SENATE BILL 492 (LRB -0668)

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).

2010

01-25.	S.	Introduced by **LAW REVISION COMMITTEE**.	
01-25.	S.	Read first time and referred to committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing	504
02-08.	S.	Public hearing held.	
02-18.	S.	Executive action taken.	
02-22.	S.	Report passage recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0	575
02-22.	S.	Available for scheduling.	
02-23.	S.	Placed on calendar 2-25-2010 pursuant to Senate Rule 18(1)	578
02-25.	S.	Read a second time	594
02-25.	S.	Ordered to a third reading	594
02-25.	S.	Rules suspended	594
02-25.	S.	Read a third time and **passed**	594
02-25.	S.	Ordered immediately messaged	595
02-26.	A.	Received from Senate	707
02-26.	A.	Read first time and referred to committee on Judiciary and Ethics	708
03-09.	A.	Public hearing held.	
03-09.	A.	Executive action taken.	
03-11.	A.	Report concurrence recommended by committee on Judiciary and Ethics, Ayes 8, Noes 0	749
03-11.	A.	Referred to committee on Rules	749
04-07.	A.	Placed on calendar 4-13-2010 by committee on Rules.	
04-13.	A.	Read a second time	820
04-13.	A.	Ordered to a third reading	820
04-13.	A.	Rules suspended	820
04-13.	A.	Read a third time and **concurred in**	820
04-13.	A.	Ordered immediately messaged	820
04-14.	S.	Received from Assembly concurred in.	

9MB

2009
ENROLLED BILL

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ADOPTED DOCUMENTS:

☒ Orig ☐ Engr ___ SubAmdt ___ 09 - 0668/1

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic Rel

4-14-10
Date

Enrolling Drafter

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–0668/1
CMH:wlj:rs

2009 SENATE BILL 492

January 25, 2010 – Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

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

Analysis by the Legislative Reference Bureau

Under current law, if a court has reason to doubt the competency of a defendant in a criminal case, the court may order the defendant to be examined to determine if the defendant is competent. If the examiner finds the defendant incompetent, the examiner's report must include the examiner's opinion as to the likelihood that the defendant will become competent, with treatment, within 12 months (or, if the maximum sentence for the most serious charged offense is shorter than 12 months, within the maximum sentence) and as to whether the defendant's treatment should occur in an inpatient facility, in a jail or locked part of a facility, or as a condition of bail or bond. If the court finds the defendant incompetent the proceedings are suspended. If the court also finds that the defendant will become competent, with treatment, in a certain time frame, the court must commit the defendant to the custody of the Department of Health Services (DHS). The statutes require DHS to determine whether the treatment should occur in a designated location or as a condition of bail or bond. This bill eliminates the option that treatment occur as a condition of bail or bond because, once proceedings are suspended when the person

is committed for treatment, bail or bond is not an option. This bill also provides an alternative process for placing a person to an inpatient setting if the person is not appropriate for outpatient treatment.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Health Services and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

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 ~~(1)~~ (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 ~~(1)~~ (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.

NOTE: SECTION 1 and this SECTION 4 reflect the renumbering of s. 971.14 (1) to 971.14 (1r) in SECTION 4 of the bill.

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 facility 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.

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

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

NOTE: The amendments in SECTIONS 7 and 8 allow for an outpatient option for competency restoration. In addition, language in the current statute provides that the department of health services must take certain actions during suspension of the proceedings, as a condition of bail or bond. The reference to these actions being taken as a condition of bail or bond is deleted. According to the department of health services, bail or bond cannot be granted once the proceedings are suspended, making it difficult to utilize this statute.

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

9 971.14 **(5)** (a) 4. A defendant under the supervision of the department placed
10 under this paragraph in a community–based treatment program is in the custody
11 and control of the department, subject to any conditions set by the department. If
12 the department believes that the defendant under supervision has violated a
13 condition, or that permitting the defendant to remain in the community jeopardizes
14 the safety of the defendant or another person, the department may designate an
15 institution at which the treatment shall occur and may request that the court
16 reinstate the proceedings, order the defendant transported by the sheriff to the
17 designated institution, and suspend proceedings consistent with subd. 1.

NOTE: The creation of s. 971.14 (5) (a) 4. in this SECTION clarifies that the department of health services has custody and control of a defendant placed in a community–based treatment program.

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

19 971.14 **(5)** (am) If the defendant is not subject to a court order determining the
20 defendant to be not competent to refuse medication or treatment for the defendant's

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

NOTE: The amendments in this SECTION clarify that the department of health services, not the treatment facility in which a defendant is placed, is responsible for filing motions with the court for an order to determine that a defendant is not competent to refuse medication or treatment.

17 **SECTION 11.** 971.14 (5) (b) of the statutes is amended to read:

18 971.14 **(5)** (b) The defendant shall be periodically reexamined by the
19 department ~~of health services~~ examiners. Written reports of examination shall be
20 furnished to the court 3 months after commitment, 6 months after commitment, 9
21 months after commitment and within 30 days prior to the expiration of commitment.
22 Each report shall indicate either that the defendant has become competent, that the
23 defendant remains incompetent but that attainment of competency is likely within

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

NOTE: The amendment in SECTION 5 defines "department" as the department of health services for s. 971.14. The amendments in SECTIONS 2, 6, and 11 reflect the creation of that definition.

6 **(END)**