

HOUSE BILL REPORT

ESB 5221

As Reported by House Committee On:
Judiciary

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].

Brief Summary of Engrossed Bill
(As Amended by Committee)

- 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.

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:

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

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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 notify 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.

Amended Bill Compared to Engrossed Bill:

The Engrossed Bill required the notification to the prosecutor and defense attorney to be provided within 24 hours of the determination to release the person and not file a civil commitment petition.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 27, 2013.

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.