

FINAL BILL REPORT

E2SHB 1114

C 289 L 13
Synopsis as Enacted

Brief Description: Addressing criminal incompetency and civil commitment.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Pedersen, Rodne, Morrell, Nealey, Green and Jinkins).

House Committee on Judiciary
House Committee on Appropriations
Senate Committee on Human Services & Corrections
Senate Committee on Ways & Means

Background:

Incompetency.

A person is incompetent to stand trial in a criminal case if he or she lacks the capacity to understand the nature of the proceedings or is unable to assist in his or her own defense. A court may require a competency evaluation of a defendant whenever the issue of competency is raised, and a person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

If a person is found incompetent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency or dismiss the charges without prejudice. If the defendant undergoes restoration but cannot be restored to competency within the designated time period, the criminal case must be dismissed without prejudice.

Evaluations and Petitions for Involuntary Commitment.

If a person's competency is not restored and charges have been dismissed, the person will be considered for commitment in the civil system. The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for an involuntary civil commitment. After the court dismisses felony charges, the person must be released or transferred to a hospital or secure mental health facility for up to 72 hours for purposes of an involuntary treatment evaluation. At the end of the 72-hour evaluation period a petition may be filed for up to 180 additional days of treatment.

Grounds for Involuntary Commitment Following a Felony Dismissal.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person who has had felony charges dismissed due to incompetency may be detained for a period of up to 180 days if the petitioner can prove by clear, cogent, and convincing evidence that the person has committed acts constituting a felony and, as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts. If the grounds for commitment have been proven, but treatment less restrictive than detention will be in the best interest of the person or others, the court may order a less restrictive alternative placement for the term of commitment.

No order of commitment under the ITA may exceed 180 days, but commitment may be renewed upon successive petitions and hearings. The grounds on subsequent petitions match those for the initial petition for commitment, but additional factors are considered in the analysis of likelihood of repeating similar acts, including life history, progress in treatment, and the public safety. The person may be released prior to the end of the term of commitment if they no longer meet the commitment criteria.

Commitment of Persons Found Not Guilty by Reason of Insanity.

A person may be committed as "criminally insane" if the person is found not guilty by reason of insanity (NGRI) and the fact finder determines that the person presents a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court, other persons, or institutions. Insanity in a criminal case means that the person was, at the time of the act underlying the charge, unable to perceive the nature and quality of the act or unable to tell right from wrong with respect to the particular act because of a mental disease or defect. The maximum term of commitment following an NGRI acquittal is equal to the maximum possible sentence for any offense charged against the person committed. A person committed as criminally insane may petition for conditional release or final release by making an application to the Secretary of the Department of Social and Health Services (DSHS), or by making a direct petition to the court.

Release of Involuntarily Committed Persons.

Mental health facility superintendents must give advance written notice of changes in the commitment status of persons committed under the ITA following dismissal of a sex, violent, or felony harassment offense. The chief of police and sheriff in the person's jurisdiction of residence, and victims and witnesses who have requested notice, are entitled to at least 30 days notice prior to the person's release, authorized leave, or transfer to another facility.

Legislation in 2010 created a public safety review panel to independently review and assess proposals by the DSHS for conditional release, furlough, temporary leave, and similar changes in commitment status of persons found NGRI. The panel provides written determinations of the public safety risk presented by any release recommendation, and may offer alternative recommendations. The panel's recommendations are submitted to the court with the DSHS recommendations.

The panel must submit a report to the Legislature by December 1, 2014, regarding observed changes in statewide consistency of evaluations and decisions concerning changes in the commitment status of persons found NGRI. The panel's report will also address whether the panel should be given the authority to make release decisions and monitor release conditions.

Summary:

Evaluations for Involuntary Commitment.

For criminal defendants who have had felony charges dismissed due to incompetency, evaluation for the purposes of filing a civil commitment petition under the ITA must occur at a state hospital. Court discretion to release a defendant who has had felony charges dismissed is eliminated.

Grounds and Procedures for Involuntary Commitment Following a Violent Felony Dismissal.

On an initial petition for commitment of a person who has had a violent felony charge dismissed due to incompetency, in addition to the standard criteria for commitment, the court must make a finding as to whether the acts the person committed constitute a violent offense as defined in statute.

On subsequent petitions for continued commitment of a person who has had a violent felony charge dismissed, when the court has made an affirmative additional finding at the initial petition, the person will be committed for up to an additional 180 days upon presentation of prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood that the person will commit acts similar to the criminal behavior. The committed person may challenge the renewed commitment with an admissible expert opinion indicating that the person's condition has changed such that his or her mental disorder or developmental disability no longer presents a substantial likelihood that he or she will commit acts similar to the charged criminal behavior.

Initial and additional terms of commitment may include transfer to a specialized intensive support and treatment program, which may be initiated prior to or after discharge from the state hospital.

Release of Involuntarily Committed People.

The prosecuting attorney of the county in which the criminal charges against the committed person were dismissed is entitled to notice of impending release, change in commitment status, or escape of a person involuntarily committed after dismissal of a sex, violent, or felony harassment offense.

The jurisdiction of the independent public safety review panel is expanded to require the panel to provide advice regarding persons committed under the ITA where the court has made an additional finding that the person committed acts constituting a violent offense. In particular, the panel must review all decisions to change the person's commitment status, and decisions to seek or not to seek commitment. The panel's report to the Legislature will include recommendations as to whether further changes in the law are necessary to enhance public safety when incompetency prevents the operation of the criminal justice system.

When a person committed as criminally insane submits a direct petition for release to the court, the petition must be served upon the court, the prosecuting attorney, and the Secretary of the DSHS. Upon receipt of service, the Secretary must determine whether reasonable grounds exist for release and provide a recommendation to all parties and the court.

When filing a release petition for a person committed as criminally insane who will be transferred upon release to a correctional facility to serve a sentence for a class A felony, the

petitioner must show that the person's mental disease or defect is manageable within a correctional facility, but need not prove that the person does not present a substantial danger to other persons or a substantial likelihood of committing criminal acts that jeopardize public safety or security if released.

Votes on Final Passage:

House	87	11	
Senate	47	1	(Senate amended)
House	89	6	(House concurred)

Effective: July 28, 2013