriate.[3] Model orders are provided for handling the vast majority of circumstances likely to arise. You may want or need to tailor them to your specific situation or jurisdiction.

There are two primary sources of law relating to mental health issues that affect criminal cases. RCW Ch. 10.77 governs competency, insanity and diminished capacity in felony and non-felony criminal proceedings. RCW Ch. 71.05 governs civil commitment proceedings for adults based on a mental disorder.[4] By statute, civil commitment proceedings are handled by the county prosecutor for the county in which the subject is being held or by the Attorney General's Office, depending on the nature and location of the hearing. This paper will focus on RCW Ch. 10.77, although it will refer occasionally to relevant provisions of RCW Ch. 71.05. All statutory references are to the statutes effective as of July 1, 2002, unless otherwise specifically noted.

---

[2] The phrases "misdemeanor" and "non-felony" are used interchangeably in this paper. The phrases include all non-felony criminal charges, other than those involving juveniles, regardless of the maximum possible punishment.

[3] Excerpts from the 2000 version of this paper have appeared with the author's permission in Chapter XVII, Part Two ("Criminal Trial Practice and Techniques: Misdemeanor Criminal Practice in Courts of Limited Jurisdiction") of the Washington Lawyers Practice Manual, published in 2002 by the King County Bar Association. Excerpts from this paper will appear with the author's permission in the 2003 edition of Chapter XVII, Part Three of the Washington Lawyers Practice Manual. Any excerpts from either the 2002 or 2003 edition that are reproduced here are with the permission of the author and of the King County Bar Association.

[4] RCW Ch. 70.96A applies to involuntary commitment of adults based on alcoholism or chemical dependency. RCW Ch. 71.34 applies to involuntary commitment of minors based on a mental disorder. All references in this paper to "civil commitment" are to proceedings pursuant to RCW Ch. 71.05 only.

Sections II and III of this paper define common terms of art used in the mental health field and throughout the paper, and summarize some of the relevant statutory provisions. Section IV introduces the topics of competency to stand trial and competency to proceed post-judgment matters such as sentencing or a probation revocation hearing. It discusses the stages at which competency may arise, and describes in detail the practical issues and conceptual problems that may be encountered. Section V discusses insanity issues, as well as the diminished capacity defense. Section VI highlights special responsibilities of the Court. Finally, section VII discusses the various form orders in detail, and explains the purpose of the different provisions in them.

II. GLOSSARY OF TERMS.

As lawyers, we are programmed from birth (*i.e.*, from the start of law school) to use jargon. Jargon is like another language to an outsider, and can be the cause of misunderstanding and miscommunication. The areas of competency and insanity in the criminal arena have their own jargon, and it is easy to become confused or to misunderstand issues unless one is familiar with several terms. As with any language, some terms are in general use, while others are specific to geographic areas. Here is a glossary of terms used throughout this paper.

CDMHP. The letters literally stand for the words "County Designated Mental Health Professional." Every county must have a CDMHP, who initiates the civil commitment process under RCW Ch. 71.05 when the statutory requirements are met. In a so-called "emergency petition," the CDMHP initiates the civil commitment process by having a person taken into emergency custody at an evaluation and treatment facility for up to 72 hours. In a so-called "non-emergency petition," the CDMHP initiates the process by filing a petition asking the Superior Court to issue an order requiring the person to appear at an evaluation and treatment facility for up to 72 hours. In some counties, such as King County, the CDMHP is actually a group of mental health professionals (**MHPs**) who are employed directly by the county. In other counties, the CDMHP is a mental health professional (or group of them) who provides services to the county on a contract basis. CDMHPs are MHPs with specialized training in crisis work and the civil commitment statutes.

Civil Commitment (aka Involuntary Commitment). This refers to a proceeding under RCW Ch. 71.05 to commit an adult involuntarily for mental health treatment, at a mental health evaluation and treatment facility. The treatment may be either on an inpatient basis or an outpatient basis. Following an initial CDMHP-initiated detention for up to 72 hours, the evaluation and treatment facility or the CDMHP refers the case to the county prosecutor, who declines to proceed or presents the case to the Superior Court. A civil commitment proceeding is often confused with competency or sanity proceedings under 10.77, but they are separate proceedings brought in different courts. *A person can be incompetent, or insane, or civilly commitable, or any one or more of them, at the same*

*time***.** A person may be civilly committed for an initial 72-hour period,[5] followed by a 14-day period, followed by a 90-day period, and followed by a 180-day period. The facility may file a petition for an additional 180-day period prior to the end of the preceding 180-day period, and may continue to file renewal petitions for 180-day periods as long as the person continues to meet the civil commitment criteria. In lieu of 14-day, 90-day or 180-day inpatient commitments, a **Less Restrictive Alternative** into an outpatient treatment program may be imposed. (*See* **Less Restrictive Alternative** below.)

Competency. This is a statutory term, referring to the defendant's capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect. RCW 10.77.010(14). A defendant who possesses the requisite capacity is **competent**; a defendant who does not possess it is **incompetent**. Competency is determined *at the time of the particular proceeding*.

Conditional Release (aka CR). In the context of a misdemeanor prosecution, a conditional release means that the defendant is released from custody to an outpatient treatment program following proceedings under RCW Ch. 10.77. For competency proceedings, a non-felony defendant who has been found incompetent and who has the requisite history can be conditionally released from custody to undergo up to 90 days of outpatient competency restoration treatment. For insanity proceedings, a non-felony defendant who has been acquitted by reason of insanity and about whom the requisite factual findings have been made can be conditionally released to an outpatient treatment program. The phrase **Conditional Release** is also used in mental health contexts beyond misdemeanor prosecutions.

Diminished Capacity. This is a defense to a criminal charge based on the defendant's lack of capacity to form the particular state of mind required by the charge. It is a challenge to one of the elements of the crime, namely, the state of mind. For example, a defendant could argue that, because of a mental illness or disorder, the defendant lacked the capacity to form the specific intent to assault the victim, and therefore was not guilty of assault. *See* WPIC 18.20 for further discussion.

Dispositional Continuance (or Stipulated Order of Continuance or SOC). The phrase "dispositional continuance" refers to an agreement between the prosecution and defense in which the case is continued upon certain conditions without a formal entry of a guilty finding. If the defendant completes the conditions, the charge is amended or dismissed. If the defendant does not complete the conditions, the prosecution must bring

[5] RCW 71.05.150(2) authorizes a CDMHP to detain a patient for up to 72 hours without prior court order if the person is in imminent likelihood of serious harm or presents an imminent danger of meeting the criteria under 71.05. This is often referred to as an emergency petition. If there is no imminence, then the CDMHP must obtain prior Superior Court approval to detain the person for up to 72 hours. RCW 71.05.150(1). This is often referred to as a non-emergency petition.

a revocation hearing, which is similar to a probation violation hearing in a case in which the court has entered a finding of guilty. If the Court revokes the dispositional continuance, the Court reads the police report and determines solely from that whether the defendant is guilty of the charges. In some jurisdictions, dispositional continuances are also referred to as a **Stipulated Order of Continuance**, or **SOC**.

Eastern, or Eastern State Hospital. Eastern is one of the two state-run mental hospitals, and is located in Spokane County. The other is Western State Hospital, which is located in Pierce County.

Insanity. *See* **Sanity** below.

Involuntary Commitment. *See* **Civil Commitment** above.

Jail Psychiatric Staff (aka Jail Psych Staff, aka Psychiatric Evaluation Staff). This term is specific to King County. Jail Psychiatric Staff are mental health professionals (**MHPs**) who are employed by the King County Department of Adult Detention. They prescreen in-custody defendants with mental health issues, and often provide brief reports to the arraignment judge, the prosecutor, and the defense attorney. The reports usually identify, in very general terms, any mental health issues, and often provide an opinion as to whether competency **may** be at issue. Jail Psychiatric Staff often refer defendants directly to the CDMHP for possible civil commitment proceedings. Although they are often confused with CDMHPs, they are not the same. And despite the moniker of "psychiatric" staff, they generally are not psychiatrists.

Less Restrictive Alternative (aka LRA). If the Superior Court finds that, as a result of a mental disorder, a person presents a likelihood of serious harm or is gravely disabled, the Court may order the person into either inpatient or outpatient treatment for a period of 14, 90 or 180 days. If the Court orders inpatient treatment, the person may still be released into outpatient treatment. The outpatient treatment, whether ordered initially or as a release from inpatient treatment, is referred to as a less restrictive alternative (LRA). Typically, this less restrictive alternative involves placement somewhere in the community. If a person violates the terms of an LRA, the LRA can be revoked and the person placed into inpatient treatment.

MHP. The letters stand for "mental health professional", and refer to any professional in the mental health area. This is a term of art in the mental health field, and is defined differently in different statutes. In the context of RCW Ch. 10.77, MHP is not defined; although a "professional person" is a duly licensed psychiatrist or psychologist, or a social worker with a masters or further advanced degree. But under RCW Ch. 71.05, a "mental health professional" can also include psychiatric nurses and others as defined by rule of the Department of Social and Health Services. *Compare* RCW 10.77.010(17) *with* RCW 71.05.020(21).

Probation. A defendant who has pled guilty or been found guilty, will be given either a deferred sentence or a suspended sentence, subject to various conditions such as commit no criminal law violations. There may be other conditions such as obtaining treatment, having no contact with an alleged victim, etc. Such a defendant is often referred to as "being on probation." A defendant who reports to a probation officer or whose compliance with conditions is monitored by a probation officer is considered on "formal" or "monitored" probation. A defendant who does not report to a probation officer and whose compliance with conditions is not monitored except by way of court hearings is considered on "informal" or "non-monitored" compliance. A defendant who has entered into a **dispositional continuance** (*see* above) or a deferred prosecution[6] is not on probation in the purest sense of the word. But as a matter of general practice within the state, such a defendant is treated as if he/she is on probation in the same way as a defendant who has actually been found guilty.

Probation Violation. Probation violation refers to a circumstance in which a defendant has failed to comply with any condition of probation. A defendant has a right to a hearing before a judge on the issue of whether he/she has committed the probation violation. Essentially the same standard is applied whether the defendant's "probation" is on a deferred or suspended sentence on the one hand or a dispositional continuance on the other hand.

RILF. This is a euphemism used in Seattle Municipal Court to denote a very specific type of probation violation. The basis for the probation violation in a RILF is that the defendant has committed a new criminal violation with the same jurisdiction, and the prosecution has decided to prosecute the new violation by way of a probation violation rather than by filing a new criminal charge.

Sanity. This is a statutory term. It refers to a defendant's capacity to perceive the nature and quality of the act(s) with which he or she is charged or to tell right from wrong with reference to the particular act(s) charged, as a result of mental disease or defect at the time of the commission of the alleged offense(s). RCW 9A.12.010. A defendant who lacked the capacity at the time of the offense as a result of mental disease or defect is entitled to be **acquitted by reason of insanity.** Sanity is determined *at the time of the alleged offense*.

SB 6214. The legislature enacted Second Substitute Senate Bill 6214, Chapter 297, Laws of 1998, to bring about sweeping amendments to several portions of RCW Ch. 10.77 and RCW Ch. 71.05, as well as other chapters. Virtually all of the sections within

[6] *See* RCW Ch. 10.05. This is a statutory form of dispositional continuance, in the sense that there is no formal finding of guilt entered unless the defendant fails to comply with the conditions of the deferred prosecution. In most, if not all, court systems, a defendant's compliance with the terms of a deferred prosecution are monitored through formal probation.

RCW Ch. 10.77 that this paper discusses were amended by SB 6214 or one of the technical clean-up bills passed shortly thereafter.

Stipulated Order of Continuance or SOC. *See* **Dispositional Continuance** above.

Western, or Western State Hospital. *See* **Eastern, or Eastern State Hospital** above.

For a summary of the differences between competency, insanity, diminished capacity and civil commitment, please refer to the chart at Exhibit 1.

III. SUMMARY OF RELEVANT STATUTORY PROVISIONS.

The primary statutory provisions which govern competency and insanity issues are: RCW 10.77.040, .060-.090, and .110. Salient portions of those provisions are summarized in this section, but will be discussed in greater detail in the application portions of this paper. Exhibit 2 contains a summary of the competency evaluation and restoration processes involving competency to stand trial.

RCW 10.77.060 sets out the procedure for evaluating a criminal defendant for competency and sanity. Note that the process is the same for each issue, and the statute does not appear to be limited to issues of competency to stand trial. The Court must appoint a panel of *at least two qualified experts, one of whom shall be approved by the prosecutor*. Sometimes the defense seeks to have its own expert appointed to examine the defendant's competency or sanity, pursuant to RCW 10.77.070.[7] While the defense may be entitled to do so, that does not abrogate the statutory requirement that the Court appoint a panel of experts, at least one of whom the prosecution approves. RCW 10.77.080 sets forth the procedure for raising a motion for acquittal by reason of insanity prior to trial.

On the substantive side, RCW 10.77.090 requires, in a non-felony case in which the defendant is not competent to stand trial, that the Court determine whether the defendant falls into the "higher risk" or the "lower risk" category, as those terms are used in this paper. *See* section IV.D.1. below. The Court *must* order competency restoration treatment for a higher risk non-felony defendant who is determined not competent to

[7] If the defense does retain an expert pursuant to RCW 10.77.070, the expert's reports and notes of any examination of the defendant, and opinions as to sanity or diminished capacity may be discoverable. *See State v. Hamlet*, 133 Wn.2d 314 (1997) (expert retained for diminished capacity defense; trial court may order disclosure of tests, notes reports, etc. even if expert will not be testifying as defense witness); *State v. Pawlyk*, 115 Wn.2d 457 (1990) (expert retained for insanity defense; State may discover defendant's statements and expert's opinion as to sanity, and may call expert as its own witness without violating defendant's attorney client privilege).

stand trial. RCW 10.77.090(1)(d)(i)(C). For a lower risk non-felony defendant who is not competent to stand trial, the Court has the following options: stay or dismiss the proceedings and detain the defendant so the CDMHP can evaluate him or her for possible civil commitment; or dismiss the case outright. RCW 10.77.090(1)(e).

A non-felony defendant who is acquitted by reason of insanity is treated the same as a felony defendant who is acquitted by reason of insanity. Depending on the findings of the trier of fact, the defendant can be: committed or placed on conditional release, for a period not to exceed the maximum possible punishment if he or she had been convicted; or fully discharged. RCW 10.77.110.

Whenever a defendant is evaluated for competency or insanity, the Court should be cognizant that RCW 10.77.065 requires that the Court refer a defendant to the CDMHP for possible civil commitment whenever certain criteria are present. That provision is discussed below at section VI.

IV. COMPETENCY ISSUES.

Competency—and insanity—issues can arise in several procedural settings: the defendant may be in custody; involved in some phase of an inpatient civil commitment; or out of custody, which includes release within the community on an LRA. Moreover, since competency is determined at the time of the trial or other hearing, it is possible for competency issues to arise or disappear at any stage of the criminal proceedings. Most competency issues, and all insanity issues, arise prior to entry of a finding of guilt. But the issue can also arise after a trial or guilty plea but before sentencing. Or it could arise in the form of a probation violation, or a violation of a condition of a deferred prosecution or dispositional continuance. Each stage at which competency can arise creates different issues about the application of RCW Ch. 10.77, especially the provisions relating to competency restoration treatment.

Competency proceedings follow a natural sequence. First, someone raises the issue, whether it be the Court, defense, or prosecution. The Court orders an evaluation, and the parties await the results. Next, the Court holds a hearing at which it makes a finding that the defendant is competent or incompetent. If the defendant is competent, the criminal proceedings continue. If the defendant is awaiting trial, then all proceedings relating to the defendant's competency to stand trial are excluded from the speedy trial period. Division Two of the Court of Appeals has held that competency proceedings start (and time begins being excluded from speedy trial) under CrR3.3(g)(1) (Superior Court Rules) "no later than when a party or the court makes an oral or written motion for a competency evaluation, and no later than when the court makes an oral or written order for a competency evaluation." *State v. Cox*, 106 Wn.App. 487, 491, 24 P.3d 1088, *review denied*, 145 Wn.2d 1010 (2001). CrRLJ 3.3(g)(1) is almost identical to CrR 3.3(g)(1). The only difference is that CrRLJ 3.3(g)(1) provides that time is no longer excluded from

speedy trial upon entry of an *order* finding the defendant competent, whereas CrR 3.3(g)(1) requires a *written order* finding the defendant is competent to stand trial before times stops being excluded from speedy trial.

If the defendant is incompetent, the Court's actions depend upon the stage of the proceedings. If the case is at the trial or pretrial stage, the Court must determine whether the defendant should be subjected to competency restoration treatment. If treatment is unsuccessful, or if the defendant is not eligible for competency restoration treatment, the Court must dismiss the matter. Whether the Court refers the defendant for civil commitment proceedings or releases the defendant outright depends on the facts and circumstances of the particular case and the applicability of various provisions of RCW 10.77.090.

If the case is at the sentencing or probation violation stage, the next step is far less clear. There are several possibilities that are discussed separately at section IV.E. below.

A. Stages of the Proceedings at Which Competency Issues Arise.

1. Competency Issues at In-Custody Arraignment.

The most common proceeding at which competency issues arise is at the in-custody arraignment on a new charge. Offenders with mental health issues are less likely to meet the criteria for personal recognizance ("PR") release prior to arraignment, and are less likely to have the funds available to post bail prior to the arraignment.

The Court, the defense attorney, or the prosecutor may put competency at issue. If your jurisdiction has the equivalent of Jail Psychiatric Staff, they may alert the Court to the issue. Regardless of who first raises the issue, the Court, either on its own motion or the motion of either party, must appoint a panel to examine the defendant's mental condition once it has reason to doubt the defendant's competency. RCW 10.77.060(1)(a).

The Court has discretion to delay granting bail until after the defendant has been evaluated and appears before the Court, *if* the Court commits the defendant to a hospital or other suitable secure public or private mental health facility for that evaluation. RCW 10.77.060(1)(b). This provision applies equally to felony and non-felony defendants.

As a practical matter, this discretion will have little impact in those courts of limited jurisdiction that have bail schedules. If the Court has adopted a bail schedule, then bail is established as soon as a defendant is booked on charges to which the bail schedule applies. RCW 10.77.060(1)(b) permits the Court to delay *granting* bail, but does not mention *revoking* bail after it has already been set. Thus, the effect of the option of delaying granting bail in those jurisdictions will be limited to cases for which there is no bail schedule. For example, in Seattle Municipal Court, there is no bail schedule for

the following crimes: Domestic Violence, Harassment, Stalking, and Indecent Exposure. RCW 10.77.060(1)(b) is not expressly limited to pending cases, so arguably it could enable a Court to delay granting bail in a sentencing or probation violation matter *if* the Court had not previously set bail. But as a practical matter, it is hard to imagine a defendant facing sentencing or a probation violation who is in custody without bail having already been set.[8]

2. Competency Issues in Out-of-Custody Cases.

Sometimes competency issues arise in non-arrest cases, or in cases in which a defendant who has been arrested and civilly committed receives a 90-day LRA. As you may recall, an LRA is essentially an outpatient treatment option, in which the subject is placed back into the community for outpatient treatment. Regardless of the reason that the defendant is out of custody, the issue is how to bring about the competency evaluation—assuming there is a sufficient basis to believe competency is at issue. There are several alternatives.

First, if there is a valid legal basis,[9] the Court may revoke any PR release, or increase any bail already set. The defendant would be taken into custody, and the evaluation could be done in the jail.

Second, the Court may commit the defendant to Western or Eastern, as the case may be, under the authority of RCW 10.77.060(1)(a). That statute provides that "the court may order the defendant committed to a hospital or other suitably secure public or private mental health facility" for purposes of the examination. Even if the prosecution requests commitment, the ultimate decision rests with the Court.

Third, the Court may order the defendant to schedule an outpatient examination at Western or Eastern, as the case may be. Western will accept such appointments if ordered by the Court; presumably, so would Eastern. If the defendant is on an LRA, Western can probably schedule the examination to occur where the defendant receives outpatient treatment as part of the LRA, or at some other suitable setting (including, possibly, defense counsel's office).

3. Competency Issues in Post-Conviction Cases.

[8] The most likely reason a defendant facing sentencing or a probation violation would be in custody is because of a new pending charge (in which case competency will be at issue on the new charge as well), an inability to post previously set bail, or a bench warrant (which would have bail already set).

[9] The various bases for revoking a PR release or increasing bail are beyond the scope of this paper. One issue is whether the fact that the defendant may have a mental illness, or that competency may be at issue, by itself, provides a sufficient basis to revoke a PR release or increase bail.

Competency issues can arise at any time, even post conviction. An incompetent person may not be "tried, convicted, *or sentenced*" for an offense so long as the defendant is not competent. RCW 10.77.050 (emphasis added). That section is silent on the issue of probation violations, though one could argue that a probation violation hearing is a form of "trial" or "conviction", and that having punishment imposed for a probation violation is a form of being "sentenced". The difficult issues are how to deal with a defendant who has been convicted and is merely awaiting sentencing, or who is facing an allegation of a probation violation. These issues are discussed in detail at section IV.E. below.

B. Concurrent Proceedings in Other Court Systems.

The discussion under this Section IV.B. relates only to competency issues involving a pending non-felony charge. Sometimes a defendant is also being processed for mental health issues by more than one court system at the same time. That complicates the process, especially since the law is not entirely clear about the interplay among the various court systems. The extent to which the process is complicated depends upon the nature of the other proceeding: a simultaneous competency proceeding in another criminal court is probably easier to deal with than a simultaneous civil competency proceeding.

1. Competency Proceedings in Another Criminal Court.

For purposes of this section, let's assume that Defendant is charged with a non-felony in Friendly Municipal Court. It is possible that Defendant could also be charged with a non-felony in Suburban District Court, or with a felony in Suburban Superior Court.[10]

a. Separate non-felony charge.

Let's assume that Defendant is charged with a non-felony in Friendly Municipal Court, and that competency has not been raised as an issue. Meanwhile, Defendant has another non-felony charge pending in Suburban District Court, and competency **has** been raised as an issue. Does the Suburban District Court case automatically mean that competency is now at issue in Friendly Municipal Court? It depends.

Competency includes the ability to understand the nature of the proceedings and to assist in one's defense. That, in turn, depends to a large extent on the nature of the

[10] It is also possible for Defendant to be facing non-felony charges in two different Divisions of the *same* District Court. For example, the King County District Court has nine Divisions. A defendant facing charges in the Bellevue Division and the Issaquah Division would actually be facing charges in one District Court, much in the same way that a defendant facing charges in Departments Three and Four of Seattle Municipal Court would actually be facing charges in a single Municipal Court.

proceedings. For example, a defendant may, as a result of mental disease or defect, be unable to maintain focus and understand what is happening for more than 30-45 minutes. That defendant would not be competent to proceed with a three-day trial, but could be competent to enter a guilty plea or enter into some form of dispositional continuance at a 30-minute hearing. If the Municipal Court knows the nature of the District Court proceedings and when the competency issue arose, it might feel comfortable finding that competency has been raised in its own proceedings. But then again, the Municipal Court might not feel comfortable doing so.

How should the Friendly Municipal Court proceed in our example? That depends on where Defendant's competency evaluation is conducted in the District Court matter. If the evaluation occurs in the jail, then the Municipal Court can have the Defendant present at the next scheduled hearing, and can determine for itself whether competency is at issue. If so, the Municipal Court can enter appropriate orders; if not, the case can proceed.

If the evaluation in the District Court matter is taking place at Western, then the Municipal Court can wait until Defendant is returned to jail and hold its own hearing. The only effect is that speedy trial might be running if Municipal Court has not found that the District Court competency proceedings have sufficiently raised the issue. CrRLJ 3.3(g)(1) excludes from speedy trial all proceedings relating to competency, but appears to apply only to competency proceedings in that particular court. But CrRLJ 3.3(g)(2) excludes from speedy trial preliminary proceedings and trial on another charge, which should include "another charge" in "another court". It is logical to assume that competency proceedings in Suburban District Court are "preliminary proceedings" under CrRLJ 3.3(g)(2).

b. Separate felony charge.

What if the competency arises out of a felony matter in Suburban Superior Court? In felony matters, defendants who are found incompetent must be placed in a DSHS facility for 90 days of competency restoration treatment. RCW 10.77.090(1)(b). If that treatment is not successful, it is possible for a defendant to be ordered into up to an additional 270 days of restoration treatment. *See* RCW 10.77.090(2)-(4).

If Friendly Municipal Court finds that competency is at issue based on the felony matter, CrRLJ 3.3(g)(1) will toll speedy trial. But if Friendly Municipal Court does not find that competency is at issue in its case because of the pending competency issue in the felony matter, then speedy trial will not be tolled under CrRLJ 3.3(g)(1). Speedy trial would expire in the non-felony matter before Defendant could be brought back to Municipal Court, unless Friendly Municipal Court finds that CrRLJ 3.3(g)(2) operates to extend speedy trial. *See* section IV.B.2.c.(iv) below.

c. Obtaining information from the simultaneous matter.

A defendant who is involuntarily detained, hospitalized, or committed under RCW chapter 10.77 has certain privacy rights regarding his or her medical and treatment records. *See* RCW 10.77.210(1). That section limits access to records under RCW Ch. 10.77. Although the defendant's attorney and the prosecutor in the felony case that generated the evaluation may receive records and reports, it is not clear whether the prosecutor or defense attorney in the non-referring court (Friendly Municipal Court in our example) can also receive them. RCW 10.77.065(4) permits disclosure to the courts "solely to prevent the entry of any evaluation or treatment order that is inconsistent with any order entered under *chapter 71.05* RCW." (Emphasis supplied.) It does not seem to allow for disclosure to prevent entry of inconsistent evaluation or treatment under a simultaneous RCW Ch. 10.77 proceeding.

Bear in mind that the privacy provisions only apply to reports, records and the like as generated by the evaluating facility. They do not apply to orders issued by courts in a criminal matter, unless the Court has ordered those records sealed. Thus, a prosecutor in Friendly Municipal Court could obtain a copy of an order from the Suburban Superior Court staying the felony proceedings because competency is at issue.

Sometimes an easy solution to the privacy issues presents itself. For example, if the same defense attorney or firm represents the defendant in the two separate proceedings, the defense would be aware of the competency issue. It is this author's opinion that a criminal defense attorney must raise with the court any concerns about the defendant's competency if known to the attorney. *If* the defense attorney truly believed that the defendant was competent for misdemeanor purposes notwithstanding the competency issue in the felony matter, then the attorney could decline to raise the competency issue. If, on the other hand, defense counsel felt that competency was still at issue in the misdemeanor case, then the attorney should raise the issue with the Court.

Another way to resolve the privacy issue is for the defendant to waive the privacy of the competency reports and records from the first proceedings. If defense counsel felt it was in the defendant's best interests to waive confidentiality, he or she could advise the defendant accordingly. Whether the defendant is competent to waive confidentiality is a different issue than whether the defendant is competent to stand trial. Nevertheless, the Court and defense counsel will need to consider the validity of any such waiver.

2. Civil Commitment Proceedings in Superior Court.

It is becoming more and more common for a non-felony defendant to be processed by the civil commitment system at the same time as the criminal matter proceeds. The

overlap between the two systems can often complicate the non-felony criminal proceedings.

a. Arraignment first, followed by civil commitment proceedings.

If the defendant has been arraigned on the non-felony matter before civil commitment proceedings begin, then the defendant would have been before the Court, and the Court would have been able to determine whether there were competency issues. If competency is at issue, the non-felony Court can issue an order tolling speedy trial. CrRLJ 3.3(g)(1).

There are three possible outcomes if a competency evaluation is ordered, each of which presents different issues. The defendant can be incompetent and in the lower risk category; the defendant can be incompetent and in the higher risk category; or the defendant can be competent.

(i) Lower risk, incompetent.

If the non-felony defendant is incompetent and in the lower risk category at the time civil commitment proceedings start, the non-felony Court can simply dismiss the non-felony matter. Because civil commitment proceedings are pending, there would be no need to refer the defendant to the CDMHP.

(ii) Higher risk, incompetent.

If the non-felony defendant is incompetent and in the higher risk category at the time civil commitment proceedings start, the non-felony Court must figure out how to comply with the requirement that the defendant be ordered into competency restoration treatment. Unfortunately, RCW 10.77.090(1)(d)(i)(C) does not expressly deal with this fact situation.

One alternative is to wait until the civil commitment proceedings have ended and then order the defendant into competency restoration treatment. This option works best if the civil commitment proceedings end following either a 72-hour or 14-day detention. The defendant can be referred into inpatient competency restoration treatment quickly. If the defendant is civilly committed for a 90-day LRA, the court can consider ordering the defendant into outpatient competency restoration treatment at the same time. If the defendant is civilly committed for 90 days of inpatient treatment, then the court may consider ordering inpatient competency restoration treatment at the same time.

In this last alternative, the issue of how to bring the defendant back to Court after the evaluation is a thorny one. Speedy trial is not at issue, since it is tolled until the Court

enters an order finding the defendant competent. *See* CrRLJ 3.3(g)(1). But the non-felony Court might not be comfortable simply staying the criminal proceedings until after the civil commitment proceeding ends. Even if the Court were comfortable so doing, the defense might argue that the statute does not authorize an indefinite stay of non-felony proceedings for a defendant who is incompetent.

(iii) Defendant competent.

If the defendant is competent, then the criminal case can proceed and speedy trial will begin to run again. Unless the defendant is civilly committed for 90 days of inpatient treatment, the civil commitment process will not unduly complicate the criminal case; the criminal case can await the end of the civil commitment process.

If, on the other hand, the civil commitment process results in a 90-day inpatient commitment, the question that arises is how to bring the defendant back before the Court before speedy trial expires. The simplest option is if the defendant is willing to waive speedy trial. The defendant might be more willing to do so if he or she receives an acceptable plea offer, but any plea offer by the prosecution should take into consideration public safety concerns. If the defendant is not willing to waive speedy trial, then the prosecution must consider some of the options under section IV.B.2.c. below.

b. Civil commitment proceedings before arraignment can occur.

If your county has the equivalent of Jail Psychiatric Staff, it is possible that a criminal defendant may be referred to the CDMHP for civil commitment proceedings directly from the jail, even before the arraignment can occur. If the CDMHP initiates civil commitment proceedings, that creates an added issue: the defendant is entitled to a speedy arraignment, but has been detained at an evaluation and treatment facility for possible civil commitment and is unavailable for arraignment. The remedy is for the Court to set a constructive arraignment date, which starts speedy trial running. Since the defendant is technically in custody, there would be only a 60-day speedy trial period.

(i) Is competency at issue?

Of course, this whole discussion presumes that there is a reason to believe that competency is at issue. Remember that RCW 10.77.060 requires the Court to appoint a panel to evaluate a defendant *once competency is at issue*. Since a person can be civilly committed yet still be competent, the Court cannot automatically order a competency evaluation just because the defendant has been civilly committed. Moreover, the period of time during which the defendant is processed in the civil commitment matter will not be excluded from the speedy trial under CrRLJ 3.3(g)(1) (relating to competency issues) simply because the defendant has been civilly committed.

In King County, the Jail Psychiatric Staff provides reports to the Court on defendants whom they refer to the CDMHP for civil commitment. Those reports generally contain an assessment of whether competency is an issue. The prosecutor or the Court can also look to the police report, witness statements, or other sources (such as jail guards who have had contact with the defendant) to establish a reason to believe that competency is at issue.

(ii) <u>If competency is at issue and the defendant is on a civil commitment</u>.

Let's assume, based on the police report or other information, that the Court does have reason to believe competency is at issue, and that the defendant has been referred from the jail for civil commitment prior to arraignment. Since civil commitments escalate from 72 hours to 14 days, to 90 days, to 180 days, the Court could set the arraignment over for a few days, until after the 72-hour period expires, to find out the results of the 72-hour hold. Although speedy trial keeps running, only a few days are lost. At the end of the 72-hour period, the Superior Court in the civil commitment proceeding will hold a hearing to determine whether to detain the defendant for an additional 14-day period. If the defendant is not detained further, but instead returned to jail, the Court can proceed in the same manner as described in section IV.A.1. above.

If, on the other hand, the defendant is detained for an additional 14-day civil commitment, the Court should order that the defendant be evaluated for competency. Western can perform that evaluation at the civil commitment facility. As a general rule (at least in King County), people civilly committed for 14 days are sent to a local treatment facility, rather than to Western.

If, for some reason, the evaluation does not occur during the 14-day commitment but the defendant is civilly committed for an additional 90-day inpatient period, the Court should be sure the evaluation occurs at the treatment facility. In most cases, defendants who are civilly committed for a 90- or 180-day period are sent to Western or Eastern.

(iii) <u>If it is not known whether competency is at issue and the defendant is on a civil commitment</u>.

One situation that is particularly difficult to deal with is when the defendant is civilly committed before he or she has even met with the criminal defense attorney. It is difficult to argue that competency is at issue solely because the defendant is subject to civil commitment proceedings, since competency and civil commitment criteria are not the same.[11] If the Court has no basis to believe competency is at issue, then speedy trial continues to run.

[11] "The legislature recognizes that a person can be incompetent to stand trial, but may not be gravely disabled or may not present a likelihood of serious harm. The legislature does not intend to create a presumption that a person

c. Alternatives when speedy trial will expire before civil commitment ends.

Speedy trial issues can arise whether or not the defendant is arraigned before the civil commitment process comes into play. There are several options available. The best option depends on the procedural circumstances and the Court's or the prosecutor's evaluation of the risks of each option on the case and on public safety.

(i) Dismiss without prejudice.

The defense attorney (and often the judge) may pressure the prosecutor to dismiss the case without prejudice, with the possibility of re-filing the case after the civil commitment concludes. The problem with that approach is that the confidentiality provisions of RCW Ch. 71.05 preclude the civil commitment system from telling the non-felony prosecutor when the civil commitment process has ended. *See* RCW 71.05.390. The prosecutor will not know when to re-file charges. Nor is the Court able to monitor the defendant's progress in the civil commitment arena. Sometimes defense counsel is able to obtain the defendant's waiver of the confidentiality protections of RCW Ch. 71.05 in exchange for the dismissal.[12] From the defendant's perspective, he/she obtains a quick dismissal, and the burden is on the prosecutor to re-file. In the meantime, the statute of limitations on the original crime (two years for a gross misdemeanor or one year for a misdemeanor, RCW 9A.04.080(1)(i), (j)) will recommence upon the dismissal, RCW 9.04.080(3).[13]

(ii) Relief from the non-felony Court.

Another option is for the non-felony Court to issue a request to the civil commitment facility (either Western or Eastern) to authorize a temporarily release of the defendant to law enforcement for transport to and from the local jail. Because the civil commitment order was issued by a Superior Court, the non-felony Court cannot *order* Western or Eastern to release the defendant, but it can *request* that they do so. Any order making such a request should make clear that the defendant is to be released only into custody, and should set appropriate bail to enable the jail to hold the defendant.

---

who is found incompetent to stand trial is gravely disabled or presents a likelihood of serous harm requiring civil commitment." Chapter 297, Laws of 1998 (Second Substitute Senate Bill 6214), Section 1, which contains the statement of legislative intent of the sweeping amendments to RCW Chs. 10.77 and 71.05.

[12] Obviously, defense counsel must feel confident that the defendant is competent to waive the confidentiality protections. Such a waiver is most likely subject to a different standard than is the issue of competency to stand trial.

[13] Whether the civil commitment tolls the statute of limitations and will eventually bar re-filing of charges depends upon whether the defendant is considered to be "publicly resident within this state". *See* RCW 9A.04.080(2). If the prosecution has a release of information that enables it to find out the status of the defendant's civil commitment, the defendant could make a strong argument that the civil commitment does not toll the statute of limitations.

(iii) Relief from the civil commitment Court.

One could argue that only the Superior Court that issued the civil commitment order may authorize a temporary release from the treatment facility. If the prosecutor knows which Superior Court issued the order,[14] the case number, and the identity of the civil defense attorney, it might be prudent to request the order from the Superior Court.

(iv) Creative speedy trial argument.

If the Court and prosecutor do not have that information because of confidentiality issues, there are two options. The first is for the non-felony Court to request that the defendant be temporarily released from the civil commitment facility. The second is to argue that speedy trial should be tolled. The tolling argument is risky, because the speedy trial rules do not discuss the effect of a civil commitment proceeding on statutory speedy trial. Thus, there is a risk of losing the case altogether. There are two potential tolling arguments.

The first tolling argument is analogize to the line of cases under *State v. Striker*, 87 Wn.2d 870 (1976), or CrRLJ 3.3(d)(2), depending on whether the defendant has been arraigned on the non-felony charge. Under *Striker* and its progeny, the Court in a criminal case is required to set a constructive arraignment date if there is a long and unnecessary delay between filing charges and arraigning the defendant. But if the prosecution exercises due diligence in attempting to bring the defendant before the Court, or if the delay is caused by the fault or connivance of the defendant, then the Court will not set a constructive arraignment date.

If the defendant has been arraigned, then an analogy to *Striker* would not be appropriate, but an analogy to CrRLJ 3.3(d)(2) might be. Under CrRLJ 3.3(d)(2), speedy trial starts over again if a defendant who has been arraigned fails to appear at a hearing at which his or her presence is required.[15]

If the prosecution cannot find out the location of the court and the case number of the civil commitment matter (or the identity of the defendant's civil commitment attorney), based on the confidentiality requirements of RCW chapter 71.05, then it can argue that it has exercised due diligence under *Striker*. And if the criminal defense attorney possesses the necessary information but declines to turn it over based upon the defendant's privacy rights—a perfectly valid position to take—then the prosecution can

[14] The hearing on a 90-day civil commitment will be heard in the Superior Court for the county in which the subject is located at the time of the hearing. For those counties that have facilities that handle 14-day civil commitments, such as King County, the hearing will be done locally. For those counties that utilize Western or Eastern for 14-day civil commitments, the hearing will be handled in Pierce or Spokane County.

[15] The speedy trial period begins again on the date the defendant returns to the county and makes his or her presence known to the court on the record. The period is 60 or 90 days, depending on whether the defendant is in or out of custody.

also argue that the delay is, in effect, brought about by the defendant's acts. The argument using a CrRLJ 3.3(d)(2) analogy is that, by failing to provide the information the prosecution needs to bring the defendant to court, the defendant is essentially willfully failing to appear.

The second tolling argument is to argue that CrRLJ 3.3(g)(2) and (5) apply by extension to civil commitment proceedings. Subsection (g)(2) excludes from speedy trial the period of "[p]reliminary proceedings and trial on another charge. Subsection (g)(5) excludes from speedy trial the time the defendant is "detained in jail or prison outside the county in which the defendant is charged." Of course, if the criminal case arises in Pierce or Spokane County and the defendant is civilly committed to Western or Eastern, then the latter provision won't be of any use.

Both of those CrRLJ provisions apply to criminal proceedings, but proceedings under RCW Ch. 71.05 are civil. It might be possible to convince the appellate courts that civil commitment proceedings should be included within the rules by extension. But again, the risk with this strategy is that the case will be dismissed with prejudice if either the trial court or the appellate court rejects the speedy trial arguments.

C. Conducting the Competency Hearing.

The Court cannot enter an order of incompetency unless it holds a hearing first.[16] The manner in which that hearing can be held is the same whether the competency issues relate to a pending non-felony charge, a sentencing matter, or a probation violation matter.

In many instances, the parties will stipulate to the Western State Hospital report. That *does not mean that the parties must stipulate* to the report; either party, or the Court, can challenge the report's findings, or the findings in any other report submitted to the Court.

The defendant will be presumed competent to stand trial unless there is a showing by a preponderance of the evidence that the defendant is incompetent to stand trial. *See* Ferguson, 12 WA Practice and Procedure, sec. 907 (1984 & 1999 Supp.)[17] RCW 10.77.090(3) expressly states that preponderance is the standard for felonies; prior to SB

[16] The parties can agree to waive the appointment of experts under RCW 10.77.060 and still hold a hearing. *See State v. Israel*, 19 Wn.App. 773 (1978); Ferguson, 12 WA Practice and Procedure, sec. 907 (1984 & 1999 Supp.) As a matter of public policy, a prosecutor should not agree to waive the appointment of experts to determine a defendant's competency, unless there are exceptional circumstances. *See also* discussion at section VII.A.4. below. There is little reason to believe that this would be any different for a probation matter to which RCW Ch. 10.77 might not apply.

[17] Although Ferguson states that the burden is on the defendant to establish he/she is incompetent to stand trial, there are cases in which the defendant asserts he is competent to stand trial and the prosecution contends the defendant is incompetent. In that circumstance, it would seem that the burden to show incompetency would rest with the prosecution.

6214, that provision (codified in former RCW 10.77.090(2)) applied to both felonies and non-felonies. It is hard to imagine that the legislature intended SB 6214 to impose a different standard for felonies and non-felonies. Although by its very terms RCW 10.77.090 applies only to the point of entry of judgment (RCW 10.77.090(1)(a)), it would seem illogical not to presume competency or to apply a standard other than preponderance of the evidence in sentencing or probation violation matters.

If the competency evaluation report concludes that the defendant is incompetent to stand trial, and if the parties stipulate to the report, the hearing will consist of the Court reading the report, inquiring of the defendant, and making a finding of competency or of incompetency. The Court should engage in a colloquy with the defendant before rendering a finding on the issue of competency, even if the report concludes that the defendant is incompetent. Competency can change daily, and the evaluation report is an opinion, not a judicial finding.

If either party challenges the report, the Court should set the matter for a contested hearing. As in any other contested motion hearing, the parties would have the right, and would most likely want, to subpoena witnesses, such as the doctor(s) who performed the competency evaluation. In non-felony cases, the Court will determine competency. In felony cases, depending on the procedural background, the Court or a jury might decide the competency issue.

If the Court concludes that the defendant is competent, the criminal proceedings will resume. Depending on the contents of the competency evaluation report, the Court might need to take steps to comply with the requirements of RCW 10.77.065. *See* section VI below.

D. Eligibility for Competency Restoration Treatment for Incompetent Non-Felony Defendants Awaiting Trial: Focus on Public Safety Risk Rather than on Felony/Non-Felony Distinction.

Prior to SB 6214, a defendant with competency issues awaiting trial was treated differently under RCW Ch. 10.77, depending *solely* upon whether he or she was charged with a felony or a non-felony crime. The public safety risk posed by the defendant was irrelevant. SB 6214 changed that to a large extent, by treating some non-felony defendants more like felony defendants. The Court is required to order "higher risk non-felony defendants" to be placed in competency restoration treatment; it may not order such treatment for "lower risk non-felony defendants."

Section IV.D.1. below discusses how to identify "higher risk" and "lower risk" non-felony defendants. Section IV.D.2. below discusses the different procedural results for each category. Section IV.D.3. below provides illustrative examples of the concepts

discussed in the first two subsections. Section IV.E. below discusses incompetent non-felony defendants who are awaiting sentencing or who are facing probation violations.

1. Identifying Higher Risk Non-Felony Defendants.

The legislature has defined what this paper refers to as a "higher risk non-felony defendant," which is a defendant who meets one or more of the criteria in the next paragraph. The paper will refer to a defendant who does not meet any of those criteria as a "lower risk non-felony defendant."

A higher risk non-felony defendant is one who: (i) has a history of, or a pending charge of, one or more violent acts, or (ii) has previously been acquitted by reason of insanity, or has previously been found incompetent, with regard to an alleged offense involving actual, threatened, or attempted physical harm to a *person*. RCW 10.77.090(1)(d)(i)(A).[18] A "violent act" is behavior that (a) resulted in, or if completed as intended would have resulted in, or was threatened to be carried out be a person who had the intent and opportunity to carry out the threat and would have resulted in: homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. RCW 10.77.010(21). A "history of one or more violent acts" means violent acts committed within 10 years of the date on which the criminal charges were filed, with time spent in a jail or prison as a result of a conviction, and time spent in a mental health facility, excluded. RCW 10.77.010(13).[19]

a. Violent acts.

A violent act under the statute need not have resulted in a conviction; the definition of violent act refers to "behavior" rather than to the fact of a conviction. This makes sense, especially in the context of a pending charge, which by definition will not involve a conviction. There may be cases in which a violent act is established other than by a conviction or a pending charge. For example, the competency evaluation report itself might refer to a past violent act by the defendant against staff members at the evaluation facility.

b. History of one or more violent acts.

The most common form of "history" of one or more violent acts in determining higher or lower risk status will be a prior conviction. But how does the prosecution establish that the prior conviction involved a violent act?

---

[18] This includes insanity acquittals and incompetency dismissals under federal or non-Washington state statutes equivalent to RCW Ch. 10.77.

[19] There are slightly different definitions of "violent act" and "history of one or more violent acts" under RCW Ch. 71.05. *See* RCW 71.05.020(16), (32).

(i) Statutory presumptions.

RCW 10.77.260 established several statutory presumptions to guide the Courts. The presumptions are rebuttable.

First, the Court must presume that a past conviction (whether by guilty plea or finding) establishes the elements necessary for the crime charged. That seems self-evident, even without the statutory presumption.

Second, the Court must also consider that the elements of the crime, in and of themselves, may not be sufficient to establish that the defendant committed a violent act. For example, assault can be committed in several ways, including an unlawful and offensive touching which neither caused nor threatened to cause injury. In order to use the assault to find that the defendant is in the higher risk category, the Court would need to know more about the underlying facts.

Third, the Court must presume that the facts underlying the elements, if unrebutted, are sufficient to establish that the defendant committed a violent act. That begs the question of what constitutes rebuttal. In the author's opinion, "rebuttal" includes a defense argument based on the very same facts relied upon by the prosecution. That doesn't mean, however, that the Court must assign any particular convincing force to the rebuttal. The clear intent of the legislature in SB 6214 is to expand on the Court's ability to receive information on which it can make a reasonable and intelligent finding that the defendant is in a higher risk or lower risk category. But the legislature also clearly intended that the Court analyze the facts underlying the alleged violent act in making its decision.[20]

(ii) Acceptable evidence.

RCW 10.77.260(3) provides that, in determining the underlying facts, the Court may consider information including, but not limited to, affidavits or declarations under penalty of perjury, criminal history record information,[21] and its own or certified copies of another court's records. Examples of court records referred to in the statute are criminal complaints, certifications of probable cause to detain, dockets, and orders on judgment and sentencing.

[20] Some may argue that creating a presumption against the defendant violates the general constitutional due process principal that the burden of proof may never be shifted to the defendant in a criminal case. But bear in mind that the "process" involved in determining eligibility for competency restoration treatment is statutorily created, not constitutionally created. There is no process provided at all for a defendant charged with a felony who is incompetent; RCW 10l.77.090(1)(b) automatically requires 90 days of competency restoration treatment. In any event, this is an issue that is best left to the parties to brief and the courts to resolve.

[21] As defined in the Criminal Records Privacy Act, RCW Ch. 10.97.

Note that the statute does not expressly include or exclude police reports. One could argue that the legislature intended the language "including, but not limited to," contained in the statute to mean that the Court could choose to accept material that is not expressly listed in the statute, such as a police report. It will be up to each Court to interpret the meaning of the statute and to decide whether to accept police reports as evidence at the hearing. In addition, if the police report is signed under penalty of perjury under the laws of the State of Washington, one could argue that the police report meets the statutory definition of a "declaration". *See* RCW 9A.72.085.

(iii) How the provisions apply—more difficult example.

Let's examine an example of how the statute would work in practice. Assume that the defendant pled guilty to fourth degree assault two years ago, that the prosecution presents a certified copy of the docket showing the plea to the assault charge, and that the prosecution has a certified copy of the certification of probable cause filed along with the original charge. Assume further that the certification of probable cause recites that the defendant walked up to the victim and slapped him on the cheek, but that the victim was not injured.

The Court would be required to presume that all of the elements of assault were established by the plea. But the Court would also need to consider that the plea could have been based on a either a theory of offensive touching or a theory of an attempt to injure. The first theory would not establish a violent act, but the second would.

The prosecution would argue that the facts establish the violent act, since the defendant intentionally hit the victim. The defense could argue that the facts in the certification of probable cause do not amount to a violent act as defined under RCW 10.77.010(15), because they show at most an offensive touching. The defense argument appears plausible under the facts of the example, so the prosecution's version of facts has been rebutted. The Court would need to make a factual finding about whether the prior assault constitutes a violent act or not. In this example, depending on any other surrounding facts in the certification of probable cause, the Court could reasonably find for either the prosecution or the defense.

(iv) How the provisions apply—simpler example.

The issue would be much simpler if the certification of probable cause recited that the defendant walked up from behind the victim, said "I want to break your neck", hit the victim on the back of the head with a two-foot long wooden board, and said "I hope you feel the pain." In this example, it is hard to imagine any facts in the certification of probable cause that the defense could rely upon to rebut the presumption that the assault

constituted a violent act. The only way the defense could rebut the underlying facts is by presenting witnesses to the prior incident.[22]

c. Pending charge involving a violent act.

The presumptions in RCW 10.77.260 do not apply to pending charges. For a pending charge, the simplest procedure is for the Court to refer to the facts contained in the police report or certification of probable cause to see if they support a finding that the defendant belongs in the higher risk category. The defense might argue that due process requires that the prosecution present live testimony, since the defendant faces possible competency restoration treatment. But remember that, in setting bail and detaining criminal defendants in custody pending trial, courts are permitted to rely on facts contained in a document sworn under penalty of perjury, such as a police report or the certification of probable cause. Detaining a person on bail and detaining a person for competency restoration treatment appear to involve the same type of liberty deprivation, and there would seem to be no reason to rely on a sworn police report for one but not for the other. Also, there is no process provided at all for felony defendants; any defendant charged with a felony who is incompetent must be sent for up to 90 days of competency restoration treatment. RCW 10.77.090(1)(b).

The bottom line, however, is that the Court must make the requisite findings. It is within the Court's authority to require live testimony even if live testimony were not constitutionally required. If the Court is considering requiring live testimony, the prosecution might consider trying to dissuade the Court by pointing out the relatively fast time period between the competency evaluation and the hearing on whether the defendant is in the higher risk category. Because it would be difficult to line up the witnesses to the pending charge for a testimonial hearing, the Court's proposed procedures could likely result in a higher risk non-felony defendant not being ordered into competency restoration treatment.

d. Prior incompetency dismissals and insanity acquittals.

The first step is to determine whether the defendant has any prior incompetency dismissals or insanity acquittals. Most jurisdictions now have access to DISCIS criminal history information. Assuming all jurisdictions have been diligently reporting their cases and dispositions, the Court might be able to determine whether the defendant meets either of the criteria. SB 6214 amended the Criminal Records Privacy Act's definition of "conviction or other disposition adverse to the subject" to include dismissals due to incompetency and acquittals by reason of insanity. RCW 10.97.030(1). Since these two

[22] Since the defendant is not competent to stand trial, the defense would have a difficult time convincing the judge that the defendant could testify competently at the hearing.

criteria are now included as conviction information, they should appear on criminal history records. One other source of this information is the competency evaluation report itself

If your jurisdiction maintains a local criminal history database, it should be advised to make any necessary modifications to comply with the amendment to the Criminal Records Privacy Act. Unfortunately, most prior findings of incompetency or insanity, especially those from courts of limited jurisdiction, have not previously been reported on criminal histories, so it will take awhile before these two criteria can be applied consistently. In some cases, Western or Eastern may have limited data available about a particular defendant who is being evaluated.

Assuming the defendant does have a prior incompetency dismissal or insanity acquittal, you will need to figure out how to establish that it involved a violent act. The procedures in RCW 10.77.260 do not apply to prior incompetency dismissals; the discussion of pending charges in section IV.D.1.c. above would apply. The procedures in RCW 10.77.260 for prior convictions, also apply to prior insanity acquittals; the discussion of prior convictions in section IV.D.1.b. above would apply.

e. <u>When to make the determination</u>.

The issue of whether a non-felony defendant is in the higher risk or lower risk category does not arise until after the Court has determined that the defendant is incompetent. Once the Court makes that determination (or the parties stipulate), the Court will need to set another hearing date, this time to handle the issue of whether the defendant is in the higher risk or lower risk category. Depending on the timing of the initial competency evaluation and the willingness of the parties to stipulate to some or all of the issues, the Court might set a single hearing for competency and for higher risk/lower risk status, or a separate hearing for each issue.

2. Different Results for Higher Risk and Lower Risk Non-Felony Defendants Who are Incompetent to Stand Trial.

a. <u>Competency restoration treatment for higher risk non-felony defendants</u>.

So why does it matter whether a non-felony defendant poses a higher or lower public safety risk? A higher risk non-felony defendant, if found incompetent, *must* be placed into inpatient or outpatient treatment to restore competency. The Court has the option of ordering the defendant into a 14-day inpatient treatment program at a secure mental health facility, or into a 90-day outpatient program pursuant to a conditional release, or a combination of them. RCW 10.77.090(1)(d)(i)(C). The treatment alternatives

need not be done in any particular order, but it makes sense to recommend first whichever treatment is most likely to restore competence.[23]

(i) Location of inpatient competency restoration treatment.

The Mental Health Division of the DSHS has determined that, for the present, all 14-day inpatient competency restoration treatment will occur at Western and Eastern. For the present, DSHS has decided not to contract with other facilities to conduct the treatment; that decision could be revisited in the future.

(ii) Extending the length of the inpatient competency restoration treatment beyond 14 days.

The 14-day period for inpatient competency restoration treatment includes only the time the defendant is actually at the treatment facility, and is in addition to "reasonable" time for transport to or from the facility. RCW 10.77.090(1)(d)(i)(C)(I). Also, bear in mind that the 14-day inpatient period is in addition to any unused time for the competency evaluation under RCW 10.77.060. RCW 10.77.090(1)(d)(i)(C)(I). Prosecutors should therefore strive to minimize the evaluation period under RCW 10.77.060, and maximize the potential period for inpatient competency restoration treatment if the defendant is not competent but has a reasonable likelihood of being restored to competency.

How does one calculate the "unused time for the competency evaluation" in order to determine the total inpatient time available? RCW 10.77.060(1)(a) and 10.77.090(1)(d)(i)(C)(I) are open to interpretation for defendants who are evaluated in the jail or out of custody. For example, assume that on day one a higher risk non-felony defendant is arraigned in custody and presents a competency issue. The Court issues an order for an evaluation that same day. Assume further that Western conducts the evaluation in the jail, and that the next hearing date is seven days from the arraignment. Are there 0, 8, or 15 days of unused time from the evaluation?

All three answers can be justified. For example, 0 days is correct if one argues that the 15-day evaluation period in RCW 10.77.060(1)(a) applies only to evaluations of defendants committed to mental health facilities. Since there is no 15-day evaluation period, there can be no "unused time" remaining.

On the other hand, 15 days is correct if one argues that, since the evaluation was done in the jail, none of the 15-day period was used. The 15-day evaluation period does not commence until the defendant is admitted to the facility. RCW 10.77.060(1)(a).

[23] Don't forget, speedy trial is tolled, in both felony and non-felony prosecutions, as soon as the Court determines that competency is at issue; it does not recommence until the Court enters a written order and finding (in felonies) or a finding (in non-felonies) that the defendant is competent. CrR3.3(g)(1); CrRLJ 3.3(g)(1).

Similarly, the 14-day competency restoration period includes only the time the defendant is actually at the facility, and excludes reasonable time for transport to and from the treatment facility. RCW 10.77.909(1)(d)(i)(C)(I).

On the other, other hand, eight days is correct if one reads the two sections together as implying that any custodial or confinement time, whether in jail or at a mental health facility, should be subtracted from the 15-day evaluation period. That is more of a "fairness" argument. Unless and until there is an amendment to the statute clarifying the legislative intent, the matter appears open to interpretation by the Courts.

(iii) Outpatient competency restoration treatment.

If the defendant remains incompetent after the inpatient competency restoration treatment, the Court may order up to 90 days of outpatient competency restoration treatment. "Outpatient" treatment can only occur if the defendant is out of custody; the treatment providers will not be able to provide treatment to a jail inmate. If a defendant is unsuitable for outpatient competency restoration treatment, *e.g.*, because he or she is far too dangerous, the Court will need to balance the potential benefits of outpatient competency restoration treatment with the potential public safety risks of releasing the defendant from custody into outpatient treatment. If the Court decides not to order outpatient competency restoration treatment following unsuccessful inpatient competency restoration treatment, the case will be dismissed and the defendant will be referred to an evaluation and treatment facility for evaluation for possible civil commitment under RCW Ch. 71.05. RCW 10.77.090(1)(d)(iii)(B).

This discussion assumes that outpatient competency restoration treatment is available. That is not necessarily an accurate assumption. The statute says that, for outpatient competency restoration treatment, *DSHS* will place the defendant on conditional release. *See* RCW 10.77.090(1)(d)(i)(C)(II). It therefore appears to be DHSH's responsibility, though the Court issues the treatment order. But to date DSHS has not contracted with local providers to provide such treatment. For that reason, the model orders direct Western or Eastern to provide the name(s) of the appropriate facility(ies). But that doesn't answer the question of what will happen if a Court orders a defendant into outpatient competency restoration treatment.

Assuming that outpatient competency restoration treatment is available, the statute makes no clear provision for a Court's alternatives if a defendant violates the terms of that treatment. If the defendant is still reasonably likely to be restored to competency with the treatment, the Court might decide to order the defendant back into the treatment program. If the nature of the violation makes it likely the defendant would not or could not comply with the treatment, the Court could find, based on the violation, that the defendant is unlikely to be restored to competency with further treatment. The case would proceed as detailed in the section IV.D.2.c. below.

(iv) Forced medication as part of treatment.

State v. Adams, 77 Wn.App. 50, 55-57 (1995), and *State v. Lover*, 41 Wn.App. 685, 688-690 (1985), permit forced medication as part of competency restoration treatment in felony cases under the appropriate facts and circumstances. The Court may authorize the treatment facility to administer anti-psychotic medications against the defendant's will if four conditions are met. First, the medication is medically appropriate and necessary to help the defendant regain competency to stand trial. Second, no less intrusive method exists for achieving competency to stand trial. Third, The medication is administered under the care of a duly authorized psychiatrist employed by the treatment facility and is administered in the minimum dosage necessary. Fourth, the psychiatrist takes all precautions to minimize side effects on the defendant and the effects on any medical conditions of the defendant.

The Court determines whether those conditions are met by holding an evidentiary hearing. The hearing can be held at the same time as the hearing to determine whether the defendant is in the higher risk or lower risk category. The prosecution will need to present live testimony by a psychiatrist from the treatment facility, unless all parties are willing to take testimony by telephone.

b. Successful competency restoration treatment for higher risk non-felony defendant.

If, in the opinion of a "professional person" as defined in RCW 10.77.010(17), the defendant is restored to competency, the defendant must return to Court for a hearing. If the Court determines at that hearing that competency has been restored, the stay of proceedings must be lifted and the case will proceed. RCW 10.77.090(1)(d)(ii). The Court should take care to comply with RCW 10.77.065, to the extent it applies. *See* section VI. below.

c. Unsuccessful competency restoration treatment for higher risk non-felony defendant.

If, in the opinion of a "professional person" the defendant is unlikely to be restored to competency with further treatment, the defendant must return to Court for a hearing. If the Court determines at that hearing that competency has not been restored, the stay of proceedings must be lifted and the defendant must automatically be referred for a civil commitment evaluation pursuant to RCW Ch. 71.05. RCW 10.77.090(1)(d)(ii)-(iv). It is possible for this to occur even before the defendant begins inpatient treatment. For example, the initial competency evaluation might recite that the defendant is unlikely to be restored to competency.

(i) In-custody defendants.

If the defendant was referred from the 14-day inpatient competency restoration treatment, the defendant must be detained and sent to an evaluation and treatment facility for up to 72 hours for the evaluation. The 72-hour period begins to run on the next nonholiday weekday following the court order, and runs "to the end of the last nonholiday weekday within the seventy-two hour period." RCW 10.77.090(1)(d)(iii)(B). For example, if the court order is issued on a Monday, the 72-hour period begins on Tuesday and ends on Thursday. The phrase "the end of the last day" implies that the deadline would me midnight on Thursday, which is the actual end of the day, rather than five o'clock, which would be the end of the business day.

The key question is: to what evaluation and treatment facility should the defendant be sent? The answer is somewhat complicated, and affects more than just the decision of where to transport the defendant.

If the detention were considered a proceeding under RCW Ch. 10.77, then the state would be responsible for the cost of the detention, and the proper location would be Western or Eastern, as the case may be. The Attorney General's Office would handle the commitment procedures from that point. But if the detention were considered a proceeding under RCW Ch. 71.05, then the county would be responsible for the cost of the detention, and the proper location would be a local evaluation and treatment facility, unless the county contracted with Western or Eastern for the services. The county prosecutor would handle the commitment proceedings from that point. In other words, the issue is one of cost allocation between DSHS and the Regional Support Networks [RSNs] (which represent the counties' interests).

The best way to resolve the issue is for the legislature to amend the statute to clarify its intent. That is not likely to happen in the near future, nor are DSHS and the RSNs likely to reach an agreed allocation.

Fortunately, DSHS has, by default, been conducting the evaluations at Eastern and Western. This is a workable solution, but there is no guarantee DSHS will continue to do so. But for now, a higher risk non-felony defendant who is in custody at the time his or her case is dismissed due to incompetency will be transported to Eastern or Western for the 72-hour evaluation.

(ii) Out-of-custody defendants.

If the defendant is referred while out of custody but while on a 90-day conditional release, the evaluation will occur at any location chosen by the CDMHP. RCW 10.77.090 (1)(d)(iii)(A). But remember, there is a difference between being on conditional release and being out of custody. A "conditional release" means a modification of a court-

ordered commitment (RCW 10.77.010(3)); "commitment" is a court-ordered detention for evaluation or treatment, whether inpatient or outpatient (RCW 10.77.010(2)). Thus, a defendant may be out of custody without being on a conditional release. In that circumstance, the statute does not expressly state how the Court should proceed.

Consider an example in which a non-felony defendant is out of custody at the time of his/her competency evaluation. Suppose the evaluation concludes the defendant is incompetent to stand trial, and that neither inpatient nor outpatient competency restoration treatment is likely to restore the defendant's competency. Suppose further that the Court therefore finds the defendant not competent and unlikely to be regain competency. According to RCW 10.77.090(1)(d)(iv), the Court must dismiss the case and the defendant should be evaluated under either RCW 10.77.090(1)(d)(iii)(A) or (B). But neither of those subsections applies to our defendant, who is not on conditional release and who is not in custody. Clearly the legislature would want such a defendant evaluated for possible civil commitment. The question is how the legislature intended that to happen.

One alternative is for the Court to conclude that an out-of-custody defendant is essentially equivalent to a defendant on conditional release. In that case, the Court would order the CDMHP to evaluate the defendant out of custody.

Another alternative is for the Court to conclude that the defendant, though held in jail, is "in custody" in the sense that he/she is subject to terms of release, and therefore his/her freedom has been curtailed by the Court. This is similar to the rationale that permits a person on probation to file a Personal Restraint Petition even though he/she is not being held in custody. *See* RAP 16.4(b).[24]

A third alternative is for the Court to conclude that RCW 10.77.090(1)(e) applies, and the Court has the alternatives discussed in section IV.D.2.d. below. There is support for this interpretation in the first sentence of RCW 10.77.090(1)(e), which applies if the defendant is charged with a crime that is not a felony and "does not meet the criteria under [RCW 10.77.090(1)(d)]." Given the context of the language, the reference to the criteria under RCW 10.77.090(1)(d) was probably intended to mean specifically the higher risk criteria under RCW 10.77.090(1)(d)(i). But the language quoted above at least supports an interpretation that RCW 10.77.090(1)(e) applies to any case that does not fit within any provision of RCW 10.77.090(1)(d). Since an incompetent higher risk non-felony defendant who is unlikely to regain competency does not fit within the criteria

[24] If the Court does not find both of these alternatives unpersuasive, then the prosecutor should be prepared to meet a defense argument that dismissal and release is appropriate. Since even lower risk non-felony defendants can be detained under RCW 10.77.090(1)(e) without reference to being in custody (*see* section IV.D.2.d. below), it would seem at a minimum that the Court could choose to detain a higher risk non-felony defendant who is out of custody. Note also that RCW 10.77.090(1)(e) states generally that it applies if the defendant is charged with a crime that is not a felony and "does not meet the criteria under [10.77.090(1)(d)]."

of RCW 10.77.090(1)(d)(iii), one could make an argument that RCW 10.77.090(1)(e) applies by default.

(iii) Transmittal of information to treatment facility or CDMHP.

If the defendant is detained and sent to an evaluation and treatment facility, that facility will only have 72 hours to decide whether to file a petition for civil commitment. If the defendant is referred to the CDMHP, the CDMHP must examine the defendant within 48 hours. In either case, the treatment facility or the CDMHP will need records from the prosecutor immediately. That includes the police report from the case, as well as other relevant information including the defendant's criminal history. **It is vital to include** a certified copy of the order setting forth the Court's finding that the defendant is in the higher risk category. The county prosecutor or assistant attorney general will need the order as part of his or her case in chief in the civil commitment proceedings. The non-felony prosecutor should make advance arrangements with Western or Eastern and the local CDMHP so that information can be faxed to those agencies as soon as the Court signs the referral order.

d. Lower risk non-felony defendant who is incompetent.

If the Court ultimately finds that a lower risk non-felony defendant is incompetent, then the Court has these alternatives: stay or dismiss the proceedings and detain; and outright dismissal**.** *See* RCW 10.77.090(1)(e). That section does not require that the defendant be in custody in order for the Court to detain. The dismissal should be without prejudice. Although RCW 10.77.090(1) does not specify whether dismissal of a non-felony should be with or without prejudice, RCW 10.77.090(4) provides that dismissal of a felony is without prejudice. There is no logical reason to dismiss a felony without prejudice while allowing dismissal of a non-felony with prejudice, especially in light of the fact that SB 6214 amended RCW Ch. 10.77 to treat competency and insanity issues in felony and non-felony cases more similarly.

Before making a recommendation, the prosecutor should review the file, including not only the examination report but also the facts of the crime, criminal history and any other relevant information. Just because the defendant is in the lower risk category does not mean that he or she has no history of violence or will not meet the criteria for civil commitment. For example, a defendant might have been convicted of second-degree assault outside the 10-year period. Even if there is no history of violence, and therefore little likelihood of civil commitment for being dangerous to others, the defendant might potentially meet the civil commitment criteria as gravely disabled or dangerous to himself or herself. These latter two civil commitment criteria are not likely to be addressed in the competency evaluation report.

An outright dismissal is appropriate if the defendant is already on a civil commitment; there would be no point in detaining so the CDMHP can evaluate for civil commitment. It might also make sense if there is no likelihood, based on the specific background and history of the case, that the defendant will meet the criteria for civil commitment. But remember that the competency evaluation will only address the "danger to others" criterion of the civil commitment provisions, and that assessment will not be made by a CDMHP, but rather by a psychologist or psychiatrist who may or may not be familiar with civil commitment. In addition, the competency evaluation report will not address the "danger to self" or "gravely disabled" criteria.

The person most qualified to determine whether the defendant should be civilly committed is the CDMHP. Absent extraordinary circumstances, that is who should make the decision, rather than a prosecutor or a judge.

3. Illustrative Examples.

The best way to understand the effects of RCW 10.77.090(1)(d) and (e) is to compare three hypothetical fact patterns. Defendant A is charged with second-degree theft for stealing a $750 overcoat in the wintertime. Defendant B is charged with second-degree criminal trespass. Defendant C is charged with fourth degree assault by means of intentionally inflicting bodily injury on another. All three defendants have been evaluated as incompetent to stand trial by the staff at Western State Hospital. None of the defendants has any criminal history, prior dismissals due to incompetency, or acquittals by reason of insanity.[25]

Defendant A, a felony defendant, *must* be ordered into treatment for up to 90 days, to restore competency. RCW 10.77.090(1)(b).[26] If treatment proves unsuccessful, the defendant could be ordered back for an additional 90 days of treatment, in the Court's discretion. RCW 10.77.090(3). If the defendant is still not competent, the Court may extend the treatment another six months if certain findings are made by the Court or by the jury.[27] Ultimately, if the defendant does not regain competency, the Court must dismiss the case without prejudice and either begin civil commitment proceedings or release the defendant, subject to any applicable requirements in RCW 10.77.065(1)(b). *See* RCW 10.77.090(3), (4).

---

[25] These examples presume that Defendants A, B, and C are not developmentally disabled; there are some differences in how the competency treatment can be ordered in the case of a developmentally disabled felony defendant.

[26] Prior to SB 6214, the initial 90-day referral was discretionary.

[27] The Court can extend the involuntary treatment another six months if: the defendant is a substantial danger to other persons, or 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. RCW 10.77.090(4).

Defendant B is a lower risk non-felony defendant, and the example assumes that RCW 10.77.065(1)(b). The Court may either: stay or dismiss the proceedings and detain the defendant for sufficient time for the CDMHP to evaluate the defendant for civil commitment, or dismiss the proceedings outright. RCW 10.77.090(1)(e).

Defendant C is a higher risk non-felony defendant, by virtue of having a pending charge involving a violent act, namely, assault by means of inflicting bodily injury. The Court can order that Defendant C be placed at Western for up to 14 days of inpatient treatment to restore competency. (The 14-day period may be extended as discussed in section IV.D.2.a.(ii) above.) At the end of that period, the defendant must return to Court for a competency hearing. If he or she is still not competent, but the Court determines that further treatment may restore competency, the Court may order Defendant C to undergo outpatient treatment of up to 90 days on a conditional release. Of course, the Court is also free to order conditional release first, and then inpatient treatment if the conditional release is not successful. *But see* Section IV.D.2.a.(iii) above, regarding the availability of outpatient competency restoration treatment.

If, at the end of the treatment period, or at any time following notice and a hearing, the Court determines that Defendant C is unlikely to return to competency, the Court must dismiss the charges and refer Defendant C for evaluation for possible civil commitment, as described in section IV.D.2.c. above.

E. Non-Felony Defendants at the Post-Judgment State.

The purpose of this subsection is to identify the complex issues involving a defendant's competency to proceed on a sentencing or probation violation matter. While statutory and case law provide a modicum of help, for the most part there are no definitive procedures. The subsection begins with a discussion of those issues that are common to both sentencing and probation violation matters, followed by a discussion of several issues worthy of special consideration.

1. Threshold Questions.

There are several questions that arise for both sentencing and probation violation matters. For example, can the Court proceed when there is a question about whether the defendant is competent to proceed with either a sentencing or a probation violation hearing? If it appears that the defendant may be incompetent, does the Court have authority to order a competency evaluation in the first place? If the Court finds the defendant is incompetent to proceed, are there any circumstances under which the Court can order competency restoration treatment? Finally, if the Court does not order competency restoration treatment, or if the treatment is unsuccessful, is there a process by which the Court can refer the defendant for a civil commitment evaluation?

a. Proceedings halted.

The Court may not proceed to sentencing or a probation violation hearing while the defendant is incompetent. RCW 10.77.050 (emphasis added) provides that a defendant may not be "tried, convicted *or sentenced*" while incompetent. There is no mention of probation violation proceedings. But the Supreme Court, in holding that the Court is powerless to alter a defendant's felony probation during the time he was at Western State Hospital being evaluated for competency, cited RCW 10.77.050 as part of its rationale. *State v. Campbell*, 95 Wn.2d 954, 957 (1981). Regardless of whether RCW 10.77.050 applies to non-felony probation violation matters, it seems clear from *Campbell* that an incompetent non-felony defendant has a right not to be subjected to a probation violation hearing while he or she is incompetent.

b. Ordering a competency evaluation.

If the Court believes that the defendant's competency is at issue, it seems clear that the Court may order a competency evaluation and conduct a competency hearing, even in a post-conviction matter. RCW 10.77.060, which applies to competency evaluations, does not appear by its terms to be limited to pre-conviction matters. The Court may order a competency evaluation of a defendant "[w]henever . . . there is reason to doubt his or her competency". And even if that section did not apply to a post-conviction matter, Washington courts have inherent judicial powers to make determinations regarding competency to stand trial. *See State v. Wicklund*, 96 Wn.2d 798, 801 (1982), in which the Supreme Court noted that courts relied exclusively on that inherent power prior to the adoption of RCW Ch. 10.77. If the Court finds the defendant competent, then the sentencing or probation violation matter can proceed. But if the Court finds the defendant incompetent, the next issue is whether the Court can order competency restoration treatment.

c. Competency restoration treatment.

The competency restoration provisions applicable to both higher risk and lower risk non-felony defendants start out with essentially the same prerequisite: the defendant must be "charged with" a non-felony crime. RCW 10.77.090(1)(d)(i)(A); 10.77.090(e). By their very terms, those provisions appear to apply only to pre-conviction matters. In addition, those provisions apply only "during the pendency of an action and prior to judgment." RCW 10.77.090(1)(a). *See also State v. Harris*, 114 Wn.2d 419, 437 (1990) (competency restoration procedures applicable to felons were not designed to apply following conviction). While some provisions of RCW 10.77, such as RCW 10.77.050, expressly apply to post-conviction competency issues, there is very little guidance available as to the Court's authority to order competency restoration treatment at the sentencing or probation violation stage.

One possibility is to argue that the Court has inherent authority to order the defendant into competency restoration treatment. The difficulty with this approach is that the few cases discussing the Court's inherent authority to address competency issues apply either to ordering a competency evaluation or to holding a competency hearing. *See Wicklund*, *supra*, 96 Wn.2d at 801 and the cases cited therein. In addition, the competency restoration treatment provisions of RCW 10.77.090 are rather comprehensive. The extent to which the legislature intended to leave room for a Court to exercise inherent authority not granted by statute is open to debate.

Campbell, *supra*, did involve competency restoration treatment for a defendant who was facing probation violation proceedings. But there are a number of aspects of the case that cast doubt on how strongly it supports the proposition that the Court has inherent authority to order competency restoration treatment in a post-conviction case. First, neither party raised the issue of the Court's authority to order the restoration treatment. Consequently, the Court never analyzed or even discussed the issue. Second, the opinion is silent on the basis for the treatment. It is possible the Superior Court erroneously based its treatment order on statutory authority under RCW 10.77.090 rather than on inherent authority. The opinion recites that the defendant requested the trial court to extend the initial 15-day observation period (presumably ordered pursuant to RCW 10.77.060) by 90 days. 95 Wn.2d at 957. That seems to track the former version of RCW 10.77.090.

Even if one assumes the Court has inherent authority to order competency restoration treatment in a sentencing or probation violation matter, one must still grapple with the issue of the extent of that authority. It seems illogical to think that a Court could use its inherent authority to order treatment in a manner exceeding the extent to which the Court could order treatment under RCW 10.77.090. Otherwise, there would be no need for the statutory scheme.

Two fact patterns serve to illustrate the point. For example, if a lower risk non-felony defendant is awaiting trial, the Court could not order competency restoration treatment. Does it make sense that the Court could use its inherent authority to order competency restoration treatment if the defendant was awaiting a probation violation hearing instead of a trial? As another example, if a higher risk non-felony defendant is awaiting trial, the Court must order competency restoration treatment. Does it make sense that the Court could use its inherent authority to order competency restoration treatment for 45 days, which would exceed the maximum possible 29-day time period under RCW 10.77.090(1)(d)(i)(C)?[28]

Logic therefore implies that, if a Court does have inherent authority to order competency restoration treatment in a sentencing or probation violation matter, that

[28] *See* the discussion at section IV.D.2.a.(ii) above.

authority is defined and limited, at least in part, by RCW 10.77.090. Yet the more the Court must rely on a statute to define and limit its inherent authority, the weaker the argument that the Court has that inherent authority in the first place. Finally, even if the Court does have such inherent authority, the Court has discretion to exercise or decline to exercise its authority.

d. Defendant incompetent—referral to CDMHP.

Regardless of how the Court decides the issue of its inherent authority to order competency restoration treatment, there are three situations in which the Court will need to consider whether and how to refer the defendant for a potential civil commitment evaluation.[29] First, the Court could find that it does not have inherent authority to order the treatment. Second, the Court could find that it does have inherent authority, but chooses not to order the treatment. Third, the Court could order the treatment but the defendant could remain incompetent.

It is vital to consider referring the defendant to the CDMHP for civil commitment evaluation under any of those three scenarios. The Court is not required under RCW 10.77.065 to order the CDMHP to evaluate the defendant if he/she is awaiting sentencing or a probation violation hearing. Nor do other provisions of the statutory scheme provide guidance. The Court has express statutory authority to detain a non-felony incompetent defendant for civil commitment evaluation *prior to judgment*. RCW 10.77.090(1)(d)(iii); 10.77.090(1)(e). But there is no such express authority for post-judgment cases.

While one might argue the old standby of inherent authority to detain a defendant for civil commitment evaluation, there is very little support for that authority. First, detaining a defendant for civil commitment evaluation is far different than committing a defendant in a criminal case for competency evaluation. The former is more similar to a civil commitment proceeding, which would otherwise be governed by RCW Ch. 71.05. The latter is more similar to the criminal procedures under RCW Ch. 10.77. That casts some doubt on whether *Wicklund*, *supra*, and *Campbell*, *supra*, would apply.

The only practical solution seems to be to request that the Court direct the CDMHP to evaluate the defendant for possible civil commitment. This should occur prior to or concurrently with the Court's decision to strike the sentencing or probation violation hearing due to the defendant's incompetency. If the defendant is in custody, the Court avoid having to detain the defendant in custody solely for purposes of the civil commitment evaluation. If the defendant is out of custody, the Court could order him/her to report the CDMHP at a specified location, prior to or at the hearing. If the defendant

[29] Obviously, if the Court finds the defendant competent, or if the Court orders competency restoration treatment and the treatment restores the defendant to competency, the Court will not need to deal immediately with the issue of referring the defendant for a civil commitment evaluation.

failed to appear for the evaluation before the Court strikes the hearing, then the Court could issue a bench warrant.

2. Special Considerations in Sentencing Matters.

We know that an incompetent defendant cannot be sentenced so long as that incompetency continues. RCW 10.77.050. That is fine as far as it goes, but there is still one very difficult issue remaining: what should the Court do about sentencing the defendant? Two possible alternatives are presented below, though neither one is without its own issues.

b. Continue sentencing to re-evaluate competency.

One possibility is to continue sentencing to re-evaluate the defendant's competency. There are some difficult questions raised by this approach. For example, how long can the Court keep continuing the case? Municipal and district courts generally have two years of jurisdiction from the time sentence is deferred or suspended. *See* RCW 3.50.320-.330 (municipal courts for cities with population of under 400,000); RCW 3.66.067-.068 (district courts); 35.20.255 (municipal courts for cities with population in excess of 400,000). But what happens if the Court cannot impose sentence? How often can the Court order competency evaluations? At some point, continued evaluations might become futile. Can the Court decide not to order future evaluations? Suppose the Court orders the defendant to return to be re-evaluated. Can the Court order that the defendant be sent to Western or Eastern for an inpatient evaluation? Suppose the Court orders instead that the defendant be evaluated on an outpatient basis, but that the defendant fails to show for the evaluation. Does the Court have authority to issue a bench warrant when the Court has already found the defendant incompetent? Finally, what does the Court do if the defendant is in custody? This may seem like a lot of questions without many answers, but there are a lot of questions, and there aren't many obvious answers.

b. Close the case administratively.

Another possibility is to take no action for a period of time, and close the case administratively unless the Court has reason to believe the defendant's mental state has changed for the better. The primary advantage of this alternative is closure on the case. It is also possible, especially in larger urban jurisdictions, that the defendant will come back into the system on a new charge that would make him/her eligible for competency restoration treatment. But there are real dangers in this approach from a policy perspective that substantially outweigh the advantage. The concept of waiting for a mentally ill defendant to commit a new crime so he/she can be sentenced is a poor one. And closing out a case without trying to sentence the defendant does nothing to protect public safety or stop future criminal behavior by the defendant. This approach should be used with extreme caution and only after serious consideration.

3. Special Considerations in Probation Violation Matters.

Judges, prosecutors and criminal defense attorneys all use the phrase "probation" as a euphemism for many different kinds of plea agreements, as outlined in the Glossary in section II above. The wide variety of forms of "probation" creates just as wide of a variety of issues for defendants who are not competent.

a. What happens to the probation period?

If the defendant is incompetent to proceed with the revocation hearing, does that toll the running of the probationary period? There is authority to support the notion that the probation jurisdiction can be tolled while the defendant is incompetent. *Campbell*, *supra*, involved a defendant on felony probation under the old indeterminate sentencing law, RCW Ch. 9.92, which has since be supplanted by the Sentencing Reform Act of 1981, RCW Ch. 9.94A. The Supreme Court held that, during the time the defendant was committed to a mental hospital to determine his competency, he was beyond the supervision of the court. Consequently, the defendant's term of probation was tolled during that time. 95 Wn.2d at 957.

In *Spokane v. Marquette*, 146 Wn.2d 124, 131-132 (2002), the Supreme Court applied *Campbell* and other cases involving tolling felony probation to the issue of tolling probation in a non-felony case when a defendant has failed to appear at a hearing. The Court noted that, although *Campbell* and the other cases cited involved felony probation, "the principle is the same in municipal court, so we find them persuasive." *Id*. at 131. It therefore appears that *Campbell* applies to municipal and district courts under RCW 3.50.320-.330 (municipal courts for cities with population of 400,000 and under); RCW 3.66.067-.068 (district courts); 35.20.255 (municipal courts for cities with population in excess of 400,000).

b. Can the Court modify probation conditions?

The Court in *Campbell* stated in dictum that the trial court in that case was "powerless to alter defendant's probation" during the time he was being treated at Western State Hospital. 96 Wn.2d at 957. That makes sense, since the probationary period was also tolled while the defendant was undergoing competency restoration treatment. While the extent to which *Campbell* applies to district and municipal court probation has not been litigated, the reasoning still seems logical, especially in light of *Marquette*.

c. Probation revocation in lieu of filing new charges (RILF).

(i) What is a RILF?

One basis for filing a probation revocation is that the defendant has committed a new crime. If the new crime occurs in the same jurisdiction, then in most instances, the prosecution files a new charge and a probation violation notice. The probation violation matter then tracks with the new case. If the defendant is incompetent to proceed on the either the new case or the probation violation matter, the statutory provisions applicable to the new case should adequately deal with the competency issues, and the probation violation matter can probably track the new charges.

In some instances, however, the prosecution might choose to file a probation violation only, rather than a new criminal charge and the probation violation. There are several reasons for doing so, including avoiding a jury trial setting and insuring a lower burden of proof. For purposes of this paper, I refer to such probation violation matters as "revocations in lieu of filing new charges", or RILF for short. When the prosecution chooses to proceed by way of a RILF rather than filing a new criminal charge, the issue that arises is whether the defendant has been "charged with a non-felony" or is facing a post-judgment matter, as those terms are used in RCW 10.77.090(1)(d) and (e). The answer to that question will determine how the Court proceeds if the defendant is incompetent.

(ii) Treating a higher risk non-felony RILF defendant as "being charged with a non-felony".

The argument in favor of treating a RILF defendant as being charged with a non-felony is that a RILF is arguably the practical equivalent of a new charge. The RILF is filed based on a new incident that could have been filed as a new charge; the only probation condition alleged to have been violated is that of committing no new criminal law. The witnesses to be called at the hearing are the same as those who would be called at trial.

But there are some major differences as well. The standard of proof for a probation violation is lower than the "beyond a reasonable doubt" standard applicable to pending charges. The defendant has a right to a jury trial on a new case, unlike on a RILF. The defendant has speedy trial rights in a pending charge, but is only bound by the Court's probation period in a RILF. The final argument against treating a RILF defendant as being charged with a non-felony is that technically the prosecution has not filed a pending charge. The form of the proceeding is that of a post-judgment matter, no matter the substance of proof.

If the Court views a RILF equivalent to being charged with a non-felony, then the provisions of RCW 10.77.090(1)(d) and (e) would apply. This approach can create a

serious public safety risk if a higher risk non-felony defendant is not restored to competency following competency restoration treatment.

This risk is best illustrated by comparing the following two examples. Let's assume Defendant A and Defendant B are both higher risk non-felony defendants, and that their cases are pending in the Friendly Municipal Court in the western part of the State (though not in Pierce County). Defendant A is awaiting trial on an assault charge, and Defendant B is awaiting a RILF in which the alleged new violation is an assault. The Court ordered both Defendants to undergo competency restoration treatment based on RCW 10.77.090(1)(d)(i); the Court in Defendant B's case concluded that the RILF was the equivalent of a pending charge. Neither of the Defendants was restored to competency. Both Defendants are in presently in custody. The Friendly Municipal Court, relying on RCW 10.77.090(1)(d)(iii)(B), ordered both Defendants transported to Western for evaluation for a possible 90-day civil commitment. *See* the discussion at section IV.D.2.c.(i) above. Western evaluated both Defendants, and filed civil commitment petitions against each of them.

As to Defendant A, the Pierce County Superior Court would hear the civil commitment matter and either commit or release the defendant based on the merits of the case. But as to Defendant B, if the Pierce County Superior Court found that the RILF did not amount to being "charged with a non-felony", it would dismiss the civil commitment matter against Defendant B *without ever reaching the merits of the case*! As a result, a higher risk non-felony defendant whom Western should be civilly committed for 90 days would be released from the hospital with no treatment and no hearing on the merits of the civil commitment. That is the very fact scenario that occurred somewhat recently in a Seattle Municipal Court case. Fortunately, the Pierce County CDMHP was able to evaluate the defendant prior to his release, and they instituted civil commitment proceedings under RCW 712.05.150. Those proceedings would be handled by the Pierce County Prosecutor's Office. The civil commitment petition filed by Western pursuant to a referral under RCW 10.77.090(1)(d)(iii)(B) would be filed under RCW 71.05.235, and would be handled by the Attorney General's Office.

The Attorney General's Office has not issued any formal policy statements about whether they will file a civil commitment petition on a RILF case where the defendant has not been restored following competency restoration treatment. The author had an informal discussion with an Assistant Attorney General about the Seattle Municipal Court case referred to in the preceding paragraph. In that discussion, the Assistant Attorney General indicated that, in light of the Pierce County Superior Court's ruling in that case, she would not be willing to file a civil commitment petition under similar circumstances. While that is certainly not an official position of that office, it does raise concerns about the risks in proceeding on the theory that a RILF is equivalent to being "charged with a non-felony" as used in RCW 10.77.090(1)(d). Any jurisdiction that wants to pursue the theory that a RILF is equivalent to the defendant being charged with

a non-felony should talk with the Attorney General's Office in advance of adopting that practice.

If the Court nevertheless decides to refer a defendant to Western or Eastern for civil commitment evaluation following unsuccessful competency restoration treatment, *it is imperative* that the order reflects the correct procedural posture of the case. The Attorney General's Office, as well as the defense attorney and the Court in the civil commitment matter, need to be aware of that the case involves a RILF rather than a truly new charge. That means that the Dismissal—Unsuccessful or Unlikely Restoration (Trial) order *must* be modified in a RILF case. The forms provided with this paper do not adequately advise the parties of that fact.

(iii) Treating a lower risk non-felony RILF defendant as "being charged with a non-felony".

If the Court finds a lower risk non-felony defendant awaiting a hearing on a RILF to be "charged with a non-felony", the public safety risk is less severe. Under RCW 10.77.090(1)(e) (and if the defendant is in custody, also under RCW 10.77.065(1)(b)), the Court will direct the CDMHP to evaluate the defendant for civil commitment. The only issue of concern at that point is the Court's authority to detain the defendant after "dismissing" the RILF. If the RILF truly meets the definition of "charged with a non-felony" then the Court has statutory authority. But if an appellate court were to find that a RILF is truly a post-judgment matter, then the Court would not have had statutory authority to detain. The discussion above regarding inherent authority would then apply.

d. Special forms of probation—dispositional continuances and deferred prosecutions distinguished.

Dispositional continuances are commonly used as part of the prosecutors' negotiation toolkit. They can also create headaches when the issue of a defendant's competency to proceed with a hearing to revoke the dispositional continuance arises. The question is whether the revocation proceeding qualifies as a pre-judgment matter or as a probation violation. A similar question arises when the defendant is on a statutory deferred prosecution under RCW 10.05. A deferred prosecution is essentially a statutory form of a dispositional continuance in which the charge is dismissed if the defendant complies with all of the conditions.

(i) Is it a pending charge of a post-judgment matter?

Technically, a dispositional continuance is not a post-judgment matter at the time it is entered into. It is an agreement between the parties to continue the case either for dismissal or for amendment to a less serious charge. The defendant waives speedy trial, which would otherwise continue to run. The Court has not entered a finding of guilty,

and therefore has not entered a judgment. A deferred prosecution is similar, except that the "agreement" to continue the case for possible dismissal is based upon RCW Ch. 10.05.

Practically speaking, a dispositional continuance and a deferred prosecution are more similar to probation than to a case awaiting trial. The conditions imposed as part of the dispositional continuance or deferred prosecution are similar to conditions of probation that might be imposed as part of a deferred suspended sentence, and might even be monitored by a probation officer. And if the Court finds the defendant failed to comply with the terms of the dispositional continuance or deferred prosecution, the Court will read the police report and, in all likelihood, find the defendant guilty. In that respect, the defendant has essentially given up his right to a meaningful trial, and the dispositional continuance is more along the lines of a submittal. Indeed, a petition for deferred prosecution must acknowledge the sufficiency of the police report to support a finding of guilt. RCW 10.05.020(2).

(ii) Treating it as a pending charge.

If one considers a dispositional continuance or deferred prosecution to be a pending charge, then the competency restoration provisions of RCW 10.77.090(1)(d) and (e) should apply to any competency issues involved in revoking a dispositional continuance or a deferred prosecution. The difficulty with this approach is that those sections of the RCW contemplate "dismissal" if a higher risk non-felony defendant is not restored to competency, or if a lower risk non-felony defendant is not competent. But a dismissal would defeat the purpose of entering into the dispositional continuance or deferred prosecution: why dismiss a case when there is a pending allegation that the defendant failed to comply with the terms of the agreement? This concern is even stronger in the case of a dispositional continuance that calls for an amendment of the charge if the defendant complies with the conditions.

Another difficulty with this approach is what happens to the defendant. The issue is the same as with treating a RILF case as a pending matter: what happens if the Superior Court in the civil commitment matter finds that it is not a "pending charge" and dismisses the civil commitment petition? A higher risk defendant whom Western or Eastern believes should be civilly committed will be released from the hospital with no treatment. *See* the discussion in section IV.E.3.c. above.

(iii) Treating it as a post-judgment matter.

If one considers a dispositional continuance or a deferred prosecution to be a true probation matter, the discussion of competency issues in probation violation matters should apply. *See* section IV.E.1.above.

V. INSANITY ISSUES.

A. Procedural Setting.

Washington utilizes the M'Naghten rule for insanity. To establish the defense of insanity, a defendant must show that, at the time of the commission of the alleged offense, as a result of mental disease or defect, the defendant's mind was affect to such an extent that: "(a) He was unable to perceive the nature and quality of the act with which he is charged; or (b) he was unable to tell right from wrong with reference to the particular act charged." RCW 9A.12.010. In other words, the mental disease or defect must impair the defendant's *cognitive* ability, or ability to perceive and understand what is happening.

There are two ways in which the Court can reach the issue of the defendant's sanity at the time of the alleged offense(s): the defendant can make a motion for judgment of acquittal by reason of insanity (either before or during trial); or the defendant can submit the issue to the trier of fact at trial. *Even if the Court denies the defendant's motion, he or she may still present the issue to the trier of fact at trial.* RCW 10.77.080. Under either scenario, the defendant must be competent in order to seek an insanity acquittal; if the defendant is not competent, then the proceedings must be stayed.

The defense must file written notice of intent to rely on an insanity defense. The notice must be filed at or within 10 days after arraignment, unless the Court determines there is good cause to permit a later filing. Insanity is an affirmative defense that the defendant must establish an insanity defense by a preponderance of the evidence. RCW 9A.12.010(2); 10.77.030(2). *See also* CrRLJ 4.7(b)(1)(vi) (defendant shall, upon written demand, disclose to prosecution whether he or she will rely on insanity defense).

B. Evaluation Process.

The process for evaluating a defendant for both competency and insanity is governed by the same statute: RCW 10.77.060. In addition, the Court may order the evaluation panel to include an evaluation as to the defendant's capacity to have a particular state of mind that is an element of the offense charged (*i.e.*, an evaluation for diminished capacity). *Id.* The Court has the option of delaying granting bail if the defendant is committed to a secure mental health facility for the evaluation. *See* the discussion at section IV.A.1. above.

Typically, if the Western State Hospital staff determine that the defendant is not competent, they will evaluate neither the defendant's sanity nor capacity to form a specific state of mind.[30] If a defendant is found incompetent, the proceedings are stayed. If the defendant later regains competency, or the Court rules that the defendant is competent despite the Western report—perhaps based upon a report by a defense expert—then the

[30] The author is not certain whether Eastern will react in the same way as Western in this circumstance.

prosecutor will want to have a subsequent evaluation done for sanity and/or diminished capacity.

As a matter of policy, a prosecutor should never agree to dismiss a case based on a claim of insanity. In appropriate cases, the parties may stipulate that the Court has a proper basis upon which to enter an acquittal by reason of insanity, based upon the evaluation and other available evidence. But if a defendant was insane at the time of the alleged offense, then the Court should make the appropriate findings and enter the appropriate orders. As discussed below, there are public safety consequences for an insanity acquittal, and it may be important in future criminal or civil commitment proceedings.

C. Raising the Defense.

If the defendant raises an insanity defense at trial, the Court must instruct the jury as required by RCW 10.77.040. If the issue is raised at a bench trial, the Court should make findings consistent with that section. *See* RCW 10.77.080. A defendant who raises an insanity defense at trial (as opposed to filing a pretrial motion for acquittal) *is* permitted to contest the acts constituting the crimes alleged.

If the defendant makes a motion for acquittal by reason of insanity under RCW 10.77.080 (as opposed to raising the issue at trial), the Court should conduct a proper colloquy with the defendant. *State v. Brasel*, 28 Wn.App. 303 (1981), contains a discussion of the difference between a waiver of rights for a guilty plea and for a plea of not guilty by reason of insanity. Because the Court must engage in a colloquy with the defendant, the defendant cannot waive his or her presence at the motion hearing. Also, if the defendant makes the motion before the judge rather than at trial, and if the motion is granted, the defendant cannot later contest the validity of the detention on the grounds that he or she did not commit the acts charged.

D. Effect of Insanity Acquittal.

If a non-felony defendant is acquitted by reason of insanity, the Court has the exact same options as it would have in a felony case: order the defendant into a state mental hospital; order the defendant into a less restrictive alternative; conditionally release the defendant; or discharge the defendant outright. RCW 10.77.110.[31] The options will depend upon the findings entered by the trier of fact,[32] not on whether the defendant is a higher risk or lower risk non-felony defendant.

[31] Prior to March 1, 1999, the non-felony Court had only two options: order the defendant's immediate release, or order the defendant held in custody for a reasonable time to allow the CDMHP to evaluate the defendant for possible civil commitment. *See* former RCW 10.77.110(3).

[32] The trier of fact must answer three additional questions: (1) is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions?; (2) does the defendant present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions? and (3) if the answer to either of the first two questions is yes, is

In light of the change in how non-felony defendants are treated after an acquittal by reason of insanity, it is unlikely that many non-felony defendants will raise insanity as a defense. In appropriate non-felony cases, the defenses of diminished capacity or no mens rea will become more popular alternatives.

1. Maximum Treatment Period.

The maximum period that a defendant who is acquitted by reason of insanity may be committed for treatment or otherwise ordered to undergo alternative treatment is the maximum possible penal sentence for any offense charged for which the person was acquitted by reason of insanity. RCW 10.77.025. If, in the opinion of the "professional person" at the treatment facility (as defined in RCW 10.77.010(6)), the defendant is not suitable for discharge from treatment, the professional person must notify the CDMHP at least seven days prior to the release. The CDMHP must conduct a civil commitment evaluation prior to the release date. RCW 10.77.025.

2. Issues Involving Conditional Release.

There are provisions in the RCW which allow for a defendant who is committed to Western or Eastern to apply for conditional release. *See, e.g.*, RCW 10.77.140-.200. Prior to the March 1, 1999 effective date of SB 6214, those provisions applied only to felonies. SB 6214 did not change their language. That is important to note because the sections contemplate that "the court of the *county*" that ordered the commitment will take action. *See also* RCW 10.77.150(2). Pre-SB 6214, that could only mean the Superior Court. Does that now refer to the Municipal or District Court? In addition, the statutes talk about the prosecuting attorney representing the *state* at hearings related to the conditional release. Again, does that now apply to municipal prosecutors representing cities, even though the language refers to the state?

There are no easy answers to these questions. The most logical conclusion is that cities, and therefore city courts and city prosecutors, would be responsible for dealing with issues involving defendants who are committed to Western or Eastern following an acquittal by reason of insanity. That would include the provisions dealing with violations of the terms of any conditional release under RCW 10.77.190.

D. <u>Diminished Capacity Distinguished</u>.

Insanity is an affirmative defense created by statute. *See* RCW 9A.12.010; 10.77.030. Diminished capacity is a judicially created concept that does not rise to the

---

it in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital? RCW 10.77.040.

level of an affirmative defense. *See State v. Ellis*, 136 Wn.2d 498, 541-542 (1998) (dissenting opinion, citing *State v. Ferrick*, 81 Wn.2d 942, 944, *cert. denied sub nom. Gustav v. Washington*, 414 U.S. 1094, 94 S.Ct. 726, 38 L.Ed.2d 552 (1973)). Rather, it is a challenge to the prosecution's ability to establish the specific intent that is an element of a crime. *Id.* at 542. To establish the defense of diminished capacity, the defendant "must product expert testimony demonstrating that a mental disorder, *not amounting to insanity*, impaired the defendant's ability to form the specific intent to commit the crime charged. *Id.* at 521 (majority opinion; emphasis added).

What does the phrase "mental disorder not amounting to insanity" mean? Since the courts have not really defined that phrase, we must turn to other sources for guidance. The best source of that guidance is the insanity definition itself. As noted above, Washington employs the M'Naghten test, which requires cognitive impairment, or impairment of one's ability to understand the nature and quality of one's actions. There is a second type of impairment, known as volitional impairment. Volitional impairment means that a person knows what he/she is doing, but cannot control his/hers actions anyway.

It is possible for a defendant to suffer from volitional impairment even if he/she does not suffer from cognitive impairment. In Washington, that defendant would not be able to assert an insanity defense. One interpretation of *Ellis*, then, is that diminished capacity is available as a defense for a defendant who, as a result of a mental disease or defect at the time of the alleged offense, understood that his/her actions were wrong, but could not was able to understand the nature and quality of his acts.[33]

The most common use for the diminished capacity defense is to negate a particular state of mind required for the crime charged. If successfully applied in a murder case, the most likely result of a successful diminished capacity defense would be conviction of a less serious charge that requires a lower mens rea, such as manslaughter. For non-felony charges, such as assault, the most likely result of a successful diminished capacity defense would be an outright acquittal, since there is no available lesser-included crime with a lower mens rea.

Prior to the opinion in *Ellis*, a defendant had to meet nine specific criteria in order to admit expert testimony. These were commonly referred to as the "*Edmon*" factors, since they were formulated in *State v. Edmon*, 28 Wn.App. 98 (1981). In *Ellis*, the Supreme Court declined to adopt the *Edmon* factors as absolute. *Id.* at 522. Unfortunately, they provided little guidance as to how and when the *Edmon* factors would apply. The Court did consider the charges in *Ellis*, aggravated first-degree murder

[33] Some states employ the American Legal Institute Model Penal Code (or ALI) test for insanity. Under that test, a defendant can establish an insanity defense by showing that the mental disease or defect cause either cognitive *or volitional* impairment.

with the State seeking the death penalty, as crucial to its decision to allow expert testimony even though not all of the *Edmon* factors had been met. *Id*.

VI. CDMHP REFERRALS UNDER RCW 10.77.065.

The provisions of RCW 10.77.065 expand upon the duties of the Court, the CDMHP, and the facility providing the competency or sanity evaluation under RCW 10.77.060. The challenge to the Court is how to apply the section in practice.

Under RCW 10.77.060(3)(f), the facility conducting the competency or sanity evaluation of a felony or a non-felony defendant must include a recommendation to the Court whether the defendant should be examined by a CDMHP for possible civil commitment. The facility must also include an opinion as to whether the defendant poses a danger[34] unless kept under further control. If the facility concludes that the defendant does pose such a danger, the Court "shall" order that the CDMHP conduct an evaluation; the timing is set by statute.

In light of all of the statutory provisions dealing with civil commitment referrals for criminal defendants who are not competent, one might ask: what is the point of RCW 10.77.065? With respect to non-felony defendants, it is primarily intended to cover defendants who are competent. There are some situations in which a lower risk non-felony defendant who is not competent may also fall within the provisions of this section.

A. The Consequences of the Recommendation.

One might naturally assume, if Western or Eastern recommends that the defendant be evaluated by a CDMHP, that the Court would be required to order that evaluation to occur. But the Court is only required to order the CDMHP evaluation if Western or Eastern concludes, under RCW 10.77.060(3)(f), that the defendant poses a danger unless kept under further control. RCW 10.77.065(1)(b). Absent the opinion that the defendant should be kept under further control, the recommendation that the defendant be referred to a CDMHP is advisory only. This might help a Court decide whether to issue a dismiss and detain or outright dismissal order in a case involving a lower risk non-felony defendant who is not competent to stand trial. *See* section IV.D.2.d. above. The recommendation would also be helpful if the defendant is competent to stand trial and is to be released on bail on a personal recognizance release.

B. When the Recommendation Must be Provided.

[34] The actual language is "an opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security . . . .: RCW 10.77.060(3)(f), as amended.

The report and recommendation must be provided at least 24 hours before the defendant is transferred to the correctional facility in the county in which the criminal proceeding is pending. RCW 10.77.065(1)(a)(i). It is unclear how this provision applies to evaluations conducted in the local jail facilities. The most logical interpretation is that the report must be provided at least 24 hours before the defendant's next court hearing.

C. When the Referral to the CDMHP Must be Made.

If Western or Eastern concludes that the defendant should be kept under control by the Court, the Court must order that the defendant be evaluated by the CDMHP. But the timing depends upon the procedural posture of the case and upon the defendant's competency. The first sentence of RCW 10.77.065(1)(b) provides that the civil commitment evaluation "shall" be conducted. The next sentence provides the timing. The Court is required to order a CDMHP evaluation:

> "(i) Prior to release from confinement for such person who is convicted, if sentenced to confinement for twenty-four months or less; (ii) for any person who is acquitted; or (iii) for any person: (A) Whose charges are dismissed pursuant to RCW 10.77.090(4)[35]; or (B) whose nonfelony charges are dismissed."

1. Prior to the Defendant's Release from Confinement.

Not every non-felony defendant who is evaluated for competency will be found incompetent. Some who are initially found incompetent may be restored to competency following competency restoration treatment. If the prosecution re-commences, it is possible that the non-felony defendant will be convicted, which would lead to sentencing.

If a non-felony defendant is sentenced to confinement for less than 24 months—don't forget, it is theoretically possible for a non-felony defendant to receive three consecutive one-year sentences—then the Court must order the evaluation prior to the defendant's release. But what happens if the defendant receives no jail time, or receives a jail sentence amounting to credit for time previously served? The statute does not provide for that possibility.

The most logical solution is for the Court to order the defendant to submit to a CDMHP evaluation as a condition of sentencing. If the defendant fails to appear for the evaluation, the Court could issue a bench warrant and take the defendant into custody. The CDMHP evaluation then could occur in the jail.

[35] RCW 10.77.090(4) applies only to felony matters.

2. If the Defendant is Acquitted.

Normally, one thinks of jury verdicts and judge verdicts as findings of "not guilty" rather than of "acquittal." But the Court ultimately enters a judgment of acquittal following a not guilty verdict.

The statute seems straightforward enough in that circumstance—the Court must order the defendant to be evaluated by the CDMHP. The problem is that the Court has no jurisdiction over the defendant following the acquittal, and therefore no mechanism to require the defendant to cooperate.[36] Nor is it feasible for the Court to "anticipate" an acquittal by a jury and order the evaluation in advance.

The phrase "acquittal" could also be interpreted to include a judgment of acquittal by reason of insanity. The detailed provisions of RCW 10.77.110 that apply when a felony or non-felony defendant is acquitted by reason of insanity include the possibility of commitment to Western or Eastern. It seems unlikely the legislature intended RCW 10.77.065 to apply as well.

3. If the Non-Felony Charges are Dismissed.

The most common scenario in which this provision will apply is a when a non-felony defendant is competent to stand trial, but the charges are dismissed. The dismissal could be for any number of reasons, such as speedy trial, suppression of evidence, witnesses failing to appear for trial, or general proof problems.

All of the options discussed above presume that the non-felony defendant is competent to stand trial.[37] But what happens if a non-felony defendant is not competent? For higher risk non-felony defendants who cannot be restored to competency, RCW 10.77.090(d)(i) sets out automatic referral procedures. The requirements of RCW 10.77.065 would be redundant.

RCW 10.77.090(e), which applies to lower risk non-felony defendants, does not provide for an automatic referral for civil commitment. It does, however, provide for discretionary detention and referral to the CDMHP. The key question is: which of the two sections, RCW 10.77.065(1)(b) (the first sentence) or RCW 10.77.090(e), takes priority? Since RCW 10.77.065(1)(b) applies only if the competency evaluator concludes that the defendant should be kept under further control, it seems most logical

[36] It might be possible to construct an argument, based on RCW 71.05.150(1) (involving non-emergency detentions authorized by the Superior Court based upon a petition by the CDMHP), that the Municipal or District Court has an implied power to order the defendant to appear for the evaluation. The merits of such an argument are beyond the scope of this paper.

[37] The omitted circumstance involves dismissal of a felony based on the defendant's incompetency. *See* RCW 10.77.065(1)(b)(iii)(A) and 10.77.090(4).

that the more specific provisions of that section would control, rather than the more general provisions of RCW 10.77.090(1)(e).

VII. USING THE MODEL FORM ORDERS.

The orders are drafted with several purposes in mind. First and foremost, they are designed to carry out what the law requires. Second, they are designed to provide flexibility if circumstances change, by eliminating the need for supplemental orders. Third, they are intended to specify in detail for all users (judges, prosecutors, defense attorneys, MHPs, jail staff, etc.) what is being ordered, and in many cases why it is being ordered. In order to minimize the number of variations of each form, they are designed with check boxes.

The orders might seem to contain more information than is minimally necessary; that is by design. The added information helps educate those unfamiliar with these kinds of issues, and provides helpful reminders to take actions required by statute. Some of that added information also helps preemptively resolve thorny issues that might arise down the road. Those issues have arisen over the past several years in the author's practice in Seattle Municipal Court. For a summary guide to using the various orders, please refer to Exhibit 3.

A. Initial Evaluation—Exhibit 4.

The "Order for Initial Evaluation for Competency, Insanity, or Diminished Capacity, Other Ancillary Orders" should be used to bring about the initial evaluation for competency or insanity (or diminished capacity). This Initial Evaluation order provides for the evaluation to occur either in the local jail, at Western or Eastern, at a civil commitment location, or on an outpatient basis at any other location.

At one time the Criminal Division of the Seattle City Attorney's Office previously used different form orders for the evaluation, depending upon the location of the evaluation. That proved to be confusing to the Court, prosecutors, and defense attorneys, because there were several possible orders to deal with. Also, the defendant's custody status, and consequently the location of the evaluation, sometimes changed between the signing of the order and the evaluation itself. The Court had to issue a new order to authorize the evaluation at the new location. This form is designed to authorize the evaluation at any location without the need for a new order.

The order is divided into sections, based upon subject matter. Each section is discussed below.

1. Need for Evaluation.

The order contains three options for the subject matter of the evaluation: competency, insanity, and diminished capacity. The order used the statutory definition for competency rather than the phrase "competency to stand trial," since the issue can arise even at the post-judgment phase. The order also uses the statutory definition for insanity. With respect to diminished capacity, the state(s) of mind must be filled in. The staffs at Western and Eastern are mental health professionals, not lawyers. They do not always know the requisite state of mind for all crimes, so it helps them tremendously to have that information in the order itself.

It might be tempting to check all three options for the evaluation, just to save time. But bear in mind that an insanity evaluation requires a lot of extra time and work-up by the staff at Western or Eastern. Unless the defense really wants to explore insanity or diminished capacity as a defense, the Court should not include them as part of the evaluation.

If the defense asks for an evaluation for diminished capacity, the prosecution should ask that the evaluation include insanity. Diminished capacity is a judicially created defense available when a mental disorder *not amounting to insanity* impaired the defendant's ability to form the requisite specific intent to commit the crime charges. *State v. Ellis*, 136 Wn.2d 498, 521 (1998). Unless the evaluation includes insanity, there will be no way to determine whether the mental disorder does or does not amount to insanity.[38]

2. Custody Status and Defendant's Presence.

This section is designed to create a record about the defendant's custody and/or bail status. It also provides for the option of delaying granting bail if the legal requirements are met and the Court deems it appropriate. If the defendant is at a civil commitment facility, the name of that facility should be filled in if known, so that Western or Eastern will know where to go for the evaluation.

3. Defendant's Background.

This section identifies the procedural setting of the case. The order can be used for a defendant who is awaiting trial, a probation violation hearing, or sentencing. If the defendant is awaiting trial, the order recites that the defendant charged with a non-felony crime, and expressly reserves ruling (until a future hearing) on whether the defendant is in the higher risk or lower risk category. If the defendant is facing a post-judgment

[38] The statute requires that the report include an evaluation of sanity if the defense expresses an intention to rely on an insanity defense. RCW 10.77.060(3)(d). But that provision only states what the order *must* include. It still leaves the Court with discretion to include other information, including an evaluation of sanity in order to determine whether a diminished capacity defense is available.

matter, the order expressly reserves the issue of whether the Court will consider competency restoration treatment.

Sections 3.2.3. and 3.2.4. of the order relate to dispositional continuances and stipulated orders of continuance. Different jurisdictions use one phrase or the other to describe what the Glossary (section II above) defines as a dispositional continuance. In Seattle Municipal Court, there are differences in each of the phrases, which is why the order lists them separately. The order should be modified according to the terminology used in a particular jurisdiction.

Section 3.2. of the order also dovetails with section 7.1. of the order, relating to speedy trial and/or jurisdiction for probation. *See* section VII.A.5. below. If the numbering within section 3.2. of the order is modified, it is vital to modify the corresponding provisions of section 7.1. of the order accordingly.

4. Order for Evaluation.

This section sets out the details of the evaluation. It authorizes evaluations in the jail, at Western or Eastern, at a civil commitment location, or on an outpatient basis. In most instances, the defendant will be held in custody subject to bail. In that situation, the order permits Western or Eastern to decide whether to conduct the evaluation in jail or at the hospital. Both Western and Eastern have teams of evaluators who will go to jails or other locations to conduct evaluations. The availability of the staff at Eastern is a little more limited by travel distances than is the availability of Western's staff.

If the evaluation is to occur at a civil commitment location, Western or Eastern will need access to the defendant. The order grants that access to the defendant at the treatment facility. This is important, because that facility might not grant access to the defendant without a court order.

The order describes the contents of the evaluation report, at section 4.5. Most of the provisions are taken directly from RCW 10.77.060. Some of the provisions are designed to assist in making competency restoration decisions. For example, section 4.5.3. requires that Western: render an opinion about whether competency restoration treatment is likely to be effective, and whether medication is appropriate or necessary; and identify the appropriate DSHS facility(ies) at which outpatient competency restoration treatment would be conducted. The opinion about medication relates to a part of the competency restoration order authorizing forced medication.

Section 4.6. of the order is intended to comply with RCW 10.77.060(1)(a) in the event one of the parties advises the Court that the defendant may be developmentally disabled. If that occurs, the statute requires that at least one of the experts or professional persons conducting the evaluation be a developmental disabilities professional, as that

term is defined in RCW 10.77.010(8). Section 4.7. will only be applied if the check-box is marked.

Section 4.7. of the order is intended to comply with RCW 10.77.065(1)(a)(i). That section requires that the CDMHP, prosecutor, defense attorney and local jail receive a copy of the evaluation report itself. Including the requirement in the order serves as a helpful reminder. RCW 10.77.065(1)(a)(ii) specifies the appropriate recipient at the local jail. Please note that Exhibit 5 relates specifically to King County; those who practice in other counties will need to modify the order appropriately.

Section 4.8. of the order contains language by which the parties may, if they so choose, decide to waive the statutory requirement of two evaluators (*see* section III above) if the evaluation is to occur other than at Western or Eastern. Due to staffing considerations, Western will only conduct a competency evaluation away from Western with a single evaluator. Thus, both parties do not wish to waive the requirement of two evaluators, the evaluation will occur at Western. The same is most likely true with respect to Eastern.

5. Transmittal of Records; Transport Orders; Ancillary Orders.

The last three sections of the order are "enabling" provisions. For example, they authorize the transmittal of information, authorize the defendant to be transported as may be necessary, and provide for an interpreter to be appointed if necessary. Finally, speedy trial is tolled if competency is at issue in a pre-judgment matter or dispositional continuance, and jurisdiction is tolled if competency is at issue in a post-judgment proceeding.

If the observation and examination is to be carried out at Western or Eastern, the Court will need to arrange for transporting the defendant to and from the facility. This is a matter that should be worked out *in advance* with the local City or County Police Department or the local or County jail.

Section 7.1. of the order is designed to work hand-in-hand with sections 3.1. and 3.2. of the order. There are no check-boxes under section 7.1. of the order, since the provisions will apply based on the boxes that are marked under section 3.1. or 3.2. or the order.

If the case is at the pre-judgment stage or if the defendant is on a dispositional continuance, then speedy trial is an issue. CrRLJ 3.3(g)1) excludes from the calculation of speedy trial that period involving "[a]ll proceedings relating to the competency of a defendant to stand trial, terminating when the court enters an order finding the defendant to be competent." The order makes clear that speedy trial is tolled starting on the date of the order, so that there is no question later on about when speedy trial stopped running.

Some form orders contain a recital that the action itself is stayed during the examination period. But the action itself is not stayed until after the Court finds the defendant incompetent, and in non-felony cases, only under certain circumstances. *See* RCW 10.77.090(1)(a).

If the case is at the post-judgment stage, then probation jurisdiction is an issue. The running of probation should be tolled during the defendant's incompetency. *See* section IV.E.3.a. above.

B. Competency Restoration Order (Trial)—Exhibit 5.

If the Court concludes at the competency hearing that the defendant is a higher risk non-felony defendant and is incompetent to stand trial, the Court must order competency restoration treatment. The Competency Restoration Order should be used, regardless of whether the Court intends to order inpatient or outpatient treatment. If the defendant remains incompetent after completing one form of treatment and the Court wants to order the other, the Court should issue a new Competency Restoration Order.

1. Findings of Fact.

The order specifies the ground(s) on which the defendant qualifies for higher risk status. If the defendant does not meet one of the grounds in section 1.1., then this is not the correct order to use. It is very important for the Court to make the appropriate findings in this section of the order. If a higher risk non-felony defendant is not restored to competency, then he or she is evaluated for a possible 90-day civil commitment. The county prosecutor or assistant attorney general handling the civil commitment matter will need a certified copy of an order establishing that the defendant meets the criteria for restoration treatment, and therefore for consideration for the 90-day civil commitment.

Section 1.3. delineates whether the defendant has received any form of competency restoration treatment. This information is helpful to the treatment facility, and helps clarify the record.

2. Orders Regarding Treatment for Restoration of Competency.

The Court can designate the type of competency restoration program by checking the appropriate box. RCW 10.77.090(1)(d)(i)(C) requires that the *Court* calculate the number of days by which the 14-day treatment period can be extended pursuant to RCW 10.77.090(1)(d)(i)(C), and that the *Court* include that calculation in the order. Although presently the inpatient treatment is provided at Western and Eastern, it is possible that DSHS will designate different locations in the future. The order provides for that possibility in section 2.1.3.

Section 2.2. relates to outpatient treatment, if ordered by the Court. The Court will need to fill in the name of the outpatient treatment facility, and any additional conditions of the outpatient program. The conditions in the order are loosely based on the deferred prosecution statute (RCW Ch. 10.05) and the deferred prosecution orders typically used in courts of limited jurisdiction.

Section 2.3. authorizes the treatment facility to administer forced medication as part of the competency restoration treatment. This section should only be used if the facts and circumstances of the case justify it. The order cites *State v. Adams*, 77 Wn.App. 50, 55-57 (1995), and *State v. Lover*, 41 Wn.App. 685, 688-690 (1985), which permit forced medication as part of competency restoration treatment in felony cases when the appropriate facts exist. *See* section IV.D.2.a.(iv) above.

3. Orders upon Completion of Treatment Period.

The most important question regarding competency restoration treatment is whether it worked. Section 3. of the order requires Western or Eastern to evaluate the defendant's competency before the treatment ends. The contents of the evaluation report are similar, but not identical, to the provisions of the initial evaluation order.

Subsection 3.3.1. sets a return date for the next competency hearing. It provides for an early termination of the competency restoration treatment if the treatment facility determines that competency has been restored or is unlikely to be restored.

Subsection 3.3.2. provides for the Court to set a later hearing date, in case the next hearing is scheduled before the defendant's inpatient competency restoration treatment is completed. That could occur, for example, if the Court underestimates the time it takes to transport the defendant to the treatment facility. This subsection alerts Western or Eastern to notify the Court if this situation arises.

4. Transport Orders.

This section only applies if the defendant is placed into inpatient treatment. It authorizes the defendant to be transported to and from the treatment facility.

C. Competency Restoration Order (RILF)—Exhibit 6.

Section IV.E.1.c. above contains a lengthy discussion on the issue of competency restoration treatment in post-judgment matters. If the Court orders competency restoration treatment, the form order in Exhibit 6 can be used. This specific form is based on use in a RILF, or probation revocation filed in lieu of a new charge. It should be modified as appropriate to the type of post-judgment matter involved.

The provisions of the Competency Restoration Order (RILF) essentially track those in the Competency Restoration Order (Trial), with some relatively minor modifications. Those modifications are designed to provide the greatest flexibility in determining the Court's basis for ordering the treatment. For example, section 1.1, which describes the defendant's background, contains the criteria for a higher risk non-felony defendant who is incompetent to stand trial. That allows the Court to base its decision to order competency restoration treatment in a RILF either on a theory that the RILF is equivalent to the defendant being charged with a non-felony, or on inherent authority. *See* sections IV.E.1.c. and IV.E.3.c.(ii) above. Another example is section 1.3., which describes the defendant's prior competency restoration treatment history on the case. The statutory references to RCW Ch. 10.77 have been removed in case the Court bases its order on inherent authority to order treatment.

The other difference between this order and the Competency Restoration Order (Trial) is section 3.4. Because this order applies to a post-judgment matter, *i.e.*, a RILF, jurisdiction is tolled, and speedy trial is not at issue. But bear in mind that if this order is modified for use in probation violation matter involving a dispositional continuance, then section 3.4. should be modified to provide that speedy trial is tolled. *See* section IV.E.3.d. above.

D. Dismissal—Unsuccessful or Unlikely Restoration (Trial)—Exhibit 7.

If the Court concludes that a higher risk non-felony defendant awaiting trial who has completed the competency restoration treatment has not been restored to competency, the Court is required to dismiss the case. The Court is also required to dismiss the case if it determines that, although the defendant has not completed the treatment, the defendant is unlikely to be restored to competency with further treatment. If the defendant was in custody at the time, the Court must also detain the defendant and send him or her to an evaluation and treatment facility for evaluation under RCW Chapter 71.05. If the defendant was out of custody at the time, the Court must refer the defendant to the CDMHP, who will evaluate the defendant at a location chosen by the CDMHP.

The Dismissal—Unsuccessful or Unlikely Restoration order is designed to carry out the Court's duties. The first section specifies the basis for the dismissal. There is an alternative for each reason the Court can enter dismissal.

For example, the defendant might have completed both inpatient and outpatient treatment unsuccessfully. Or the defendant might have completed only inpatient treatment, but restoration is unlikely to occur with outpatient treatment (or vice versa). Another possibility is a professional person (as defined in RCW 10.77.010(17)) opines in the initial evaluation that the defendant is unlikely to regain competency with either inpatient or outpatient treatment. Finally, the Court might decline to order the defendant into outpatient treatment, following unsuccessful inpatient treatment, because the

defendant is too much of a safety risk. That risk level is something Western or Eastern is required to evaluate in the Order for Initial Evaluation.

The remaining portions of the order dismiss the case and make the appropriate referral. They also authorize the prosecutor to transmit records to the CDMHP or the treatment facility, as appropriate. The order sets a specific time limit within which the jail is to transport the defendant to Western or Eastern.

E. Dismissal—Ineligible for Treatment (Trial)—Exhibit 8.

As previously discussed, if a lower risk non-felony defendant is not competent to stand trial, the Court has limited options: stay or dismiss the proceedings and detain the defendant; or dismiss outright. The Dismissal—Ineligible for Treatment order is the proper order to use.

If either the dismiss-and-detain or stay-and-detain options are used, the Court should fill in the maximum length of detention time in section 2.1. or 2.3., as the case may be. RCW 10.77.090(1)(e) does not contain a specific time limit. All it says is that the defendant may be detained "for a sufficient time" for the CDMHP to make its evaluation.

The office of the King County CDMHP has advised the author that they prefer to be given 72 hours to make the evaluation, but that 48 would be minimally appropriate. The reason they need that much time is that the evaluation requires that the CDMHP meet with the defendant *and* attempt to contact and interview witnesses *and* attempt to contact other service providers.. That cannot reasonably be done in less than 48 or 72 hours. One factor to consider in setting the time limits is the complexity of the particular case, including the number of witnesses.

As with the Dismissal—Unsuccessful or Unlikely Restoration (Trial) order, this order sets a specific time limit within which the jail is to transport the defendant to Western or Eastern. It is also a good idea to work out release procedures with the jail so that the defendant is not held in jail longer than is necessary.

Because the CDMHP will be under time pressure to determine whether to pursue civil commitment proceedings, it is vital that the prosecutor gets the information to them as soon as possible. Section 3.1. requires the CDMHP to notify the Court and both counsel whether civil commitment proceedings were instituted. The order should contain the defense attorney's full name and address, so the CDMHP can send the information.

F. Strike Revocation (FTC)—Exhibit 9.

This order applies when the Court finds a non-felony defendant incompetent to proceed on a probation violation matter and has not ordered competency restoration treatment. The order requires some modification if it is to be used in a sentencing matter.

Section 2 of the order strikes the hearing and provides either refers the defendant to the CDMHP for civil commitment evaluation or releases the defendant immediately. The referral provision in section 2.1 is similar the dismiss and detain provision in the Dismissal—Ineligible for Treatment (Trial) order with one major difference. This order refers the defendant to the CDMHP now, and strikes the probation violation hearing effective five days later, without further order of the Court. The defendant is ordered release on the earlier of the fifth day or when the CDMHP declines to initiate a civil commitment. The order is phrased this way in an attempt to avoid the issue of whether the Court has authority to detain the defendant on a probation matter. *See* section IV.E.1.d. above.

Section 3 of the order either tolls speedy trial or the period of probation, defending on the nature of the probation matter.

G. Strike Revocation (RILF)—Exhibit 10.

The Strike Revocation (RILF) order is designed for use in when the defendant is facing a probation violation matter in the form of a RILF. If the Court did not order competency restoration treatment, the Strike Revocation (FTC) order could be used instead. If the Court did order competency restoration treatment and the defendant is not restored to competency, this order should be used. *See* section IV.E.

H. Insanity Acquittal—Exhibit 11.

If the Court grants the defendant's motion for acquittal by reason of insanity, the Court should issue written findings of fact and orders. The Findings of Fact is designed to do that. If the defendant is acquitted by reason of insanity at a jury or bench trial, the Court should modify the order appropriately.

1. Findings of Fact.

As discussed previously, a defendant must be competent in order bring a motion for acquittal by reason of insanity. The defendant must also be advised of the rights he or she waives, and the potential consequences of the motion. *See State v. Brasel*, 28 Wn.App. 303 (1981). Section 1.1. of the order states that the defendant is competent, and recites the rights that the defendant must knowingly, voluntarily and intelligently waive, in accordance with *Brasel*, and with RCW 10.77.110.

The Court is also required to make certain findings regarding the defendant's dangerousness. *See* RCW 10.77.040, .080, and .110. Sections 1.3. and 1.4. contain the various possible findings. If the defendant is acquitted by reason of insanity at a jury trial, the form should be modified to recite that the jury made the findings in those two sections.

2. Judgment of Acquittal by Reason of Insanity.

Section 2 of the order sets forth the actual judgment of acquittal.

3. Orders Regarding Defendant's Treatment or Discharge.

The disposition of the defendant following the acquittal by reason of insanity depends upon the findings entered in Sections 1.3. and 1.4. of the order. Sections 3.1. through 3.4. contain the different alternatives; which one applies depends upon which boxes are checked in sections 1.3. and 1.4. All of the treatment sections require the defendant to comply with treatment. The defendant's failure to comply could for the basis for revoking any conditional release. *See* section V.C.2. above.

Section 3.1. provides for inpatient treatment at a Western or Eastern, and authorizes the defendant's transport. It also authorizes confining the defendant in jail for up to seven days while awaiting transport to Western or Eastern. This provision is based on RCW 10.77.220. In addition, it authorizes the transport to the hospital. Sections 3.2. and 3.3. provide for outpatient treatment of one kind or another. The Court needs to fill in some blanks regarding the outpatient treatment. Section 3.4. provides for an outright release of the defendant on the charge(s) on which the acquittal by reason of insanity is entered. The Court does not need to take any further action.

The maximum period of inpatient or outpatient treatment into which the defendant may be ordered is the maximum possible jail sentence the defendant could have received if convicted on any of the charges for which he or she was acquitted by reason of insanity. The treatment facility will not have ready access to the Court's files, and in any event its staff members are not lawyers. It is therefore incumbent upon the Court to calculate the release date. The order grants the defendant credit for previous bookings in calculating the release date.

Section 3.5. contains a blank line for the release date, and blank lines for calculating the release date. The order includes the calculation to make it easier for the Court (or counsel, if the Court asks counsel to prepare the order) to determine the release date.

VII. <u>CONCLUSION</u>.

State statutes govern competency and sanity issues. But the logistics of complying with the law *and* ensuring public safety are largely dependent upon local efforts and

resources. The legislature has expanded the options in dealing with mental health issues in courts of limited jurisdiction. As a result, many of the "how-to" details require constant communication among all of the players in the system. This includes the prosecutor, Court, defense bar, police, and community mental health professionals (such as the CDMHP and representatives of Western or Eastern).

This is not an area in which there is a "one size fits all" approach. Counties and cities should form work groups to develop a uniform approach (and to coordinate between county and city) in local areas. Judges, prosecutors, and defense attorneys should communicate with other colleagues in other counties, and with local mental health providers, on a regular basis. It is well worth the effort, both in terms of public safety and in terms of handling non-felony cases involving mentally ill offenders appropriately.

wsama\papers/Fall 2002 MIO Paper
j:\data\criminal\docs\forms\mio\How-to Paper-2002

EXHIBIT 1—COMPARISON OF ISSUES RELATING TO COMPETENCY, INSANITY, DIMINISHED CAPACITY, & CIVIL COMMITMENT IN NON-FELONY CASES

	Competency	**Insanity**	**Diminished Capacity**	**Civil Commitment**
Relevant Court	Municipal or District.	Municipal or District.	Municipal or District.	Superior Court.
Relevant Proceeding	The pending criminal action.	The pending criminal action.	The pending criminal action.	A separate civil proceeding.
Relevant Test	As a result of mental disease or defect, does defendant lack capacity to understand nature of proceedings or assist in own defense?	As a result of mental disease or defect, did defendant have capacity to perceive nature and quality of acts charged, or tell right from wrong with reference to charged acts?	Evidence of mental illness or disorder may be taken into consideration in determining whether defendant had capacity to form particular state of mind, which is element of crime charged.	As a result of mental disorder, does subject present likelihood of serious harm, or is subject gravely disabled?
Relevant Time	At the present time.	At the time of the offense.	At the time of the offense.	At the present time.
Can Status Change over Time?	Yes. Defendant can change from competent to incompetent and back again, over time.	No. Defendant was either sane or insane at the time of offense.	No. Defendant either did or did not have the capacity to form the requisite state of mind.	Yes. Civil commitments run for 72 hours, then 14 days, then 90 days, then 180 days, and provide for LRAs as well.

EXHIBIT 2—SUMMARY OF COMPETENCY EVALUATION AND RESTORATION PROCESS—NON-FELONY DEFENDANTS AWAITING TRIAL (RCW 10.77.090)

1. Competency to stand trial issue arises—Court orders competency evaluation (usually in jail, but can be at Western or Eastern State Hospital or at outpatient location) pursuant to RCW 10.77.060.

2. Evaluation results received—if defendant is **competent**, case proceeds to trial. If defendant is **not competent**, then and must determine if defendant is **higher risk** or **lower risk** category. This may require contested hearing.

a. If defendant is not competent and is in **lower risk** category, then Court must either: stay or dismiss case without prejudice and detain defendant for CDMHP evaluation for possible 71.05; or dismiss case without prejudice and take no further action.

b. If defendant is not competent and is in **higher risk** category, then Court must order competency restoration (14 days of inpatient or 90 days of outpatient, or combination of both. The 14 days is in addition to unused custodial time from initial evaluation.)

3. If **higher risk** defendant still not competent after restoration treatment (or if Court finds competency unlikely to be restored even with treatment), the charges are dismissed without prejudice, and either:

a. Defendant referred to Evaluation and Treatment facility for up to 72 hours for evaluation for possible 71.05, **if defendant was in custody at time of dismissal**; or

b. Defendant referred to CDMHP for evaluation for possible 71.05 (at location selected by CDMHP), **if defendant was on conditional release at time of dismissal**.

4. Non-felony Court jurisdiction, and City Prosecutor involvement, ends with dismissal.

*** Higher risk** defendant has either: pending charge, or history of, one or more violent acts; prior ngi, or had dismissal based on incompetency, of charge involving actual, threatened, or attempted physical harm to a person. All other defendants are **lower risk**. **History of violent acts** means behavior within a 10-year period *preceding the date of filing of criminal charges* (excluding prison, jail, or institutional time) that (a)(i) resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly created an immediate risk of serious physical injury to another person.

j:\data\criminal\docs\forms\mio\comp-sum

EXHIBIT 3—GUIDE TO USING MIO FORM ORDERS

Title of Order (and Document Name)*	Description of Use
Order for Initial Evaluation for Competency, Insanity, or Diminished Capacity, and Other Ancillary Orders (Initial Evaluation)	Used when Court determines that competency, insanity, or diminished capacity may be at issue. Used for matters prior to disposition or trial, and for probation violation and sentencing matters. Provides for initial evaluation by Western State Hospital.
Order Directing Competency Restoration Treatment and Ancillary Orders (Trial) (Competency Restoration Order (Trial))	Used when case is prior to disposition or trial and defendant falls within higher risk category, and Court finds defendant not competent. Provides for competency restoration treatment on inpatient or outpatient basis.
Order Directing Competency Restoration Treatment and Related Ancillary Orders (Probation Revocation in Lieu of Filing New Charges) (Competency Restoration Order (RILF))	Used when defendant is on probation or on some form of dispositional continuance and defendant falls within higher risk category, and Court finds defendant not competent. Provides for competency restoration treatment on inpatient or outpatient basis.
Order Dismissing Case—Competency Restoration Treatment Unsuccessful or Unlikely to Be Successful—and Related Ancillary Orders (Trial) (Dismiss-Treatment Unsuccessful or Unlikely to Succeed (Trial))	Used when case is prior to disposition or trial and defendant falls within higher risk category, and Court finds defendant's competency not restored through treatment (or that treatment is unlikely to restore competency). Provides for referral to CDMHP or treatment facility for civil commitment evaluation.
Order Finding Defendant Not Eligible for Competency Restoration Treatment, Dismissing or Staying Proceedings, and Related Ancillary Orders (Trial) (Dismiss-Not Eligible for Restoration Treatment (Trial))	Used when case is prior to disposition or trial and defendant falls within lower risk category, and Court finds defendant not competent. Provides for referral to CDMHP for civil commitment evaluation.

Title of Order (and Document Name)*	**Description of Use**
Order Striking or Staying Probation Revocation Proceedings Due to Defendant's Lack of Competency and Related Ancillary Orders (FTC with probationary conditions) Strike Hearing-Not Eligible for Restoration Treatment (FTC with Probationary Conditions)	Used when defendant is on probation or on some form of dispositional continuance and probation violation alleged for failure to comply with conditions of probation. Used when defendant falls within lower risk category and Court finds defendant still not competent. Provides for referral to CDMHP for civil commitment evaluation.
Order Striking or Staying Probation Revocation Proceedings Due to Defendant's Lack of Competency and Related Ancillary Orders (Probation Revocation in lie of Filing New Charges) (Strike Hearing-Not Eligible for Restoration Treatment (RILF))	Used when defendant is on probation or on some form of dispositional continuance and probation violation filed in lieu new criminal charges. Can be used when defendant falls within higher risk category and Court finds competency is not restored through treatment (or that treatment is unlikely to restore competency). Or can be used when defendant falls within lower risk category and Court finds defendant still not competent. Provides for referral to CDMHP for civil commitment evaluation.
Acquittal by Reason of Insanity—Findings of Fact, Judgment, and Orders Regarding Defendant's treatment or Discharge (Insanity Acquittal Order)	Used when defendant has been acquitted by reason of insanity. Provides for required factual findings and orders defendant's commitment for treatment or release

*****All documents can be accessed under their respective document names, in "Read Only" format, in the following folder: j:/data/criminal/docs/forms/mio/[insert document name].

EXHIBIT 4—INITIAL EVALUATION

IN SEATTLE MUNICIPAL COURT, COUNTY OF KING
STATE OF WASHINGTON

CITY OF SEATTLE, Plaintiff,	No.
vs.	ORDER FOR INITIAL EVALUATION FOR COMPETENCY, INSANITY, OR DIMINISHED CAPACITY, AND OTHER ANCILLARY ORDERS
_____, Defendant.	

THIS MATTER having come on for hearing before the undersigned Judge of the above-entitled court on the date indicated below for a hearing on the Defendant's competency to proceed and/or the issue of the Defendant's sanity or diminished capacity at the time of the alleged acts, as indicated in section 1 below; the Plaintiff, the City of Seattle, being represented by the undersigned Assistant City Attorney, and the Defendant being represented by his/her attorney whose name is listed below; and the Court having considered the records and files herein, and having heard from the Defendant; the Court hereby enters findings of fact and issues orders as follows:

1. NEED FOR EVALUATION. The Court finds that the defendant is in need of a mental health examination prior to proceeding further in the above-entitled cause, to make the determination(s) marked below:

_____ **1.1. Competency.** The Defendant's capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect, pursuant to RCW 10.77.010(14) and 10.77.050.

_____ **1.2. Insanity.** The Defendant's capacity to perceive the nature and quality of the act(s) with which he or she is charged or to tell right from wrong with reference to the

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

particular act(s) charged, as a result of mental disease or defect at the time of the commission of the alleged offense(s), pursuant to RCW 9A.12.010 and SMC 12A.04.160.

_____ **1.3. Diminished Capacity.** The Defendant's capacity to have a particular state of mind, which is an element of the offense(s), charged, as follows:

State of Mind _____ Offense _____

State of Mind _____ Offense _____

State of Mind _____ Offense _____

State of Mind _____ Offense _____

2. CUSTODY STATUS AND DEFENDANT'S PRESENCE. The Defendant's custody status and appearance are as marked below:

_____ **2.1.** The Defendant is present in custody, and bail is set as marked below:

_____ **2.1.1.** Bail has been previously set as marked:

_____ **2.1.1.1.** By previous order of this Court; or

_____ **2.1.1.2.** In accordance with the bail schedule previously adopted by this Court for the crime(s) charged; or

_____ **2.1.2.** Bail is hereby set at, or modified to, $_____, with the conditions as set forth in the Court file in this matter; or

_____ **2.1.3.** The Defendant is hereby released on his/her personal recognizance without bail, subject to such conditions as are set forth in the Court file in this matter; or

_____ **2.1.4.** Bail has not been set previously, and the Court hereby delays granting bail, in accordance with RCW 10.77.060(1)(b), until the Defendant has been evaluated for competency or sanity and appears back before this Court. The Defendant is hereby committed for inpatient examination as set forth in subsection 4.2. below.

_____ **2.2.** The Defendant is present in Court out of custody.

_____ **2.3.** The Defendant is not present in Court but is presently being detained pursuant to proceedings under chapter 71.05 RCW. This Court's prior bail order shall remain

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

in effect. The name of the facility at which the Defendant is detained (the "Treatment Facility") is: _____.

_____ **2.4.** The Defendant is in custody but is not present in Court.

3. DEFENDANT'S BACKGROUND. The Defendant is charged as follows:

_____ **3.1. The Defendant is charged with a non-felony crime.** The Court expressly reserves ruling on the issue of whether the Defendant meets any of the criteria under RCW 10.77.090(1)(d)(i)(A) for competency restoration treatment.

_____ **3.2. The Defendant is awaiting a post-judgment proceeding in this case as marked below.** The Court expressly reserves ruling on the issue of whether the Defendant may be ordered into competency restoration treatment.

_____ **3.2.1.** The Defendant is on probation in the form of a suspended sentence.

_____ **3.2.2.** The Defendant is on probation in the form of a deferred sentence.

_____ **3.2.3.** The Defendant is on probation in the form of a dispositional continuance.

_____ **3.2.4.** The Defendant is on probation in the form of a stipulated order of continuance.

_____ **3.2.5.** The Defendant is awaiting sentencing.

4. ORDER FOR EVALUATION. The staff at Western State Hospital ("WSH") shall examine and report upon the mental condition of the Defendant in accordance with RCW 10.77.060. The report shall include those items marked in section 1 above. The examination and report shall be conducted at the location, and shall include the information, described below in this section.

4.1. Examination in King County Jail. If either subsection 2.1.1. or 2.1.2. above is marked, the examination shall take place in the King County Jail (either in downtown Seattle

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

or at the Kent Regional Justice Center) unless WSH determines that the examination should take place at Western State Hospital.

4.1.1. Examination at Western State Hospital instead. If WSH determines in its reasonable discretion that the examination should take place at Western State Hospital, WSH shall notify the City Attorney and the Defense Attorney of that fact, as soon as is reasonably practicable, and then the Defendant shall be deemed committed to Western State Hospital for a period not to exceed 15 days from the date of admission to Western State Hospital, after which time the Defendant is to be returned to the King County Jail for further proceedings in this matter, unless the Defendant has been released from custody on all matters.

4.1.2. If Defendant released from custody before completion. If the Defendant is released from custody before the examination is completed, it is hereby ordered that, as a condition of release on bail or personal recognizance, the Defendant is ordered to make arrangements with WSH for, and to undergo, an examination on an outpatient basis, within 15 days of the date of this order, in the manner described in subsection 4.3. below.

4.2. Examination at Western State Hospital. If subsection 2.1.4. above is marked, the Defendant is hereby committed to Western State Hospital for the examination. The Defendant's commitment shall be for, and the examination shall be completed within, a period not to exceed 15 from the date of admission to Western State Hospital, after which time the Defendant is to be returned to the King County Jail for further proceedings in this matter.

4.3. Out-of-Custody Examination. If subsection 2.1.3. or 2.2. above is marked, or if the Defendant is released from custody as described in subsection 4.1.2. above, then the examination shall occur on an outpatient basis. In that event, the Defendant is hereby ordered to contact WSH at 253-761-7565, to schedule an appointment for the examination. The

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

examination shall take place at Western State Hospital, or at any other location deemed appropriate by WSH, and shall occur within 15 days of the date of this order.

4.4. Examination at Civil Commitment Facility. If subsection 2.3. above is marked, or if the Defendant is detained pursuant to proceedings under chapter 71.05 before the evaluation takes place under any of subsections 4.1, 4.2, or 4.3 above, then the Defendant shall be made available by the staff of the Treatment Facility identified in subsection 2.3. above, or whatever other treatment facility at which the Defendant is detained, for examination by WSH. The examination shall take place at such facility within 15 days of the date of this order.

4.5. Contents of Report. As soon as practicable, WSH shall furnish to the Court a written report of the results of the examination and, if the Defendant was committed to Western State Hospital for the evaluation, in no event less than twenty-four hours preceding the transfer of the Defendant back to the King County Jail. The report shall include all of the following:

4.5.1. A description of the nature of the examination;

4.5.2. A diagnosis of the mental condition of the defendant;

4.5.3. If the Defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to the Defendant's capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect. If the opinion is that the Defendant lacks such capacity, then an opinion as to whether the Defendant is likely to regain such capacity with competency restoration treatment in the manner described in RCW 10.77.090(1)(d)(i)(C), and if so:

4.5.3.1. An opinion whether medication is medically appropriate and necessary to help the Defendant regain or maintain such capacity.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

4.5.3.2. An opinion as to whether any less intrusive methods exist to help the Defendant regain or maintain such capacity.

4.5.3.3. An opinion, based on the Defendant's risk level and/or treatment needs, as to whether the Defendant is suitable for competency restoration treatment on an outpatient basis. If the opinion is that the defendant is suitable for such outpatient treatment, the name of the DSHS-designated treatment facility at which outpatient competency restoration would be conducted in the event the Court orders placement at such treatment.

4.5.4. If subsection 1.2. above is marked, an opinion as to the Defendant's sanity at the time of the act.

4.5.5. If subsection 1.3. above is marked, an opinion as the to Defendant's capacity to have a particular state of mind which is an element of the offense charged.

4.5.6. An opinion as to whether the Defendant should be evaluated by a county designated mental health professional under RCW Ch. 71.05, an opinion as to whether the Defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the Court or other persons or institutions. If the opinion is that the Defendant is not such a danger **and** does not present such a substantial likelihood, then an opinion as to whether the Defendant is nevertheless in need of control by the Court or other persons or institutions.

_____ **4.6. Developmental Disabilities Professional.** The provisions of this section 4.6. apply only if this section is marked. One of the parties has advised the Court that the defendant may be developmentally disabled. The Court hereby orders that at least one of the experts or professional persons conducting the evaluation shall be a developmental disabilities professional, as defined in RCW 10.77.010(8).

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

4.7. Copies of Report. Copies of the report shall be sent to the City Attorney (directed to the attention of the Case Prep Unit), the Defense Attorney, the Psychiatric Services Administrator of the King County Department of Adult Detention, and the County Designated Mental Health Professional for King County.

4.8. Waiver of Requirement of Two or More Examiners. If the examination occurs at a location other than WSH, and if the attorneys for both parties initial below, then the Court hereby accepts the parties' waiver of the statutory requirements of two evaluators, which waiver has been given for the purpose of expediting the examination. If both parties do not initial below, then the waiver shall not be effective.

The parties, by having their respective attorneys place their initials below, hereby consent to having a single competency evaluator.

_____ _____

Prosecutor's Initials and Bar # Defense Attorney's Initials and Bar #

5. TRANSMITTAL OF RECORDS.

5.1. Access to Records. To the extent permitted by RCW Chs. 10.77 and 71.05 (including but not limited to 10.77.065, 10.77.097, and 71.05.390) or other applicable law, WSH is hereby granted access to the Defendant's medical records, whether they are located at the King County Correctional Facilities, at Western State Hospital, or elsewhere, for the purpose of conducting the examination ordered hereby.

5.2. Authorization to Provide Information. The City Attorney, the Court, the Seattle Police Department, any other law enforcement agency possessing relevant information, and the Defense Attorney, are hereby authorized to provide to WSH all information in their possession or control which they reasonably deem may be of assistance WSH in conducting the examination ordered hereby. The City Attorney's office shall provide a copy of this order to the CDMHP.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

6. TRANSPORT ORDERS. If the examination is to occur at Western State Hospital, then the following shall occur. (a) The Defendant shall be transported to Western State Hospital at Ft. Steilacoom by the King County Department of Adult Detention as soon as possible, but not prior to the next business day after Western State Hospital receives information within the control of the Court, the prosecutor, or the defense attorney that is relevant to the evaluation. Western State Hospital shall notify the King County Department of Adult Detention when it has received such information. (b) The Defendant shall be transported from Western State Hospital at Ft. Steilacoom to the King County Jail, by the King County Department of Adult Detention, upon completion of said examination. (c) The King County Department of Adult Detention is hereby authorized to transport the Defendant as requested herein.

7. ANCILLARY ORDERS.

7.1. Speedy Trial/Jurisdiction. If subsections **1.1. and 3.1.** above are marked, then the running of speedy trial time is tolled in this action, pursuant to CrRLJ 3.3(g)(1), until this Court enters an order finding the defendant to be competent. If subsections **1.1 and** either subsection **3.2.1. or 3.2.2.** above is marked, then the running of this Court's jurisdiction in the probation action shall be tolled pursuant to applicable law, until this Court enters an order finding the Defendant to be competent. If subsections **1.1. and** either subsection **3.2.3. or 3.2.4.** above is marked, then the running of speedy trial time is tolled in this action pursuant to CrRLJ 3.3(g)(1), until this Court enters an order finding the Defendant to be competent.

7.2. Next Hearing Date. The next hearing in this case shall be:

Date: _____ Time: _____ Courtroom: _____

_____ **7.3. Interpreters.** If this subsection is marked, then, that the examination shall be done with the aid of an interpreter in the _____ language. Defense counsel is

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

to arrange for the appointment of an interpreter and to coordinate with WSH for the interpreter to be present at the examination, whether it occurs at Western State Hospital, or in the King County Jail (either in downtown Seattle or at the Kent Regional Justice Center), or at the Treatment Facility.

DONE IN OPEN COURT this _____ day of _____ , ____ .

_____
JUDGE

Presented by:

_____
Assistant City Attorney
WSBA #_____

Attention: Case Preparation Unit
Seattle City Attorney's Office
Criminal Division
710 Second Ave., #1414
Seattle, WA 98104-1700
(206) 684-7757
FAX (206) 615-1293

Defense Attorney:

_____
(Attorney Name) WSBA #

_____
(Firm)

_____
(Address)

_____
(City, State, Zip)

_____
(Telephone)

_____
(Fax)

Copy received; Approved for entry:

_____
WSBA # _____

j:/data/criminal/docs/forms/mio/Initial Evaluation

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

EXHIBIT 5—COMPETENCY RESTORATION ORDER (TRIAL)

IN SEATTLE MUNICIPAL COURT, COUNTY OF KING
STATE OF WASHINGTON

CITY OF SEATTLE, Plaintiff,	)	No.
vs.	)	ORDER DIRECTING COMPETENCY RESTORATION TREATMENT AND RELATED ANCILLARY ORDERS (TRIAL)
_____, Defendant.	)	

THIS MATTER having come before the undersigned Judge of the above entitled Court on the date indicated below for a hearing on the Defendant's competency to stand trial; the Court having reviewed the report(s) of the mental health professional(s) who have examined the Defendant regarding the Defendant's competency to stand trial as well as the other reports and information in this case; and the Defendant being present and represented by his/her attorney whose name is listed below and Plaintiff the City of Seattle being represented by the undersigned Assistant City Attorney; the Court hereby enters findings of fact and issues orders as follows:

1. FINDINGS OF FACT:

1.1. Defendant's Background. The Court finds that the Defendant is charged with a non-felony crime and has one or more of the following, as marked below:

_____ **1.1.1.** A pending charge of one or more violent acts as defined in RCW 10.77.010(21);

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

_____ **1.1.2.** A history of one or more violent acts as defined in RCW 10.77.010(13) and (21);

_____ **1.1.3.** Been previously found incompetent under chapter 10.77 RCW or an equivalent federal or out-of-state statute with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person; and/or

_____ **1.1.4.** Been previously acquitted by reason of insanity under chapter 10.77 RCW or an equivalent federal or out-of-state statute with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person.

1.2. Competency to Stand Trial. The Court finds that the Defendant lacks the capacity to understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect. The Defendant is therefore not competent to stand trial, pursuant to RCW 10.77.010(14) and 10.77.050.

1.3. Competency Restoration Treatment Appropriate. The Court does **not** presently find that the Defendant is unlikely to regain competency with treatment. The Court is therefore required to order that the Defendant undergo treatment for the restoration of competency, as directed by RCW 10.77.090(1)(d)(i). In connection with the above-entitled cause, the Defendant has or has not previously undergone treatment for competency restoration as marked on the blank lines below:

_____ **1.3.1.** The Defendant has not previously been placed in any form of treatment for competency restoration pursuant to RCW 10.77.090(1)(d)(i)(C).

_____ **1.3.2.** The Defendant has previously been placed in an inpatient treatment program at a secure mental health facility in the custody of the Department of

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

Social and Health Services for mental health treatment and restoration of competency, pursuant to RCW 10.77.090(1)(d)(i)(C)(I).

_____ **1.3.3.** The Defendant has previously been placed on a 90-day conditional release program for mental health treatment and restoration of competency, pursuant to RCW 10.77.090(1)(d)(i)(C)(II).

2. <u>ORDERS REGARDING TREATMENT FOR RESTORATION OF COMPETENCY</u>: The Secretary of the Department of Social and Health Services (DSHS) is hereby ordered to place the Defendant in a program for mental health treatment and restoration of competency, as noted on the blank lines below.

_____ **2.1. <u>Inpatient Program</u>.** The Defendant shall be placed at a secure mental health facility in the custody of DSHS (or an agency designated by DSHS) for mental health treatment and restoration of competency. The Defendant shall comply with all aspects of the treatment as directed by the treatment facility, including, without limitation, taking any medications prescribed as part of the program.

2.1.1. The placement shall not exceed 14 days in addition to any unused time of evaluation under RCW 10.77.060. There are ____ days of unused time of the 15-day evaluation (if the preceding line is left blank, then there are no unused days of the evaluation), so the total placement shall not exceed ____ days (if the preceding line is left blank, then the total placement shall not exceed 14 days).

2.1.2. The 14 days includes 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.

2.1.3. The inpatient treatment program shall be provided at _____. If the preceding line is left blank, then the location shall be Western State Hospital.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

_____ **2.2. <u>90-Day Conditional Release Program</u>.** The Defendant shall be placed on conditional release for 90 days for mental health treatment and restoration of competency. The treatment shall be performed at the following DSHS-designated treatment facility ("Treatment Facility"):

_____.

2.2.1. The Defendant shall be released from custody forthwith, and is hereby directed to contact the Treatment Facility in person or by telephone within ____ days of this order.

2.2.2. The Defendant shall comply with the following conditions:

Comply with all terms and conditions of the treatment program as directed by the Treatment Facility, including, without limitation, taking any medications prescribed as part of the program.

Notify the Court and the Treatment Facility of any change of address or telephone number.

Have no criminal law violations.

Attend all required Court appearances in this matter or in any other criminal matters in this or any other Court.

Abstain from alcohol and all other mood altering drugs, unless prescribed by a physician.

Possess no weapons.

Other: _____

_____

_____

_____.

2.2.3. The Treatment Facility shall inform the Court, the Mental Health Court Monitor, the defense attorney listed below, and the prosecutor listed below

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

immediately if the Defendant fails to comply with any of the conditions of the conditional release.

2.2.4. The Treatment Facility shall provide monthly reports on the Defendant's progress to the Court, the Mental Health Court Monitor, the defense attorney listed below, and the prosecutor listed below.

_____ **2.3. Forced Administration of Medication.** Western State Hospital evaluated the Defendant pursuant to a court-ordered competency evaluation. Western State Hospital produced a report, dated _____, which the parties have agreed to rely on for purposes of having this Court determine whether an order permitting treatment including the involuntary administration of anti-psychotic medications is appropriate. The Court, having reviewed that report, and having heard further argument from the parties, makes the following findings and enters the following orders, pursuant to *State v. Adams*, 77 Wn. App. 50, 55-57 (1995) and *State v. Lover*, 41 Wn. App. 685, 688-690 (1985), in addition to all other findings and orders set forth elsewhere in this Order:

2.3.1. The City's compelling interest in trying the Defendant justifies the administration of anti-psychotic medications against the Defendant's will.

2.3.2. The administration of anti-psychotic medications is medically appropriate and necessary to help the defendant become competent to stand trial.

2.3.3. No less intrusive method exists for achieving competency to stand trial.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

2.3.4. The treatment facility providing competency restoration treatment, whether pursuant to subsection 2.1. or 2.2. above, is hereby authorized to administer anti-psychotic medications to the Defendant as part of the competency restoration treatment ordered. The medications shall be administered under the care of a duly authorized psychiatrist employed by the treatment facility, and shall be administered in the minimum dosage necessary. The psychiatrist shall take all precautions to minimize side effects on the Defendant and effects on any medical conditions of the Defendant.

3. ORDERS UPON COMPLETION OF TREATMENT PERIOD.

3.1. Re-evaluation for competency. Prior to the end of the treatment period pursuant to section 2 above and at least 24 hours before the Defendant's next scheduled court hearing as determined under section 3.3 below, the staff at Western State Hospital ("WSH") shall evaluate the Defendant's competency to stand trial, and prepare a written report of the results of the evaluation. The evaluation, and the contents of the report, shall be as set forth below.

3.1.1. Time and location of evaluation. The evaluation shall occur at such time prior to the end of the treatment period as WSH determines is reasonable and appropriate to evaluate the Defendant's competency while also maximizing his/her available treatment time.

3.1.1.1. If the Defendant has been placed in an inpatient treatment program, the evaluation shall occur at the location of the treatment program.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

3.1.1.2. If the Defendant has been placed on a 90-day conditional release, the evaluation may occur at the Treatment Facility or any other location of WSH's choosing.

3.1.2. Contents of report. WSH shall furnish a written examination report to the Court, setting forth its findings. If any portions of the findings are unchanged from a previous competency evaluation report furnished to this Court in the instant criminal case, the report may refer the Court to that prior evaluation. The findings shall include:

3.1.2.1. A description of the nature of the examination;

3.1.2.2. A diagnosis of the mental condition of the Defendant;

3.1.2.3. An opinion as to whether the Defendant has the capacity to understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect;

3.1.2.4. If the opinion is that the Defendant lacks such capacity, then an opinion as to whether the Defendant is likely to regain such capacity with further treatment as permitted under RCW 10.77.090(1)(d)(i)(C), and if so, an opinion: (a) as to whether medication is medically appropriate and necessary to help the Defendant regain or maintain such capacity; and (b) as to whether any less intrusive methods exist to help the Defendant regain or maintain such capacity; and (c) as to whether the Defendant is suitable for competency restoration treatment on an outpatient basis, based on the Defendant's risk level and/or treatment needs. If the opinion under section 3.1.2.4(c) is that the defendant is suitable for such outpatient treatment, the name of the DSHS-designated treatment facility at which outpatient competency restoration would be conducted in the event the Court orders placement at such treatment. The

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

information in section 3.1.2.4.(c) shall only be required if the defendant has not yet been placed into outpatient competency restoration treatment in connection with the present matter.

3.1.3. Access to records. For purposes of the competency evaluation under this subsection 3.1, and to the extent permitted by RCW Chs. 10.77 and 71.05 (including but not limited to 10.77.065, 10.77.097, and 71.05.390) or other applicable law, WSH is hereby granted access to the Defendant's medical records, whether they are located at WSH, the Treatment Facility, the King County Correctional Facilities, or elsewhere. The City Attorney's office is authorized and directed to transmit a copy of this order to WSH so that WSH may conduct the competency re-evaluation pursuant to this order.

3.2. Copies of Report. WSH shall provide copies of the competency report prepared pursuant to this order to the following: the Court, the Mental Health Court Monitor, the City Attorney (directed to the attention of the Case Prep Unit), the defense attorney (whose name and address are provided at the end of this order), the County Designated Mental Health Professional for King County, and the Psychiatric Services Administrator of the King County Department of Adult Detention.

3.3. Return to Court. The Defendant shall return to Court at the end of the treatment program, or as otherwise directed below or by further order of this Court.

3.3.1. The next hearing date and time in this case shall be: _____ , at _____ o'clock, in Courtroom ___. If, however, the treatment program, or WSH, notifies the Court prior to the end of the treatment program that the Defendant's competency is unlikely to be restored with further treatment, or that the Defendant's competency has been restored, and if this determination is made more than 48 hours prior to the next hearing date, WSH may notify the Court, prosecutor and defense attorney by FAX requesting that the Defendant

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

be transported earlier than ordered and that the next hearing date be advanced. The Court shall review such request with the parties and shall notify the parties and WSH by FAX of the new date for transport and hearing, or of the denial of the request. If the request is granted, WSH shall make appropriate transport arrangements with the King County Department of Adult Detention. If the notification by WSH is on a weekend and/or within 48 hours of the next hearing date, the Court will not be able to grant the request and the transportation date and hearing date will remain as originally ordered.

3.3.2. If (a) the treatment program is an inpatient program, (b) the transportation and next hearing dates set by the Court are prior to the end of the statutorily authorized competency restoration period, and (c) WSH does not believe that the Defendant's competency will be restored prior to the original transportation date, WSH may notify the Court by FAX and request that the transportation and hearing dates be reset to allow for the full restoration period authorized by statute. The Court shall review such request with the parties and shall notify the parties and WSH by FAX of the new date for transport and hearing or of the denial of the request. If the request is granted, WSH shall make appropriate transport arrangements with the King County Department of Adult Detention.

3.3.3. If the treatment program is an inpatient program, the Defendant shall be transported to Court by the King County Department of Adult Detention as provided in section 4 below, for the next hearing. If the treatment program is the 90-day conditional release, the Defendant is hereby ordered to appear in this Court for the next hearing.

3.4. <u>Speedy Trial Tolled</u>. The running of speedy trial time in this action remains tolled, pursuant to CrRLJ 3.3(g)(l), until this Court enters an order finding the Defendant to be competent.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

4. TRANSPORT ORDERS. This section only applies if the Defendant is placed in an inpatient treatment program as described in section 2.1 above.

4.1. Transport from Court to Program. The Defendant shall be transported to Western State Hospital at Ft. Steilacoom (or such other location as is specified in section 2.1.3. above) by the King County Department of Adult Detention as soon as possible, and the King County Department of Adult Detention is hereby authorized to transport the Defendant as directed herein.

4.2. Transport from Program to Court. Upon the earlier of the completion of the program or such other time as may be set by the Court in accordance with sections 3.3.1. and 3.3.2. above, the Defendant shall be transported from Western State Hospital (or such other location as is specified in section 2.1.3. above) to this Court by the King County Department of Adult Detention, and the King County Department of Adult Detention is hereby authorized to transport the Defendant as directed herein. The Defendant shall be transported to Court at least one day prior to the scheduled hearing, excluding Saturdays, Sundays, and Court Holidays.

DONE IN OPEN COURT this _____ day of _____ , ____ .

_____
JUDGE

//
//
//
//
//
//
//
//

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

Presented by:

_____
Assistant City Attorney
WSBA #_____

Attention: Case Preparation Unit
Seattle City Attorney's Office
Criminal Division
710 Second Ave., #1414
Seattle, WA 98104-1700
(206) 684-7757
FAX (206) 615-1293

Copy received; Approved for entry:

Defense Attorney:

_____
(Attorney Name) WSBA #

_____
(Firm)

_____
(Address)

_____
(City, State, Zip)

_____
(Telephone)

_____
(Fax)

_____
WSBA # _____

j:\data\criminal\docs\forms\mio\Competency Restoration Order (Trial)

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

EXHIBIT 6—COMPETENCY RESTORATION ORDER (RILF)

IN SEATTLE MUNICIPAL COURT, COUNTY OF KING
STATE OF WASHINGTON

CITY OF SEATTLE, Plaintiff, vs. _____, Defendant.	No. ORDER DIRECTING COMPETENCY RESTORATION TREATMENT AND RELATED ANCILLARY ORDERS (PROBATION REVOCATION IN LIEU OF FILING NEW CHARGES)

THIS MATTER having come before the undersigned Judge of the above entitled Court on the date indicated below for a hearing on the Defendant's competency to proceed with a probation revocation hearing related to an alleged new criminal law violation in lieu of new charges being filed; the Court having reviewed the report(s) of the mental health professional(s) who have examined the Defendant regarding the Defendant's competency to proceed with such probation revocation hearing, as well as the other reports and information in this case; and the Defendant being present and represented by his/her attorney whose name is listed below and Plaintiff the City of Seattle being represented by the undersigned Assistant City Attorney; the Court hereby enters findings of fact and issues orders as follows:

1. FINDINGS OF FACT:

1.1. Defendant's Background. The Court finds that the Defendant is charged with a probation violation based on an alleged new non-felony criminal law violation, in lieu of new

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

charges being filed, arising out of Seattle Police Incident Report No. _____, and has one or more of the following, as marked below:

_____ **1.1.1.** A pending charge, or pending probation revocation hearing in lieu of new charges being filed based on an allegation of a new criminal law violation, of one or more violent acts as defined in RCW 10.77.010(21);

_____ **1.1.2.** A history of one or more violent acts as defined in RCW 10.77.010(13) and (21);

_____ **1.1.3.** Been previously found incompetent under chapter 10.77 RCW or an equivalent federal or out-of-state statute with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person; and/or

_____ **1.1.4.** Been previously acquitted by reason of insanity under chapter 10.77 RCW or an equivalent federal or out-of-state statute with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person.

1.2. Competency to Proceed. The Court finds that the Defendant lacks the capacity to understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect. The Defendant is therefore not competent to proceed with a probation violation hearing based on all alleged new criminal violation.

1.3. Competency Restoration Treatment Appropriate. The Court does **not** presently find that the Defendant is unlikely to regain competency with treatment. The Court therefore orders that the Defendant undergo treatment for the restoration of competency. In connection with the above-entitled cause, the Defendant has or has not previously undergone treatment for competency restoration as marked on the blank lines below:

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

_____ **1.3.1.** The Defendant has not previously been placed in any form of treatment for competency restoration.

_____ **1.3.2.** The Defendant has previously been placed in an inpatient treatment program at a secure mental health facility in the custody of the Department of Social and Health Services for mental health treatment and restoration of competency.

_____ **1.3.3.** The Defendant has previously been placed on a 90-day conditional release program for mental health treatment and restoration of competency.

2. ORDERS REGARDING TREATMENT FOR RESTORATION OF COMPETENCY: The Secretary of the Department of Social and Health Services (DSHS) is hereby ordered to place the Defendant in a program for mental health treatment and restoration of competency, as noted on the blank lines below.

_____ **2.1. Inpatient Program.** The Defendant shall be placed at a secure mental health facility in the custody of DSHS (or an agency designated by DSHS) for mental health treatment and restoration of competency. The Defendant shall comply with all aspects of the treatment as directed by the treatment facility, including, without limitation, taking any medications prescribed as part of the program.

2.1.1. The placement shall not exceed 14 days in addition to any unused time of evaluation under RCW 10.77.060. There are ____ days of unused time of the 15-day evaluation (if the preceding line is left blank, then there are no unused days of the evaluation), so the total placement shall not exceed ____ days (if the preceding line is left blank, then the total placement shall not exceed 14 days).

2.1.2. The 14 days includes 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.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

2.1.3. The inpatient treatment program shall be provided at _____. If the preceding line is left blank, then the location shall be Western State Hospital.

_____ **2.2. <u>90-Day Conditional Release Program</u>.** The Defendant shall be placed on conditional release for 90 days for mental health treatment and restoration of competency. The treatment shall be performed at the following DSHS-designated treatment facility ("Treatment Facility"):

_____.

2.2.1. The Defendant shall be released from custody forthwith, and is hereby directed to contact the Treatment Facility in person or by telephone within ____ days of this order.

2.2.2. The Defendant shall comply with the following conditions:

Comply with all terms and conditions of the treatment program as directed by the Treatment Facility, including, without limitation, taking any medications prescribed as part of the program.

Notify the Court and the Treatment Facility of any change of address or telephone number.

Have no criminal law violations.

Attend all required Court appearances in this matter or in any other criminal matters in this or any other Court.

Abstain from alcohol and all other mood altering drugs, unless prescribed by a physician.

Possess no weapons.

Other: _____

_____

_____

_____.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

2.2.3. The Treatment Facility shall inform the Court, the Mental Health Court Monitor, the defense attorney listed below, and the prosecutor listed below immediately if the Defendant fails to comply with any of the conditions of the conditional release.

2.2.4. The Treatment Facility shall provide monthly reports on the Defendant's progress to the Court, the Mental Health Court Monitor, the defense attorney listed below, and the prosecutor listed below.

_____ **2.3. Forced Administration of Medication.** Western State Hospital evaluated the Defendant pursuant to a court-ordered competency evaluation. Western State Hospital produced a report, dated _____, which the parties have agreed to rely on for purposes of having this Court determine whether an order permitting treatment including the involuntary administration of anti-psychotic medications is appropriate. The Court, having reviewed that report, and having heard further argument from the parties, makes the following findings and enters the following orders, pursuant to *State v. Adams*, 77 Wn. App. 50, 55-57 (1995) and *State v. Lover*, 41 Wn. App. 685, 688-690 (1985), in addition to all other findings and orders set forth elsewhere in this Order:

2.3.5. The City's compelling interest in trying the Defendant on the probation revocation based on an alleged new criminal law violation (filed in lieu of filing new charges) justifies the administration of anti-psychotic medications against the Defendant's will.

2.3.6. The administration of anti-psychotic medications is medically appropriate and necessary to help the defendant become competent to stand trial.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

2.3.7. No less intrusive method exists for achieving competency to proceed with the probation revocation hearing.

2.3.8. The treatment facility providing competency restoration treatment, whether pursuant to subsection 2.1. or 2.2. above, is hereby authorized to administer anti-psychotic medications to the Defendant as part of the competency restoration treatment ordered. The medications shall be administered under the care of a duly authorized psychiatrist employed by the treatment facility, and shall be administered in the minimum dosage necessary. The psychiatrist shall take all precautions to minimize side effects on the Defendant and effects on any medical conditions of the Defendant.

3. ORDERS UPON COMPLETION OF TREATMENT PERIOD.

3.1. Re-evaluation for competency. Prior to the end of the treatment period pursuant to section 2 above, and at least 24 hours before the Defendant's next scheduled court hearing as determined under section 3.3 below, the staff at Western State Hospital ("WSH") shall evaluate the Defendant's competency to proceed with the probation revocation proceedings based on an alleged new criminal law violation, and prepare a written report of the results of the evaluation. The evaluation, and the contents of the report, shall be as set forth below.

3.1.1. Time and location of evaluation. The evaluation shall occur at such time prior to the end of the treatment period as WSH determines is reasonable and appropriate to evaluate the Defendant's competency while also maximizing his/her available treatment time.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

3.1.1.1. If the Defendant has been placed in an inpatient treatment program, the evaluation shall occur at the location of the treatment program.

3.1.1.2. If the Defendant has been placed on a 90-day conditional release, the evaluation may occur at the Treatment Facility or any other location of WSH's choosing.

3.1.2. Contents of report. WSH shall furnish a written examination report to the Court, setting forth its findings. If any portions of the findings are unchanged from a previous competency evaluation report furnished to this Court in the instant criminal case, the report may refer the Court to that prior evaluation. The findings shall include:

3.1.2.1. A description of the nature of the examination;

3.1.2.2. A diagnosis of the mental condition of the Defendant;

3.1.2.3. An opinion as to whether the Defendant has the capacity to understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect;

3.1.2.4. If the opinion is that the Defendant lacks such capacity, then an opinion as to whether the Defendant is likely to regain such capacity with further treatment as would be permitted under RCW 10.77.090(1)(d)(i)(C), and if so, an opinion: (a) as to whether medication is medically appropriate and necessary to help the Defendant regain or maintain such capacity; and (b) as to whether any less intrusive methods exist to help the Defendant regain or maintain such capacity; and (c) as to whether the Defendant is suitable for competency restoration treatment on an outpatient basis, based on the Defendant's risk level and/or treatment needs. If the opinion under section 3.1.2.4(c) is that the defendant is suitable for such outpatient treatment, the name of the DSHS-

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

designated treatment facility at which outpatient competency restoration would be conducted in the event the Court orders placement at such treatment. The information in section 3.1.2.4.(c) shall only be required if the defendant has not yet been placed into outpatient competency restoration treatment in connection with the present matter.

3.1.3. Access to records. For purposes of the competency evaluation under this subsection 3.1, and to the extent permitted by RCW Chs. 10.77 and 71.05 (including but not limited to 10.77.065, 10.77.097, and 71.05.390) or other applicable law, WSH is hereby granted access to the Defendant's medical records, whether they are located at WSH, the Treatment Facility, the King County Correctional Facilities, or elsewhere. The City Attorney's office is authorized and directed to transmit a copy of this order to WSH so that WSH may conduct the competency re-evaluation pursuant to this order.

3.2. Copies of Report. WSH shall provide copies of the competency report prepared pursuant to this order to the following: the Court, the Mental Health Court Monitor, the City Attorney (directed to the attention of the Case Prep Unit), the defense attorney (whose name and address are provided at the end of this order), the County Designated Mental Health Professional for King County, and the Psychiatric Services Administrator of the King County Department of Adult Detention.

3.3. Return to Court. The Defendant shall return to Court at the end of the treatment program, or as otherwise directed below or by further order of this Court.

3.3.1. The next hearing date and time in this case shall be: _____, at _____ o'clock, in Courtroom ___. If, however, the treatment program, or WSH, notifies the Court prior to the end of the treatment program that the Defendant's competency is unlikely to be restored with further treatment, or that the Defendant's competency has been restored, and if this

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

determination is made more than 48 hours prior to the next hearing date, WSH may notify the Court, prosecutor and defense attorney by FAX requesting that the Defendant be transported earlier than ordered and that the next hearing date be advanced. The Court shall review such request with the parties and shall notify the parties and WSH by FAX of the new date for transport and hearing, or of the denial of the request. If the request is granted, WSH shall make appropriate transport arrangements with the King County Department of Adult Detention. If the notification by WSH is on a weekend and/or within 48 hours of the next hearing date, the Court will not be able to grant the request and the transportation date and hearing date will remain as originally ordered.

3.3.2. If (a) the treatment program is an inpatient program, (b) the transportation and next hearing dates set by the Court are prior to the end of the statutorily authorized competency restoration period, and (c) WSH does not believe that the Defendant's competency will be restored prior to the original transportation date, WSH may notify the Court by FAX and request that the transportation and hearing dates be reset to allow for the full restoration period authorized by statute. The Court shall review such request with the parties and shall notify the parties and WSH by FAX of the new date for transport and hearing or of the denial of the request. If the request is granted, WSH shall make appropriate transport arrangements with the King County Department of Adult Detention.

3.3.3. If the treatment program is an inpatient program, the Defendant shall be transported to Court by the King County Department of Adult Detention as provided in section 4 below, for the next hearing. If the treatment program is the 90-day conditional release, the Defendant is hereby ordered to appear in this Court for the next hearing.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

3.4. Jurisdiction Tolled. The running of the Court's jurisdiction in this probation action shall be tolled pursuant to applicable law, until this Court enters an order finding the Defendant to be competent.

4. TRANSPORT ORDERS. This section only applies if the Defendant is placed in an inpatient treatment program as described in section 2.1 above.

4.1. Transport from Court to Program. The Defendant shall be transported to Western State Hospital at Ft. Steilacoom (or such other location as is specified in section 2.1.3. above) by the King County Department of Adult Detention as soon as possible, and the King County Department of Adult Detention is hereby authorized to transport the Defendant as directed herein.

4.2. Transport from Program to Court. Upon the earlier of the completion of the program or such other time as may be set by the Court in accordance with sections 3.3.1. and 3.3.2. above, the Defendant shall be transported from Western State Hospital (or such other location as is specified in section 2.1.3. above) to this Court by the King County Department of Adult Detention, and the King County Department of Adult Detention is hereby authorized to transport the Defendant as directed herein. The Defendant shall be transported to Court at least one day prior to the scheduled hearing, excluding Saturdays, Sundays, and Court Holidays.

DONE IN OPEN COURT this _____ day of _____ , ____ .

_____

JUDGE

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

Presented by:

_____
Assistant City Attorney
WSBA #_____

Attention: Case Preparation Unit
Seattle City Attorney's Office
Criminal Division
710 Second Ave., #1414
Seattle, WA 98104-1700
(206) 684-7757
FAX (206) 615-1293

Copy received; Approved for entry:

Defense Attorney:

_____
(Attorney Name) WSBA #

_____
(Firm)

_____
(Address)

_____
(City, State, Zip)

_____
(Telephone)

_____
(Fax)

_____
WSBA # _____

j:\data\criminal\docs\forms\mio\Competency Restoration Order (RILF)

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

EXHIBIT 7—DISMISSAL—UNSUCCESSFUL OR UNLIKELY RESTORATION (TRIAL)

IN SEATTLE MUNICIPAL COURT, COUNTY OF KING STATE OF WASHINGTON

CITY OF SEATTLE,	)	
Plaintiff,	)	No.
vs.	)	ORDER DISMISSING CASE—COMPETENCY RESTORATION TREATMENT UNSUCCESSFUL OR UNLIKELY TO BE SUCCESSFUL—AND RELATED ANCILLARY ORDERS (TRIAL)
_____,	)	
Defendant.	)	

THIS MATTER having come before the undersigned Judge of the above entitled Court on the date indicated below for a hearing on the Defendant's competency to stand trial; this Court having reviewed the report(s) of the mental health professional(s) who have examined the Defendant regarding the Defendant's competency to stand trial and his/her treatment to restore competency, as well as the other reports and information in this cause; and the Defendant being present and represented by his/her attorney whose name is listed below and Plaintiff the City of Seattle being represented by the undersigned Assistant City Attorney; the Court hereby enters findings of fact and issues orders as follows:

1. FINDINGS OF FACT AND PROCEDURAL BACKGROUND:

1.1. Defendant's Background. The Court finds that the Defendant is charged with a non-felony crime and has one or more of the following, as marked below:

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

_____ **1.1.1.** A pending charge of one or more violent acts as defined in RCW 10.77.010(21);

_____ **1.1.2.** A history of one or more violent acts as defined in RCW 10.77.010(13) and (21);

_____ **1.1.3.** Been previously found incompetent under chapter 10.77 RCW or an equivalent federal or out-of-state statute with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person; and/or

_____ **1.1.4.** Been previously acquitted by reason of insanity under chapter 10.77 RCW or an equivalent federal or out-of-state statute with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person.

1.2. Procedural Background Regarding Competency Restoration Treatment. The following has occurred with respect to the Defendant pursuant to RCW 10.77.090(1)(d)(i) and (1)(d)(ii) (the appropriate line(s) are marked).

_____**1.2.1.** The maximum allowable **inpatient** mental health treatment and competency restoration period in RCW 10.77.090(1)(d)(i) has ended. **A professional person (as defined in RCW 10.77.010(17)) has determined that the Defendant's competency is unlikely to be restored**. The Court, following notice to the parties and a hearing, hereby finds that the Defendant's competency has not been restored, and that further **outpatient** treatment within the time limits established by RCW 10.77.090(1)(d)(i) is unlikely to restore competency. The Defendant remains incompetent to stand trial as a result of mental disease or defect, pursuant to RCW 10.77.010(14) and 10.77.050.

_____ **1.2.2.** The maximum allowable **inpatient** mental health treatment and competency restoration period in RCW 10.77.090(1)(d)(i) has ended and the Defendant's competency has not been restored. The Court finds, **based on Western State Hospital's**

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

assessment of the Defendant's risk level and/or likelihood of successful restoration, that it is not appropriate to refer the Defendant for competency restoration treatment on an outpatient basis. The Defendant remains incompetent to stand trial as a result of mental disease or defect, pursuant to RCW 10.77.010(14) and 10.77.050.

_____ **1.2.3.** The maximum allowable **inpatient and outpatient** mental health treatment competency restoration period in RCW 10.77.090(1)(d)(i) has ended and the Defendant's competency has not been restored. The Defendant remains incompetent to stand trial as a result of mental disease or defect, pursuant to RCW 10.77.010(14) and 10.77.050.

_____ **1.2.4.** The Defendant **has not been ordered into either inpatient or outpatient competency restoration treatment**. A professional person (as defined in RCW 10.77.010(17)) has determined that the Defendant's competency is unlikely to be restored. The Court, following notice to the parties and a hearing, hereby finds that the Defendant's competency has not been restored, and that neither inpatient nor outpatient treatment within the time limits established by RCW 10.77.090(1)(d)(i) is likely to restore competency. The Defendant remains incompetent to stand trial as a result of mental disease or defect, pursuant to RCW 10.77.010(14) and 10.77.050.

2. ORDER OF DISMISSAL. The proceedings against the Defendant in the above-referenced cause number are hereby dismissed without prejudice, due to the Defendant's incompetency to stand trial, pursuant to RCW 10.77.090(1)(d)(ii) and/or (1)(d)(iv).

3. REFERRAL OF DEFENDANT FOR EVALUATION PURSUANT TO CHAPTER 71.05 RCW. In accordance with RCW 10.77.090(1)(d)(iii) and/or (1)(d)(iv), the Court hereby refers the Defendant for evaluation for consideration of filing a petition under chapter 71.05 RCW. The referral shall be made in accordance with the subsection marked below.

_____**3.1. Defendant on Conditional Release.** The Defendant is on conditional release at the present time. Accordingly, the County Designated Mental Health Professional for King County (CDMHP) shall evaluate the Defendant pursuant to chapter 71.05 RCW. The

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

evaluation shall be conducted at a location chosen by the CDMHP. The Defendant has been provided with a notice of rights form regarding the evaluation. The Defendant is hereby released from custody on the above-referenced cause number.

_____**3.2. Defendant in custody.** The Defendant is in custody at the present time. Accordingly, the Defendant shall be detained and sent to _____ ("Treatment Facility") for up to 72 hours for evaluation for purposes of filing a petition under chapter 71.05 RCW. If the preceding line is left blank, then the Treatment Facility shall be Western State Hospital. The Defendant shall be transported to the Treatment Facility by the King County Department of Adult Detention as soon as possible, but in no event shall the Defendant be transported later than the following date and time: _____, ____, at _____ a.m./p.m.. The Court hereby authorizes the King County Department of Adult Detention to transport the Defendant as directed herein.

4. ANCILLARY ORDERS.

4.1 Copies of Reports. The City Attorney's Office, the Court, the Seattle Police Department, and any other law enforcement agency possessing relevant information, is authorized to provide to the CDMHP or to the Treatment Facility, as applicable, all information in their possession which they reasonably believe may be of assistance to the CDMHP or the Treatment Facility, as the case my be, in conducting the evaluation for purposes of filing a petition under chapter 71.05 RCW. To the extent permitted by RCW Chs. 10.77 and 71.05 (including but not limited to 10.77.065, 10.77.097, and 71.05.390) or other applicable law, the CDMHP or the Treatment Facility, as the case may be, is hereby granted access to all the Defendant's medical records, whether they are located at the King County Correctional Facilities, at Western State Hospital, or elsewhere, for the purpose of conducting the evaluation for the purposes of filing a petition under chapter 71.05 RCW.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

4.2. <u>Results of CDMHP or Treatment Facility Evaluation</u>. Within five days after evaluating the Defendant as directed in this order, the CDMHP or Treatment Facility shall, in writing, inform the Court, the Mental Health Court Monitor, the City Attorney (directed to the attention of the Case Prep Unit), the defense attorney (whose name and address are provided at the end of this order), and the Psychiatric Services Administrator of the King County Department of Adult Detention whether proceedings under chapter 71.05 RCW were or were not commenced against the defendant.

DONE IN OPEN COURT this _____ day of _____ , ____ .

_____
JUDGE

Presented by:

_____
Assistant City Attorney
WSBA # _____

Attention: Case Prep Unit
Seattle City Attorney's Office
Criminal Division
710 Second Ave., #1414
Seattle, WA 98104-1700
(206) 684-7757
FAX (206) 615-1293

Defense Attorney:

_____
(Attorney Name) WSBA #

_____
(Firm)

_____
(Address)

_____
(City, State, Zip)

_____
(Telephone)

_____
(Fax)

Copy received; Approved for entry:

_____
WSBA # _____

j:\data\criminal\docs\forms\mio\Dismiss-Treatment Unsuccessful or Unlikely to Succeed (Trial)

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

EXHIBIT 8—DISMISSAL—INELIGIBLE FOR TREATMENT (TRIAL)

IN SEATTLE MUNICIPAL COURT, COUNTY OF KING
STATE OF WASHINGTON

CITY OF SEATTLE, Plaintiff, vs. _____, Defendant.	No. ORDER FINDING DEFENDANT NOT ELIGIBLE FOR COMPETENCY RESTORATION TREATMENT, DISMISSING OR STAYING PROCEEDINGS, AND RELATED ANCILLARY ORDERS (TRIAL)

THIS MATTER having come before the undersigned Judge of the above entitled Court on the date indicated below for a hearing to determine the Defendant's competency to stand trial; the Court having reviewed the report(s) of the mental health professional(s) regarding the defendant's competency to stand trial, as well as the other reports and information in this case; and the Defendant being present and represented by his/her attorney whose name is listed below and Plaintiff the City of Seattle being represented by the undersigned Assistant City Attorney, the Court hereby enters findings of fact and issues orders as follows:

1. FINDINGS OF FACT. The Court finds as follows:

1.1. Defendant's Background. The Defendant is charged with a nonfelony crime. The Defendant does not have a pending charge, or a history, of one or more violent acts as defined in RCW 10.77.010(13) and (21). The Defendant has not been previously found incompetent under chapter 10.77 RCW with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person. The Defendant has not been previously

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

acquitted by reason of insanity with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person.

1.2. Competency to Stand Trial. The Defendant lacks the capacity to understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect. The Defendant is therefore not competent to stand trial, as defined in RCW 10.77.010(14).

2. FINDINGS AND ORDERS REGARDING THE STATUS OF THE CASE. The Court hereby finds, and orders that the case shall proceed, as marked below:

2.1. Findings and Orders for How Case Will Proceed.

_____ **2.1.1. Dismiss and Detain.** The Court finds that the Defendant is unlikely to become competent to stand trial if proceedings in the above-entitled cause are stayed. Accordingly, the instant criminal case is dismissed without prejudice as a result of the Defendant's incompetency to stand trial. The Court also finds that it is appropriate to allow the County Designated Mental Health Professional (CDMHP) to evaluate the Defendant and consider initial detention proceedings under chapter 71.05 RCW. Therefore, pursuant to RCW 10.77.090(1)(e), the Defendant is to be detained for a sufficient time, up to and including 72 hours (excluding weekends and holidays) from the date and time of this order, but specifically not beyond the date and time of _____ , ____ , at _____ a.m./p.m., to allow the CDMHP to evaluate the Defendant and commence proceedings under chapter 71.05 RCW if appropriate. If neither the a.m. nor the p.m. is denoted, it shall be presumed the Court intended to denote p.m. The defendant is to be released from custody on the above-entitled criminal case immediately upon the CDMHP's determination not to initiate proceedings under chapter 71.05 RCW. Any other custody orders on any other cases are to remain unaffected by this order.

_____ **2.1.2. Dismiss and Release.** The Court finds that the Defendant is unlikely to become competent to stand trial if proceedings in the above-entitled cause are stayed. Accordingly, the instant criminal case is dismissed without prejudice as a result of the

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

Defendant's incompetency to stand trial. The Court also finds that it is not appropriate to allow the County Designated Mental Health Professional (CDMHP) to evaluate the Defendant and consider initial detention proceedings under chapter 71.05 RCW. Therefore, the Court hereby orders that the Defendant be released from custody on the above-entitled criminal case immediately. Any other custody orders on any other cases are to remain unaffected by this order.

_____ **2.1.3. Stay and Detain.** The Court finds that the Defendant is likely to become competent to stand trial if proceedings in the above-entitled cause are stayed. Accordingly, criminal proceedings in the above-entitled cause are hereby stayed pending further order of the Court. The Court also finds that it is appropriate to allow CDMHP to evaluate the Defendant and consider initial detention proceedings under chapter 71.05 RCW. Therefore, pursuant to RCW 10.77.090(1)(e), the Defendant is to be detained for a sufficient time, up to and including 72 hours (excluding weekends and holidays) from the date and time of this order, but specifically not beyond the date and time of _____ , ____ , at __ _____ a.m./p.m., to allow the CDMHP to evaluate the Defendant and commence proceedings under chapter 71.05 RCW if appropriate. If neither the a.m. nor the p.m. is denoted, it shall be presumed the Court intended to denote p.m. The Defendant shall appear for a further hearing regarding his/her competency to stand trial in this case, on the following date and time: _ _____, _____, at _____ o'clock, a.m./p.m. in Courtroom ____.

2.2. Findings re Prior Notice if Dismissal. In the event the Court orders dismissal in either section 2.1.1. or 2.1.2. above, the following has occurred, as marked:

_____ **2.2.1. Waiver of 24 hours prior notice.** If the attorneys for both parties initial below, then the Court hereby accepts the parties' waiver of the statutory requirement of 24 hours prior notice of such dismissal, which waiver has been given for the purpose of expediting the hearing from which the Court is issuing this order. If both parties do not initial below, then the waiver shall not be effective.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

The parties, by having their respective attorneys place their initials below, hereby waive the statutory requirement that the Court provide 24 hours advance notice of its intent to dismiss the instant cause.

_____ _____

Prosecutor's Initials and Bar # Defense Attorney's Initials and Bar #

_____ **2.2.2. 24-hours prior notice.** If the parties have not initialed the waiver in section 2.2.1. above, then the Court has provided 24 hours prior notice to the parties of its intention to dismiss the matter as set forth in section 2.1.1 or 2.1.2. above.

3. ANCILLARY ORDERS.

3.1. Copies of reports. Copies of the mental health evaluation(s) and the police report may be forwarded to the CDMHP, together with any other reports or documents which might be of assistance in evaluating the defendant and, if appropriate, commencing proceedings under chapter 71.05 RCW.

3.2. Results of CDMHP evaluation. If the Court has ordered that the CDMHP evaluate the Defendant, under section 2.1.1. or 2.1.3. above, then within five days after evaluating the Defendant as directed in this order, the CDMHP shall, in writing, inform the Court, the Mental Health Court Monitor, the City Attorney (directed to the attention of the Case Prep Unit), the defense attorney (whose name and address are provided at the end of this order), and the Psychiatric Services Administrator of the King County Department of Adult Detention whether proceedings under chapter 71.05 RCW were or were not commenced against the defendant. If the Court has ordered that proceedings be stayed, under section 2.1.3. above, and if proceedings are initiated under chapter 71.05 RCW, then the CDMHP and any facility to which the Defendant is committed pursuant to chapter 71.05 are hereby authorized (to the extent permissible under chapter 71.05 RCW) to provide to the parties listed in the preceding sentence information regarding the length of the commitment, the date and nature of

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

any additional proceedings under chapter 71.05 RCW, and the Defendant's projected release date from the commitment.

DONE IN OPEN COURT this _____ day of _____ , _____, at _____ a.m./p.m.

_____
JUDGE

Presented by:

_____
Assistant City Attorney
WSBA No. _____

Attention: Case Prep Unit
Seattle City Attorney's Office
Criminal Division
710 Second Ave., #1414
Seattle, WA 98104-1700
(206) 684-7757
FAX (206) 6151293

Defense Attorney:

_____
(Attorney Name) WSBA #

_____
(Firm)

_____
(Address)

_____
(City, State, Zip)

_____
(Telephone)

_____
(Fax)

Copy received; Approved for entry:

_____
WSBA # _____

j:\data\criminal\docs\forms\mio\Dismiss-Not Eligible for Restoration Treatment (Trial)

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

EXHIBIT 9—STRIKE REVOCATION (FTC)

IN SEATTLE MUNICIPAL COURT, COUNTY OF KING
STATE OF WASHINGTON

CITY OF SEATTLE,	)	
	)	No.
Plaintiff,	)	
	)	ORDER STRIKING OR STAYING
vs.	)	PROBATION REVOCATION
	)	PROCEEDINGS DUE TO
_____,	)	DEFENDANT'S LACK OF
	)	COMPETENCY AND RELATED
Defendant.	)	ANCILLARY ORDERS (FTC WITH
	)	PROBATIONARY CONDITIONS)
_____	)	

THIS MATTER having come before the undersigned Judge of the above entitled Court on the date indicated below for a hearing to determine the Defendant's competency to proceed with a probation revocation hearing related to an alleged failure to comply with conditions of probation; the Court having reviewed the report(s) of the mental health professional(s) regarding the defendant's competency to proceed with a probation revocation hearing as well as the other reports and information in this case; and the Defendant being present and represented by his/her attorney whose name is listed below and Plaintiff the City of Seattle being represented by the undersigned Assistant City Attorney, the Court hereby enters findings of fact and issues orders as follows:

1. FINDINGS OF FACT. The Court hereby finds as follows:

The Defendant lacks the capacity to understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect. The Defendant is therefore not competent to proceed with a probation revocation hearing.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

.

2. FINDINGS AND ORDERS REGARDING THE STATUS OF THE CASE. The Court hereby finds, and orders that the case shall proceed, as marked below:

2.1. Findings and Orders for How Case Will Proceed.

_____ **2.1.1. Strike and Refer.** The instant probation revocation hearing alleging a failure to comply with probationary conditions shall be deemed stricken without prejudice, effective five days from the date of this order without further order of this Court, as a result of the Defendant's incompetency to proceed. The Court also finds that it is appropriate to allow the County Designated Mental Health Professional (CDMHP) to evaluate the Defendant and consider initial detention proceedings under chapter 71.05 RCW, prior to the Court striking the hearing. Therefore, the Defendant is to remain in custody on the above-entitled criminal case for a sufficient time, up to and including 72 hours (excluding weekends and holidays) from the date and time of this order, but specifically not beyond the date and time of _____ , ____ , at _____ a.m./p.m., to allow the CDMHP to evaluate the Defendant and commence proceedings under chapter 71.05 RCW if appropriate. If neither the a.m. nor the p.m. is denoted, it shall be presumed the Court intended to denote p.m. The defendant is to be released from custody on the above-entitled criminal case immediately upon the CDMHP's determination not to initiate proceedings under chapter 71.05 RCW. Any other custody orders on any other cases are to remain unaffected by this order.

_____ **2.1.2. Strike and Release.** The instant probation revocation hearing alleging a failure to comply with probationary conditions is hereby stricken without prejudice, effective immediately, as a result of the Defendant's incompetency to stand trial. The Court finds that it is not appropriate to require the County Designated Mental Health Professional (CDMHP) to evaluate the Defendant and consider initial detention proceedings under chapter 71.05 RCW. Therefore, the Court hereby orders that the Defendant be released from custody on the above-entitled criminal case immediately. Any other custody orders on any other cases are to remain unaffected by this order.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

2.2. Findings re Prior Notice if Revocation Stricken. In the event the Court orders the probation revocation proceedings stricken in either section 2.1.1. or 2.1.2. above, the following has occurred, as marked:

_____ **2.2.1. Waiver of 24 hours prior notice.** If the attorneys for both parties initial below, then the Court hereby accepts the parties' waiver of 24 hours prior notice of striking such proceedings, which waiver has been given for the purpose of expediting the hearing from which the Court is issuing this order. If both parties do not initial below, then the waiver shall not be effective.

The parties, by having their respective attorneys place their initials below, hereby waive any requirement that the Court provide 24 hours advance notice of its intent to strike the probation revocation proceedings in the instant cause.

_____ _____

Prosecutor's Initials and Bar # Defense Attorney's Initials and Bar #

_____ **2.2.2. 24-hours prior notice.** If the parties have not initialed the waiver in section 2.2.1. above, then the Court has provided 24 hours prior notice to the parties of its intention to strike the probation revocation matter as set forth in section 2.1.1 or 2.1.2. above.

3. ANCILLARY ORDERS.

3.1. Copies of reports. Copies of the mental health evaluation(s) and the police report may be forwarded to the CDMHP, together with any other reports or documents which might be of assistance in evaluating the defendant and, if appropriate, commencing proceedings under chapter 71.05 RCW.

3.2. Status of probationary conditions. All probationary conditions shall remain unchanged.

3.3. Re-calculation of jurisdiction end date. The period of the Court's jurisdiction shall be as marked below:

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

_____ **3.3.1. Suspended sentence.** The instant probation revocation hearing relates to a suspended sentence. Accordingly, jurisdiction is and remains tolled during the during the Defendant's incompetency. *State v. Campbell*, 95 Wn.2d 954, 957 (1981); *see also Spokane v. Marquette*, 146 Wn.2d 124, 131-132 (2002).

_____ **3.3.2. Deferred sentence.** The instant probation revocation hearing relates to a deferred sentence. Accordingly, jurisdiction is and remains tolled during the during the Defendant's incompetency. *State v. Campbell*, 95 Wn.2d 954, 957 (1981); *see also Spokane v. Marquette*, 146 Wn.2d 124, 131-132 (2002).

_____ **3.3.3. Dispositional continuance**. The instant probation revocation hearing relates to a dispositional continuance or stipulated order of continuance. Accordingly, speedy trial remains tolled and shall not re-commence running until this Court enters an order finding the Defendant has regained competency to stand trial.

3.4. Results of CDMHP evaluation. If the Court has ordered that the CDMHP evaluate the Defendant, under section 2.1.1. above, then within five days after evaluating the Defendant as directed in this order, the CDMHP shall, in writing, inform the Court, the Court Monitor, the City Attorney (directed to the attention of the Case Prep Unit), the defense attorney (whose name and address are provided at the end of this order), and the Psychiatric Services Administrator of the King County Department of Adult Detention whether proceedings under chapter 71.05 RCW were or were not commenced against the defendant. If the Court has ordered that proceedings be stayed, under section 2.1.3. above, and if proceedings are initiated under chapter 71.05 RCW, then the CDMHP and any facility to which the Defendant is committed pursuant to chapter 71.05 are hereby authorized (to the extent permissible under chapter 71.05 RCW) to provide to the parties listed in the preceding sentence information regarding the length of the commitment, the date and nature of any additional proceedings under chapter 71.05 RCW, and the Defendant's projected release date from the commitment.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

DONE IN OPEN COURT this _____ day of _____ , _____ .

_____

JUDGE

Presented by:

_____

Assistant City Attorney
WSBA No. _____

Attention: Case Prep Unit
Seattle City Attorney's Office
Criminal Division
710 Second Ave., #1414
Seattle, WA 98104-1700
(206) 684-7757
FAX (206) 615-1293

Defense Attorney:

_____

(Attorney Name) WSBA #

_____

(Firm)

_____

(Address)

_____

(City, State, Zip)

_____

(Telephone)

_____

(Fax)

Copy received; Approved for entry:

_____

WSBA # _____

j:\data\criminal\docs\forms\mio/Strike Hearing-Not Eligible for Restoration Treatment (FTC with Probationary Conditions)

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

EXHIBIT 10—STRIKE REVOCATION (RILF)

IN SEATTLE MUNICIPAL COURT, COUNTY OF KING
STATE OF WASHINGTON

CITY OF SEATTLE,	)	No.
Plaintiff,	)	ORDER STRIKING OR STAYING PROBATION REVOCATION PROCEEDINGS DUE TO DEFENDANT'S LACK OF COMPETENCY AND RELATED ANCILLARY ORDERS (PROBATION REVOCATION IN LIEU OF FILING NEW CHARGES)
vs.	)	
_____,	)	
Defendant.	)	

THIS MATTER having come before the undersigned Judge of the above entitled Court on the date indicated below for a hearing to determine the Defendant's competency to proceed with a probation revocation hearing related to an alleged new criminal law violation(s) in lieu of new charges being filed; the Court having reviewed the report(s) of the mental health professional(s) regarding the defendant's competency to proceed with a probation revocation hearing based on an alleged new criminal law violation, as well as the other reports and information in this case; and the Defendant being present and represented by his/her attorney whose name is listed below and Plaintiff the City of Seattle being represented by the undersigned Assistant City Attorney, the Court hereby enters findings of fact and issues orders as follows:

1. FINDINGS OF FACT. The Court finds as marked below:

_____ **1.1. Defendant not previously sent for competency restoration treatment; not competent.** The Defendant has not been ordered into competency restoration treatment regarding the instant probation revocation matter. The Defendant lacks the capacity to

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect. The Defendant is therefore not competent to proceed with a probation revocation hearing.

_____ **1.2. Defendant sent for competency restoration treatment; not competent.** The Defendant was ordered into competency restoration treatment regarding the instant probation revocation matter. That treatment has not successfully restored the Defendant's competence. The Defendant presently lacks the capacity to understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect. The Defendant is therefore not competent to proceed with a probation revocation hearing.

The Defendant lacks the capacity to understand the nature of the proceedings against him/her or to assist in his/her own defense as a result of mental disease or defect. The Defendant is therefore not competent to proceed with a probation revocation hearing.

2. FINDINGS AND ORDERS REGARDING THE STATUS OF THE CASE. The Court hereby finds, and orders that the case shall proceed, as marked below:

2.1. Findings and Orders for How Case Will Proceed.

_____ **2.1.1. Strike and Refer.** The instant probation revocation hearing alleging a failure to comply with probationary conditions shall be deemed stricken without prejudice, effective five days from the date of this order without further order of this Court, as a result of the Defendant's incompetency to proceed. The Court also finds that it is appropriate to allow the County Designated Mental Health Professional (CDMHP) to evaluate the Defendant and consider initial detention proceedings under chapter 71.05 RCW, prior to the Court striking the hearing. Therefore, the Defendant is to remain in custody on the above-entitled criminal case for a sufficient time, up to and including 72 hours (excluding weekends and holidays) from the date and time of this order, but specifically not beyond the date and time of _____ , ____ , at _____ a.m./p.m., to allow the CDMHP to evaluate the Defendant and commence proceedings under chapter 71.05 RCW if appropriate. If neither

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

the a.m. nor the p.m. is denoted, it shall be presumed the Court intended to denote p.m. The defendant is to be released from custody on the above-entitled criminal case immediately upon the CDMHP's determination not to initiate proceedings under chapter 71.05 RCW. Any other custody orders on any other cases are to remain unaffected by this order.

_____ **2.1.2. Strike and Release.** The instant probation revocation hearing alleging a failure to comply with probationary conditions is hereby stricken without prejudice, effective immediately, as a result of the Defendant's incompetency to stand trial. The Court finds that it is not appropriate to require the County Designated Mental Health Professional (CDMHP) to evaluate the Defendant and consider initial detention proceedings under chapter 71.05 RCW. Therefore, the Court hereby orders that the Defendant be released from custody on the above-entitled criminal case immediately. Any other custody orders on any other cases are to remain unaffected by this order.

2.2. Findings re Prior Notice if Revocation Stricken. In the event the Court orders the probation revocation proceedings stricken in either section 2.1.1. or 2.1.2. above, the following has occurred, as marked:

_____ **2.2.1. Waiver of 24 hours prior notice.** If the attorneys for both parties initial below, then the Court hereby accepts the parties' waiver of 24 hours prior notice of striking such proceedings, which waiver has been given for the purpose of expediting the hearing from which the Court is issuing this order. If both parties do not initial below, then the waiver shall not be effective.

The parties, by having their respective attorneys place their initials below, hereby waive any requirement that the Court provide 24 hours advance notice of its intent to strike the probation revocation proceedings in the instant cause.

_____ _____

Prosecutor's Initials and Bar # Defense Attorney's Initials and Bar #

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

_____ **2.2.2. 24-hours prior notice.** If the parties have not initialed the waiver in section 2.2.1. above, then the Court has provided 24 hours prior notice to the parties of its intention to strike the probation revocation matter as set forth in section 2.1.1 or 2.1.2. above.

3. ANCILLARY ORDERS.

3.1. Copies of reports. Copies of the mental health evaluation(s) and the police report may be forwarded to the CDMHP, together with any other reports or documents which might be of assistance in evaluating the defendant and, if appropriate, commencing proceedings under chapter 71.05 RCW.

3.2. Status of probationary conditions. All probationary conditions shall remain unchanged.

3.3. Re-calculation of jurisdiction end date. The period of the Court's jurisdiction shall be as marked below:

_____ **3.3.1. Suspended sentence.** The instant probation revocation hearing relates to a suspended sentence. Accordingly, jurisdiction is and remains tolled during the during the Defendant's incompetency. *State v. Campbell*, 95 Wn.2d 954, 957 (1981); *see also Spokane v. Marquette*, 146 Wn.2d 124, 131-132 (2002).

_____ **3.3.2. Deferred sentence.** The instant probation revocation hearing relates to a deferred sentence. Accordingly, jurisdiction is and remains tolled during the during the Defendant's incompetency. *State v. Campbell*, 95 Wn.2d 954, 957 (1981); *see also Spokane v. Marquette*, 146 Wn.2d 124, 131-132 (2002).

_____ **3.3.3. Dispositional continuance**. The instant probation revocation hearing relates to a dispositional continuance or stipulated order of continuance. Accordingly, speedy trial remains tolled and shall not re-commence running until this Court enters an order finding the Defendant has regained competency to stand trial.

3.4. Results of CDMHP evaluation. If the Court has ordered that the CDMHP evaluate the Defendant, under section 2.1.1. above, then within five days after evaluating the Defendant as directed in this order, the CDMHP shall, in writing, inform the Court, the Court

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

Monitor, the City Attorney (directed to the attention of the Case Prep Unit), the defense attorney (whose name and address are provided at the end of this order), and the Psychiatric Services Administrator of the King County Department of Adult Detention whether proceedings under chapter 71.05 RCW were or were not commenced against the defendant. If the Court has ordered that proceedings be stayed, under section 2.1.3. above, and if proceedings are initiated under chapter 71.05 RCW, then the CDMHP and any facility to which the Defendant is committed pursuant to chapter 71.05 are hereby authorized (to the extent permissible under chapter 71.05 RCW) to provide to the parties listed in the preceding sentence information regarding the length of the commitment, the date and nature of any additional proceedings under chapter 71.05 RCW, and the Defendant's projected release date from the commitment.

DONE IN OPEN COURT this _____ day of _____ , _____ .

_____
JUDGE

//
//
//
//
//
//
//
//
//
//

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

Presented by:

_____
Assistant City Attorney
WSBA No. _____

Attention: Case Prep Unit
Seattle City Attorney's Office
Criminal Division
710 Second Ave., #1414
Seattle, WA 98104-1700
(206) 684-7757
FAX (206) 615-1293

Copy received; Approved for entry:

Defense Attorney:

_____
(Attorney Name) WSBA #

_____
(Firm)

_____
(Address)

_____
(City, State, Zip)

_____
(Telephone)

_____
(Fax)

_____
WSBA # _____

j:\data\criminal\docs\forms\mio\Strike Hearing-Not Eligible for Restoration Treatment (RILF)

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

EXHIBIT 11—INSANITY ACQUITTAL

IN SEATTLE MUNICIPAL COURT, COUNTY OF KING
STATE OF WASHINGTON

CITY OF SEATTLE,	)	
Plaintiff,	)	No.
vs.	)	ACQUITTAL BY REASON OF INSANITY—FINDINGS OF FACT, JUDGMENT, AND ORDERS REGARDING DEFENDANT'S TREATMENT OR DISCHARGE
_____,	)	
Defendant.	)	

THIS MATTER having come before the undersigned Judge of the above entitled Court on the date indicated below for a hearing on defendant's motion for acquittal by reason of insanity pursuant to RCW 10.77.080; the Court having reviewed the report(s) of the mental health professional(s) who have examined the Defendant regarding the Defendant's sanity at the time of the crimes alleged, as well as the other reports and information in this case; and the defendant being present with his attorney (whose name is listed below) and the Plaintiff City of Seattle being represented by the undersigned Assistant City Attorney, the Court hereby enters findings of fact and issues orders as follows:

1. FINDINGS OF FACT.

1.1. Waiver of Rights. The Court finds that the Defendant presently understands the nature of the proceedings against the him/her and is able to assist his/her attorney in his/her own defense. The Court also finds that the Defendant understands: (a) the essential elements of the offenses with which he/she is charged; (b) that by moving for a judgment of acquittal by reason of insanity he/she admits to committing the acts charged and that, if acquitted, he/she may not later contest the validity of his detention on the ground that he/she did not commit the

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

acts charged; (c) that by making the motion he/she waives his rights to remain silent, to confront his accusers, and to be tried by a jury; (d) that if acquitted, he/she could be committed to a state mental hospital for a term up to the maximum possible penal sentence for the offense(s) charged; and (e) that a person who is acquitted by reason of insanity of an alleged offense involving actual, threatened, or attempted physical harm to a person, and who is later charged with a nonfelony crime and found to be incompetent, shall be placed in a secure mental health facility for up to 14 days for mental health treatment and restoration of competency, or on conditional release for up to 90 days for mental health treatment and restoration of competency, or any combination of the two.

1.2. Commission of Acts Charged. The Court finds that the Defendant did commit each of the acts alleged in the complaint in the above-entitled cause on the date(s) alleged. The Court finds that, at the time of the commission of the acts alleged in the complaint, the defendant was legally insane, as defined in Seattle Municipal Code 12A.04.160 and RCW 9A.12.010, and is not legally responsible for said acts.

1.3. Potential Dangerousness. The Court hereby finds as marked below:

_____ **1.3.1.** The Defendant **is** a substantial danger to other persons unless kept under further control by the Court or other persons or institutions, and it is **not** in the best interests of the Defendant and others that the Defendant be placed in treatment that is less restrictive than detention in a state mental hospital.

_____ **1.3.2.** The Defendant **is** a substantial danger to other persons unless kept under further control by the Court or other persons or institutions, and it **is** in the best interests of the Defendant and others that the Defendant be placed in treatment that is less restrictive than detention in a state mental hospital.

_____ **1.3.3.** The Defendant **is not** a substantial danger to other persons but **is** in need of control by the court or other persons or institutions.

_____ **1.3.4.** The Defendant **is not** a substantial danger to other persons and **is not** in need of control by the court or other persons or institutions.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

1.4. Likelihood of Further Criminal Acts. The Court hereby finds as marked below:

_____ **1.4.1.** The Defendant **does** present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the Court or other persons or institutions, and it is **not** in the best interests of the Defendant and others that the Defendant be placed in treatment that is less restrictive than detention in a state mental hospital.

_____ **1.4.2.** The Defendant **does** present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the Court or other persons or institutions, and it **is** in the best interests of the Defendant and others that the Defendant be placed in treatment that is less restrictive than detention in a state mental hospital.

_____ **1.4.3.** The Defendant **does not** present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the Court or other persons or institutions but **is** in need of control by the court or other persons or institutions.

_____ **1.4.4.** The Defendant **does not** present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the Court or other persons or institutions and **is not** in need of control by the court or other persons or institutions.

2. JUDGMENT OF ACQUITTAL BY REASON OF INSANITY. The Court has jurisdiction over the parties and subject matter of this cause. Judgment of Acquittal by Reason of Insanity, as defined by Seattle Municipal Code 12A.04.160 and RCW 9A.12.010, is therefore entered as to each of the nonfelony crimes alleged in the complaint.

3. ORDERS REGARDING DEFENDANT'S TREATMENT OR DISCHARGE. The Court hereby issues the following orders, which relate to the specific findings in sections 1.2 and 1.3 above.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

3.1. If **either or both** of subsections 1.3.1. or 1.4.1. above are marked, then the Defendant is hereby committed to Western State Hospital for a period of up to the maximum possible sentence for any crime upon which he/she has been acquitted, pursuant to RCW 10.77.110(1) and 10.77.025(1). If the Defendant is charged with crimes with different maximum possible sentences, then the maximum possible period of commitment shall be based on the crime with the longest maximum possible sentence. The Defendant shall receive credit for any previous bookings on this matter. The Defendant shall comply with all of the terms and conditions of the commitment, including any conditional release. The Defendant shall be confined to the King County Jail while awaiting placement at Western State Hospital, but such confinement shall be for no more than seven days from the date of this order. The King County Department of Adult Detention shall transport the Defendant to Western State Hospital as soon as practicable, and in any event within seven days of the date of this order.

3.2. If **either or both** of subsections 1.3.2. or 1.4.2. above are marked, then the Defendant shall comply with alternative treatment which is less restrictive than detention at Western State Hospital, pursuant to RCW 10.77.110(1). The treatment shall be for a period of up to the maximum possible sentence for any crime upon which he/she has been acquitted, pursuant to 10.77.025(1). If the Defendant is charged with crimes with different maximum possible sentences, then the maximum possible period of commitment shall be based on the crime with the longest maximum possible sentence. The Defendant shall receive credit for any previous bookings on this matter. The treatment shall be on the following terms and conditions:

3.2.1. The Defendant shall be released from custody forthwith, and is hereby directed to contact the following treatment facility ("Treatment Facility") in person or by telephone within ____ days of this order: _____.

3.2.2. The Defendant shall comply with the following conditions of the less restrictive alternative:

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

Comply with all terms and conditions of the treatment program as directed by the Treatment Facility, including, without limitation, taking any medications prescribed as part of the program.

Notify the Court and the Treatment Facility of any change of address or telephone number.

Have no criminal law violations.

Abstain from alcohol and all other mood altering drugs, unless prescribed by a physician.

Possess no weapons.

Other:_____

_____

_____

_____

3.2.3. The Treatment Facility shall inform the Court, the Court Monitor, the defense attorney, and the prosecutor immediately if the Defendant fails to comply with any of the conditions of the less restrictive alternative.

3.2.4. The Treatment Facility shall provide monthly reports on the Defendant's progress to the Court, the Court Monitor, the defense attorney, and the prosecutor.

3.3. If **both** subsections 1.3.3. and 1.4.3. above are marked, then the defendant shall be conditionally released pursuant to RCW 10.77.110(3). The conditional release shall be for a period of up to the maximum possible sentence for any crime upon which he/she has been acquitted, pursuant to 10.77.025(1). If the Defendant is charged with crimes with different maximum possible sentences, then the maximum possible period of conditional release shall be based on the crime with the longest maximum possible sentence. The Defendant shall

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

receive credit for any previous bookings on this matter. The conditional release shall be on the following terms and conditions:

3.3.1. The Defendant shall be released from custody forthwith, and is hereby directed to contact the following treatment facility ("Treatment Facility") in person or by telephone within ____ days of this order: _____ .

3.3.2. The Defendant shall comply with the following conditions of the release:

Comply with all terms and conditions of the treatment program as directed by the Treatment Facility, including, without limitation, taking any medications prescribed as part of the program.

Notify the Court and the Treatment Facility of any change of address or telephone number.

Have no criminal law violations.

Abstain from alcohol and all other mood altering drugs, unless prescribed by a physician.

Possess no weapons.

Other:_____

_____

_____

_____

3.3.3. The Treatment Facility shall inform the Court, the Court Monitor, the defense attorney, and the prosecutor immediately if the Defendant fails to comply with any of the conditions of the conditional release.

3.3.4. The Treatment Facility shall provide monthly reports on the Defendant's progress to the Court, the Court Monitor, the defense attorney, and the prosecutor.

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

3.4. If **both** subsections 1.3.4. and 1.4.4. above are marked, then the Defendant is hereby ordered discharged immediately and, if in custody on this case, shall be released immediately from jail on this case. This order shall not affect the Defendant's custody status on any case(s).

3.5. The maximum period of commitment under subsection 3.1 above, or of conditional release under subsection 3.2 above, is through the date of _____ _____. That date has been determined as follows: The maximum possible sentence is _____ days in jail; the Defendant has already served _____ days in jail as of the date of this order; the maximum remaining time of commitment or conditional release is therefore _____ days from the date of this order.

3.6. The Court hereby reserves all jurisdiction otherwise granted by law, including but not limited to that necessary to hear requests for conditional release and to enforce any terms of conditional release related to any commitment or treatment that is the subject of this order.

DONE IN OPEN COURT this _____ day of _____ , ____ .

_____

JUDGE

//

//

//

//

//

//

//

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757

Presented by:

_____
Assistant City Attorney
WSBA #_____

Attention: Case Preparation Unit
Seattle City Attorney's Office
Criminal Division
710 Second Ave., #1414
Seattle, WA 98104-1700
(206) 684-7757
FAX (206) 615-1293

Defense Attorney:

_____
(Attorney Name) WSBA #

_____
(Firm)

_____
(Address)

_____
(City, State, Zip)

_____
(Telephone)

_____
(Fax)

Copy received; Approved for entry:

_____
WSBA # _____

j:\data\criminal\docs\forms\mio\Insanity Acquittal Order

Thomas A. Carr
Seattle City Attorney
710 Second Avenue, 14h Floor
Seattle, WA 98104-1700
(206) 684-7757