

# HOUSE BILL REPORT

## ESB 5221

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### As Passed House - Amended:

April 25, 2013

**Title:** An act relating to notification of release of a person following dismissal of charges based on incompetence to stand trial.

**Brief Description:** Requiring notification of release of a person following dismissal of charges based on incompetence to stand trial.

**Sponsors:** Senators Kohl-Welles, Carrell and Darneille.

### Brief History:

#### Committee Activity:

Judiciary: 3/14/13, 3/27/13 [DPA].

#### Floor Activity:

Passed House - Amended: 4/25/13, 98-0.

### Brief Summary of Engrossed Bill (As Amended by House)

- Requires notification to the prosecutor and defense attorney when a facility determines not to file a civil commitment petition for a person whose felony or serious non-felony charges were dismissed due to incompetency to stand trial.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

**Staff:** Edie Adams (786-7180).

### Background:

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*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.*

In a criminal case, a court may require a competency evaluation of a defendant who may be incompetent to stand trial. A person is incompetent if the person, as a result of a mental disease or defect, lacks the capacity to understand the nature of the criminal proceedings or to assist in his or her own defense.

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 a defendant cannot be restored to competency within specified time periods, the criminal case must be dismissed without prejudice.

When a defendant's criminal charges are dismissed due to lack of competency, the defendant is evaluated for potential civil commitment under the Involuntary Treatment Act (ITA). If a felony or serious non-felony offense is dismissed due to the incompetency of the defendant, the defendant is transported to a state hospital or other evaluation and treatment facility for 72 hours for a civil commitment evaluation. The state may file a petition for a civil commitment for a period of up to 90 days or 180 days, depending on the underlying dismissed criminal charge.

A person may be civilly committed under the ITA if the person, as a result of a mental disorder, presents a substantial likelihood of serious harm, or is gravely disabled. A person whose felony charges have been dismissed based on incompetency to stand trial may be committed under the ITA for a period of up to 180 days if the petitioner can prove by clear, cogent, and convincing evidence that the person committed acts constituting a felony, and as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts.

A person whose criminal charges were dismissed based on incompetency, and who does not meet the standards for civil commitment, will be released. If the underlying charge was a misdemeanor, the evaluator must forward the recommendation for release without a petition for civil commitment to the superior court of the county in which the criminal charge was dismissed for review by the court.

**Summary of Amended Bill:**

A facility conducting a civil commitment evaluation of a person whose felony or serious non-felony charges were dismissed due to incompetency to stand trial must provide written notification to the prosecutor and the defense attorney if the facility makes a determination to release the person and not file a petition for civil commitment. The notification must be provided on a business day and at least 24 hours prior to the person's release, and may be given by electronic mail, facsimile, or other means of immediate communication.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill requires notification to the prosecutor and defense attorney when a potentially dangerous person is being released so that the victim can be notified. The bill addresses a concern brought by a constituent who was being harassed and stalked in violation of a restraining order. Because the defendant was incompetent, the criminal charges were dismissed. The person was referred for a civil commitment evaluation, but released after one day. Victims need to be notified in these circumstances so that they can take measures to protect themselves. Prosecutors in every county have a process for providing notification to the victim. Amending the bill to provide notification 24 hours prior to the person's release is a good policy, but it could have a potential bed impact, and there is currently a shortage of bed space.

(Opposed) None.

**Persons Testifying:** Senator Kohl-Welles, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.