2005 SENATE BILL 574

February 6, 2006 – Introduced by Senators Zien and Grothman, cosponsored by Representatives Suder, Musser, Townsend, Hines, Gunderson, Albers and Jeskewitz. Referred to Committee on Judiciary, Corrections and Privacy.

AN ACT to amend 971.16 (4) of the statutes; relating to: deadline for distributing a physician's or psychologist's report on a criminal defendant or a person committed upon a finding of not guilty by reason of mental disease or defect.

Analysis by the Legislative Reference Bureau

Under current law, if the mental responsibility of the defendant is relevant in a criminal action, the court may appoint a physician or psychologist to examine the defendant and testify at trial. At least ten days before trial, unless another time is specified by the court, the court–appointed examiner must provide the court with a report on the defendant, which the court must distribute to defense counsel and to the prosecution. The defense or prosecution may also arrange for a physician or psychologist to examine the defendant. An examiner selected by the defense or prosecution may not testify at trial regarding the defendant's mental condition unless a copy of the examiner's report has been provided to opposing counsel at least three days before trial. The procedures governing examinations and testimony by physicians or psychologists selected by the defense or prosecution also apply at hearings regarding a person who is committed to the Department of Health and Family Services (DHFS) upon a finding of not guilty by reason of mental disease or defect, including hearings on conditional release, termination of custody, or competency to refuse medication or treatment.

This bill provides that a physician or psychologist selected by the defense or prosecution to examine a defendant in a criminal action may not testify at trial

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unless the examiner's report is provided to opposing counsel at least 15 days before trial. Under the bill, the 15-day deadline for providing a report of a defendant's or prosecution's examiner also applies to hearings regarding a person committed to DHFS upon a finding of not guilty by reason of mental disease or defect.

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

Section 1. 971.16 (4) of the statutes is amended to read:

971.16 (4) If the defendant wishes to be examined by a physician, psychologist or other expert of his or her own choice, the examiner shall be permitted to have reasonable access to the defendant for the purposes of examination. No testimony regarding the mental condition of the defendant shall be received from a physician, psychologist or expert witness summoned by the defendant unless not less than 3 15 days before trial a report of the examination has been transmitted to the district attorney and unless the prosecution has been afforded an opportunity to examine and observe the defendant if the opportunity has been seasonably demanded. The state may summon a physician, psychologist or other expert to testify, but that witness shall not give testimony unless not less than 3 15 days before trial a written report of his or her examination of the defendant has been transmitted to counsel for the defendant.

14 (END)