

# State of Wisconsin



2009 Senate Bill 492

Date of enactment: **April 21, 2010**

Date of publication\*: **May 5, 2010**

## 2009 WISCONSIN ACT 214

**AN ACT** to renumber 971.14 (1); to renumber and amend 971.14 (5) (a); to amend 911.01 (4) (c), 967.02 (2), 969.01 (1), 971.14 (2) (a), 971.14 (3) (d), 971.14 (5) (am) and 971.14 (5) (b); and to create 971.14 (1g) and 971.14 (5) (a) 4. of the statutes; relating to: restoration to competency of a defendant (suggested as remedial legislation by the Department of Health Services).

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

**SECTION 1.** 911.01 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting, or revoking probation, modification of a sentence under s. 302.1135, adjustment of a bifurcated sentence under s. 973.195 (1r), release to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s. 973.01 (4m), issuance of arrest warrants, criminal summonses, and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (4) (1r) (c); or proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

**SECTION 2.** 967.02 (2) of the statutes is amended to read:

967.02 (2) "Department" means the department of corrections, except as provided in s. ss. 971.14 and 975.001.

**SECTION 3.** 969.01 (1) of the statutes is amended to read:

969.01 (1) **BEFORE CONVICTION.** Before conviction, except as provided in ss. 969.035 and 971.14 (4) (1r), a

defendant arrested for a criminal offense is eligible for release under reasonable conditions designed to assure his or her appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. Bail may be imposed at or after the initial appearance only upon a finding by the court that there is a reasonable basis to believe that bail is necessary to assure appearance in court. In determining whether any conditions of release are appropriate, the judge shall first consider the likelihood of the defendant appearing for trial if released on his or her own recognizance.

**SECTION 4.** 971.14 (1) of the statutes is renumbered 971.14 (1r).

**SECTION 5.** 971.14 (1g) of the statutes is created to read:

971.14 (1g) **DEFINITION.** In this section, "department" means the department of health services.

**SECTION 6.** 971.14 (2) (a) of the statutes is amended to read:

971.14 (2) (a) The court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant. If an inpatient examination is determined by the court to be necessary, the defendant may be committed to a suitable mental health facil-

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

ity for the examination period specified in par. (c), which shall be deemed days spent in custody under s. 973.155. If the examination is to be conducted by the department of health services, the court shall order the individual to the facility designated by the department of health services.

**SECTION 7.** 971.14 (3) (d) of the statutes is amended to read:

971.14 (3) (d) If the examiner reports that the defendant lacks competency, the examiner's opinion regarding the likelihood that the defendant, if provided treatment, may be restored to competency within the time period permitted under sub. (5) (a). The examiner shall provide an opinion as to whether the ~~individual's~~ defendant's treatment should occur in an inpatient facility designated by the department of health services, in a community-based treatment program under the supervision of the department, or ~~should be conducted~~ in a jail or a locked unit of a facility that has entered into a voluntary agreement with the state to serve as a location for treatment, ~~or as a condition of bail or bond.~~

**SECTION 8.** 971.14 (5) (a) of the statutes is renumbered 971.14 (5) (a) 1. and amended to read:

971.14 (5) (a) 1. If the court determines that the defendant is not competent but is likely to become competent within the period specified in this paragraph if provided with appropriate treatment, the court shall suspend the proceedings and commit the defendant to the custody of the department of health services for the treatment for a period not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. The department ~~to~~ shall determine whether the defendant will receive treatment ~~shall occur~~ in an appropriate institution designated by the department, ~~or while under the supervision of the department~~ in a community-based treatment ~~conducted~~ program under contract with the department, ~~or~~ in a jail or a locked unit of a facility that has entered into a voluntary agreement with the state to serve as a location for treatment, ~~or as a condition of bail or bond, for a period of time not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less.~~ Under this subsection, The sheriff shall transport the defendant to the institution, program, jail, or facility, as determined by the department.

2. If, under subd. 1., the department of health services may commence commences services to a person defendant in jail but or in a locked unit, the department shall, as soon as possible, transfer that person the defendant to an institution or provide services to the person defendant in a nonjail setting community-based treatment program consistent with this subsection.

3. Days spent in commitment under this paragraph are considered days spent in custody under s. 973.155.

**SECTION 9.** 971.14 (5) (a) 4. of the statutes is created to read:

971.14 (5) (a) 4. A defendant under the supervision of the department placed under this paragraph in a community-based treatment program is in the custody and control of the department, subject to any conditions set by the department. If the department believes that the defendant under supervision has violated a condition, or that permitting the defendant to remain in the community jeopardizes the safety of the defendant or another person, the department may designate an institution at which the treatment shall occur and may request that the court reinstate the proceedings, order the defendant transported by the sheriff to the designated institution, and suspend proceedings consistent with subd. 1.

**SECTION 10.** 971.14 (5) (am) of the statutes is amended to read:

971.14 (5) (am) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendant's mental condition and if the ~~treatment facility~~ department determines that the defendant should be subject to such a court order, the ~~treatment facility~~ department may file with the court, with notice to the counsel for the defendant, the defendant, and the district attorney, a motion for a hearing, under the standard specified in sub. (3) (dm), on whether the defendant is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall, under the procedures and standards specified in sub. (4) (b), determine the defendant's competency to refuse medication or treatment for the defendant's mental condition. At the request of the defendant, the defendant's counsel, or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph.

**SECTION 11.** 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 months after commitment, 6 months after commitment, 9 months after commitment and within 30 days prior to the expiration of commitment. Each report shall indicate either that the defendant has become competent, that the defendant remains incompetent but that attainment of competency is likely within the remaining commitment period, or that the defendant has not made

**2009 Senate Bill 492**

**2009 Wisconsin Act 214**

such progress that attainment of competency is likely within the remaining commitment period. Any report indicating such a lack of sufficient progress shall include the examiner's opinion regarding whether the defendant

is mentally ill, alcoholic, drug dependent, developmentally disabled or infirm because of aging or other like incapacities.

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