

TITLE 6. CRIMINAL PROCEDURE

Chapter 6.5

COMPETENCY

Sections:

- 6.5.1 Mental Incapacity
- 6.5.2 Competency Evaluation.
- 6.5.3 Competency Restoration Process.
- 6.5.4 Involuntary Medication.
- 6.5.5 Dismissals Disfavored.

6.5.1. Mental Incapacity. A defendant charged with a crime is incompetent to stand trial if they are substantially unable to understand the nature or object of the proceedings against them or to participate and assist in their defense. The defendant is deemed incompetent to be tried, convicted or sentenced so long as such incapacity continues. (Res.)

6.5.2. Competency Evaluation. (a) Whenever there is a doubt as to the competency of a criminal defendant, the Court, on its own motion or on the motion of any party, including any official in charge of the institution or place in which the defendant is detained, will first review the allegations of incompetency. The Court will make a determination of whether sufficient facts have been provided to form a genuine doubt as to competency based on information provided by counsel, judicial colloquy, or direct observation of the defendant. If a genuine doubt as to competency exists, the Court will refer the defendant to a qualified expert or professional person designated by the State of Washington or the Suquamish Indian Tribe to evaluate and report upon the mental condition of the defendant.

(b) The signed order of the Court will serve as authority for the evaluator to be given access to all records held by any mental health, medical, long-term services or supports, educational, or correctional facility that relate to the defendant's present or past mental, emotional, or physical condition.

(c) The defendant is entitled to have counsel present with them and will not be required to answer any questions the defendant believes may incriminate themselves.

(d) For a competency evaluation of a defendant who is released from custody, if the evaluation cannot be completed within twenty-one (21) days due to the defendant's lack of cooperation, the evaluator will notify the Court that the defendant is unable to complete the evaluation because of such lack of cooperation.

(e) The expert conducting the evaluation will provide the expert's report and recommendation to the Court, prosecuting attorney, and defense attorney.

(f) If the evaluator concludes that the person should be evaluated by a designated crisis responder, the Court will order such evaluation be conducted prior to release from confinement when the person is acquitted, or convicted and sentenced to confinement, or when charges are dismissed pursuant to a finding of incompetent to stand trial.

(g) The Court, either on application or on its own motion, may order an incompetency examination at any stage in the proceedings and may do so without a hearing unless the person charged with a crime objects to the examination. In such event, an examination will be ordered only after determination upon a hearing that there is a prima facie question of incompetency. Upon completion of the examination, the Court will make a determination of incompetency where incompetency is established by a preponderance of the evidence. (Res.)

6.5.3. Competency Restoration Process. (a) The Court may order a defendant who has been charged with a crime and found to be incompetent, but not severely mentally disabled, to undergo competency restoration treatment.

(b) An order for competency restoration treatment will specify a reasonable competency restoration period. At the end of the competency restoration period or at any time a professional person determines competency has not been, or is unlikely to be, restored, the defendant will be returned to court for a hearing, except that if the professional person's opinion is that the defendant remains incompetent and the hearing is held before the current competency restoration period expires, the parties may agree to waive the defendant's presence, to remote participation by the defendant at a hearing, or to presentation of an agreed order in lieu of a hearing.

(c) The Court may order a further period of competency restoration treatment for a reasonable time if it finds that further treatment is likely to restore competency.

(d) Any facility providing inpatient services related to competency will discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. If the defendant is discharged to the custody of a correctional facility, the correctional facility must continue the medication regimen as prescribed by the facility providing inpatient services, when clinically appropriate, unless the defendant refuses to cooperate with medication and an involuntary medication order by the Court has not been entered.

(e) If the Court finds that competency has not or cannot be restored in a reasonable time, the Court will dismiss the proceedings without prejudice and may refer the defendant for evaluation by a designated crisis responder.

(f) The competency restoration periods allowed in RCW 10.77.086 and 10.77.088 are per se reasonable. In determining whether a period of competency restoration beyond those allowed by the State of Washington is reasonable, the Court must consider the nature and classification of the offense, the defendant's history of the same

or similar conduct, the risk the defendant poses to the community, and the likelihood of restoration. (Res.)

6.5.4. Involuntary Medication. The Court may authorize involuntary medication for the purpose of competency restoration and for maintaining the level of restoration in the jail following the restoration period if the pending charge is a felony offense or a serious offense. (Res.)

6.5.5. Dismissals Disfavored. Dismissal of a criminal case is not the appropriate remedy for a violation of a Court-imposed time line for the evaluation or restoration of a defendant where facility staff or the Tribe has in good faith attempted to comply with the Court's order or there is evidence that the delay is caused by circumstances beyond the control of the Tribe or the facility charged with carrying out the Court's order. (Res.)