

2009 DRAFTING REQUEST

Bill

Received: **12/15/2008**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Jablonsky**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Adtl. Drafters:

Subject: **Mental Health - detent/commit
Mental Health - miscellaneous
Criminal Law - procedure**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Jablonsky, BB0263 -

Topic:

Treatment to competency for persons who are not competent for trial

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 12/15/2008	bkraft 12/16/2008		_____			
/P1	chanaman 01/06/2009	bkraft 01/06/2009	phenry 12/16/2008	_____	sbasford 12/16/2008		
/P2			rschluet 01/06/2009	_____	sbasford 01/06/2009		

FE Sent For:

<END>

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Handwritten signature and date 1/6

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/?	chanaman	/PI bjk 12/16	<i>ph</i>	<i>ph</i>			

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Treatment to Competency
- Tracking Code: BB0263
- SBO team: Health and Insurance
- SBO analyst: Sue Jablonsky
 - Phone: 7-9546
 - Email: sue.jablonsky@wisconsin.gov
- Agency acronym: DHS
- Agency number: 435
- Priority (Low, Medium, High): High

Intent: Change the language related to treatment to competency from a 12-month period to a 6-month period. See attached.

Revise Treatment to Competency

Inpatient Treatment Program

- Revise treatment to competency language, for individuals determined not competent to proceed to criminal trial, to reflect a 6-month maximum treatment period rather than the existing 12 months.
- Under s. 971.14(5), if the court determines that a defendant is not competent but is likely to become competent within the maximum treatment period the individual is committed to the Department of Health Services for treatment to competency. This paragraph also defines the maximum treatment period as 12 months.
- If s. 971.14(5) was modified to define the maximum treatment period as 6 months, the Department would be able to reduce the number of individuals on the forensic waiting list. It is anticipated that the backlog would be taken care of within one year if the maximum treatment period was lowered.
- The average (FY07-FY08) number of people in treatment to competency population who have required stays greater than 6 months is approximately 29. As the waiting list backlog is eliminated, the change will decrease the average daily population across all forensic units by 4. In SFY08, the total forensic average daily population at both institutes combined was 272.
- A majority of individuals admitted to MHIs for treatment to competency services for longer than 6 months are never determined to be competent to stand trial. Eventually these individuals are returned to the county's responsibility for civil commitment at the MHI or outpatient treatment in the community. Since counties are not financially responsible while individuals are in the Department's care for treatment to competency, they usually delay civil commitment at the institutes as long as possible. These statutory changes would require counties to take responsibility for individuals unlikely to be competent for trial on a more responsible time table. For individuals who have been shifted to the county's responsibility, the court may hold charges open and try these individuals at a later time, if they have later been determined to be competent to stand trial.
- The potential savings to the state in the 2009-11 biennium is \$23,100 GPR if the statutes are changed to reflect the 6-month maximum treatment period. The waiting list backlog has already been factored into the savings.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1141/?

CMH:.....

ljk

DOA:.....Jablonsky, BB0263 - Treatment to competency for persons who are not competent for trial ✓

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

D-NOTE

SA ✓
X-ref ✓

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1 AN ACT ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES ✓

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

Under current law, if a court has reason to doubt the competency of a criminal defendant, the court may require the defendant to be examined to determine whether the person is competent to proceed to trial. If the examiner determines that the person is not competent, but may attain competency with treatment, the court must suspend the criminal proceedings and commit the defendant to the custody of DHS for placement in an appropriate mental health institution for up to 12 months, or for the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. This bill reduces the commitment time to a maximum of six months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 322.0767 (1) (b) of the statutes is amended to read:

1 322.0767 (1) (b) The department of health services shall submit ~~all reports a~~
2 report that are ~~is~~ required under s. 971.14 (5) (b) and that ~~pertain~~ pertains to a person
3 subject to a commitment order under par. (a) to the court-martial. ✓

4 History: 2007 a. 20 s. 9121 (6) (a); 2007 a. 200. ✓

4 **SECTION 2.** 971.14 (5) (a) of the statutes is amended to read:

5 971.14 (5) (a) If the court determines that the defendant is not competent but
6 is likely to become competent within the period specified in this paragraph if
7 provided with appropriate treatment, the court shall suspend the proceedings and
8 commit the defendant to the custody of the department of health services for the
9 department to determine whether treatment shall occur in an appropriate
10 institution designated by the department, or in a community-based treatment
11 conducted in a jail or a locked unit of a facility that has entered into a voluntary
12 agreement with the state to serve as a location for treatment, or as a condition of bail
13 or bond, for a period of time not to exceed ~~12~~ 6 months, or the maximum sentence
14 specified for the most serious offense with which the defendant is charged, whichever
15 is less. Under this subsection, the department of health services may commence
16 services to a person in jail but shall, as soon as possible, transfer that person to an
17 institution or provide services to the person in a nonjail setting consistent with this
18 subsection. Days spent in commitment under this paragraph are considered days
19 spent in custody under s. 973.155. ✓

20 History: 1981 c. 367; 1985 a. 29, 176; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 85, 403; 1989 a. 31, 107; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 32; 1995
a. 27 s. 9126 (19); 1995 a. 268; 1997 a. 252; 2001 a. 16; 2003 a. 122; 2005 a. 264; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a).

20 **SECTION 3.** 971.14 (5) (b) of the statutes is amended to read:

21 971.14 (5) (b) The defendant shall be ~~periodically~~ reexamined by the
22 department of health services examiners. Written reports of examination shall be
23 furnished to the court ~~3 months after commitment, 6 months after commitment, 9~~
24 ~~months after commitment~~ and within 30 days prior to the expiration of commitment.

1 Each report shall indicate either that the defendant has become competent, that the
2 defendant remains incompetent but that attainment of competency is likely within
3 the remaining commitment period, or that the defendant has not made such progress
4 that attainment of competency is likely within the remaining commitment period.
5 Any report indicating such a lack of sufficient progress shall include the examiner's
6 opinion regarding whether the defendant is mentally ill, alcoholic, drug dependent,
7 developmentally disabled, or infirm because of aging or other like incapacities. ✓

History: 1981 c. 367; 1985 a. 29, 176; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 85, 403; 1989 a. 31, 107; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 32; 1995 a. 27 s. 9126 (19); 1995 a. 268; 1997 a. 252; 2001 a. 16; 2003 a. 122; 2005 a. 264; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a).

8 **SECTION 4. 971.14 (5) (d) of the statutes is amended to read:**

9 971.14 (5) (d) If the defendant is receiving medication the court may make
10 appropriate orders for the continued administration of the medication in order to
11 maintain the competence of the defendant for the duration of the proceedings. If a
12 defendant who has been restored to competency thereafter again becomes
13 incompetent, the maximum commitment period under par. (a) shall be 18 12 months
14 minus the days spent in previous commitments under this subsection, or 12 6
15 months, whichever is less. ✓

History: 1981 c. 367; 1985 a. 29, 176; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 85, 403; 1989 a. 31, 107; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 32; 1995 a. 27 s. 9126 (19); 1995 a. 268; 1997 a. 252; 2001 a. 16; 2003 a. 122; 2005 a. 264; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a).

16 **SECTION 9322. Initial applicability; Health Services. ✓**

17 (1) COMMITMENT FOR COMPETENCY RESTORATION. The treatment of sections
18 322.0767 (1) (b) and 971.14 (5) (a), (b), and (d) of the statutes first applies to
19 commitment periods that are in progress on the effective date of this subsection. ✓

20 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1141/P1dn
CMH:bjk:ph

December 16, 2008

Sue

I did not amend s. 938.30 (5) (e) 1.; please let me know you want to change that time period as well.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

Hanaman, Cathlene

From: Jablonsky, Sue - DOA [sue.jablonsky@wisconsin.gov]
Sent: Tuesday, January 06, 2009 8:58 AM
To: Hanaman, Cathlene
Subject: FW: LRB Draft: 09-1141/P1 Treatment to competency for persons who are not competent for trial

From: Emslie, William P - DHS
Sent: Thursday, December 18, 2008 1:59 PM
To: Jablonsky, Sue - DOA
Cc: Moore, Donna J - DHS; Forsaith, Andrew C - DHS
Subject: RE: LRB Draft: 09-1141/P1 Treatment to competency for persons who are not competent for trial

After reviewing the stat language draft for revising treatment to competency, the Department recommends the following change:

SECTION 3. 971.14 (5) (b) of the statutes is amended to read:
971.14 (5) (b) The defendant shall be ~~periodically~~ reexamined by the department of health services examiners. Written reports of examination shall be furnished to the court ~~3~~ 2 months after commitment, ~~6 months after commitment, 9 months after commitment~~ and within 30 days prior to the expiration of commitment.

The change here compared to the draft language (attached) is that the first written report is due at 2 months after commitment rather than 3. If you would like to discuss further, let me know. Thank you.

Will Emslie
Budget & Policy Analyst
Department of Health Services
(608) 266-5380

From: Jablonsky, Sue - DOA
Sent: Tuesday, December 16, 2008 10:48 AM
To: Emslie, William P - DHS
Subject: FW: LRB Draft: 09-1141/P1 Treatment to competency for persons who are not competent for trial

From: Henry, Patty [mailto:Patty.Henry@legis.wisconsin.gov]
Sent: Tuesday, December 16, 2008 10:18 AM
To: Jablonsky, Sue - DOA
Cc: Gauger, Michelle C - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-1141/P1 Treatment to competency for persons who are not competent for trial

Following is the PDF version of draft 09-1141/P1.



State of Wisconsin
2009 - 2010 LEGISLATURE

72
LRB-1141/P1

CMH:bjk:ph

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DOA:.....Jablonsky, BB0263 - Treatment to competency for persons who are not competent for trial

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA ✓

- done for cat

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES

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19 (END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1141/P2
CMH:bjk:rs

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