



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2439/1
CMH:cjs

2015 ASSEMBLY BILL 259

June 5, 2015 – Introduced by Representatives HORLACHER, ALLEN, GANNON, KLEEFISCH, KREMER, T. LARSON, QUINN, SANFELIPPO, SPIROS, TITTL and WEATHERSTON, cosponsored by Senators WANGGAARD and NASS. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to renumber and amend* 971.14 (5) (a) 1. and 971.14 (5) (c); *to amend*
2 322.0767 (1) (a), 322.0767 (1) (c), 971.14 (3) (d), 971.14 (4) (d), 971.14 (5) (a) 2.,
3 971.14 (5) (b) and 971.14 (5) (d); and *to create* 971.14 (5) (a) 1. b. and 971.14
4 (5) (c) 2. of the statutes; **relating to:** competency determination hearings and
5 commitment.

Analysis by the Legislative Reference Bureau

If, at a competency hearing, the court determines that the defendant is not competent but is likely to become competent within the shorter of 12 months or the maximum sentence for the most serious offense with which he or she is charged, the court must commit the defendant for treatment for the shorter of 12 months or the maximum sentence for the most serious offense with which he or she is charged.

Under this bill, if a court at a competency hearing determines that the defendant is not competent but is likely to become competent and the defendant was charged with a serious felony or a serious child sex offense, the court must commit the defendant for treatment until the defendant becomes competent or for the duration of the maximum sentence for the most serious offense with which he or she is charged, whichever is shorter.

ASSEMBLY BILL 259

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 322.0767 (1) (a) of the statutes is amended to read:

2 322.0767 (1) (a) If a person subject to a general court-martial is found to lack
3 substantial mental capacity to understand the proceedings or assist in his or own
4 defense and the military judge determined that the person is likely to become
5 competent within the period specified under s. 971.14 (5) (a) 1. (intro.), the
6 court-martial convening authority for the person shall commit the person to the
7 custody of the department of health services under s. 971.14 (5). If the military judge
8 determines that the defendant is not likely to become competent in the time period
9 specified under s. 971.14 (5) (a) 1. (intro.), the military judge shall suspend or
10 terminate the general court-martial.

11 **SECTION 2.** 322.0767 (1) (c) of the statutes is amended to read:

12 322.0767 (1) (c) Upon receiving a report under s. 971.14 (5) (b), the
13 court-martial shall make a determination as to whether the person has become
14 competent. If the court-martial determines that the defendant has become
15 competent, the court-martial shall terminate the commitment to the department of
16 health services and resume the general court-martial. If the court-martial
17 determines that the person is making sufficient progress toward becoming
18 competent, the commitment shall continue. If the court-martial determines that the
19 person is not likely to become competent to proceed in the time period specified under
20 s. 971.14 (5) (a) 1. a. or b., whichever is applicable, the court-martial shall suspend
21 or terminate the commitment order under this subsection.

ASSEMBLY BILL 259

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

2 971.14 (3) (d) If the examiner reports that the defendant lacks competency, the
3 examiner's opinion regarding the likelihood that the defendant, if provided
4 treatment, may be restored to competency within the time period permitted under
5 sub. (5) (a) 1. (intro.). The examiner shall provide an opinion as to whether the
6 defendant's treatment should occur in an inpatient facility designated by the
7 department, in a community-based treatment program under the supervision of the
8 department, or in a jail or a locked unit of a facility that has entered into a voluntary
9 agreement with the state to serve as a location for treatment.

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

11 971.14 (4) (d) If the court determines that the defendant is not competent and
12 not likely to become competent within the time period provided in sub. (5) (a) 1.
13 (intro.), the proceedings shall be suspended and the defendant released, except as
14 provided in sub. (6) (b).

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

17 971.14 (5) (a) 1. (intro.) If the court determines that the defendant is not
18 competent but is likely to become competent within ~~the period specified in this~~
19 ~~paragraph~~ 12 months or a period that is equal to the maximum sentence specified
20 for the most serious offense with which the defendant is charged, whichever is less,
21 if provided with appropriate treatment, the court shall do one of the following:

22 a. Except if subd. 1. b. applies, suspend the proceedings and commit the
23 defendant to the custody of the department for treatment for a period not to exceed
24 12 months, or the maximum sentence specified for the most serious offense with
25 which the defendant is charged, whichever is less.

ASSEMBLY BILL 259**SECTION 5**

1 1m. The department shall determine whether the defendant will receive
2 treatment in an appropriate institution designated by the department, while under
3 the supervision of the department in a community-based treatment program under
4 contract with the department, or in a jail or a locked unit of a facility that has entered
5 into a voluntary agreement with the state to serve as a location for treatment. The
6 sheriff shall transport the defendant to the institution, program, jail, or facility, as
7 determined by the department.

8 **SECTION 6.** 971.14 (5) (a) 1. b. of the statutes is created to read:

9 971.14 (5) (a) 1. b. If the defendant is charged with a serious child sex offense,
10 as defined in s. 939.62 (2m) (a) 1m., or a serious felony, as defined in s. 939.62 (2m)
11 (a) 2m., suspend the proceedings and commit the defendant to the custody of the
12 department for treatment until such time as the defendant is restored to competency
13 or for the duration of the maximum sentence specified for the most serious offense
14 with which the defendant is charged, whichever is less.

15 **SECTION 7.** 971.14 (5) (a) 2. of the statutes is amended to read:

16 971.14 (5) (a) 2. If, under subd. ~~1.~~ 1m., the department commences services to
17 a defendant in jail or in a locked unit, the department shall, as soon as possible,
18 transfer the defendant to an institution or provide services to the defendant in a
19 community-based treatment program consistent with this subsection.

20 **SECTION 8.** 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 examiners. Written reports of examination shall be furnished to the
23 court once every 3 months after commitment, ~~6 months after commitment~~, ~~9 months~~
24 ~~after commitment~~ and within 30 days prior to the expiration of commitment. Each
25 report shall indicate either that the defendant has become competent, that the

ASSEMBLY BILL 259

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

7 **SECTION 9.** 971.14 (5) (c) of the statutes is renumbered 971.14 (5) (c) 1. and
8 amended to read:

9 971.14 (5) (c) 1. Upon receiving a report under par. (b) indicating the defendant
10 has regained competency or is not competent and unlikely to become competent in
11 the remaining commitment period, the court shall hold a hearing within 14 days of
12 receipt of the report and the court shall proceed under sub. (4), except that, if the
13 defendant was committed under par. (a) 1. b., and the court determines that the
14 defendant is not competent and not likely to become competent in the remaining
15 commitment period under par. (a) 1. b., the court shall proceed under sub. (6).

16 3. If the court determines in a hearing required under subd. 1. or 2. that the
17 defendant has become competent, the defendant shall be discharged from
18 commitment and the criminal proceeding shall be resumed. If the court determines
19 that the defendant is making sufficient progress toward becoming competent, the
20 commitment shall continue.

21 **SECTION 10.** 971.14 (5) (c) 2. of the statutes is created to read:

22 971.14 (5) (c) 2. If the defendant was committed under par. (a) 1. b., the court
23 shall hold a hearing at the request of the defendant, but no more than twice a year,
24 or, if the defendant makes no request, at least annually. At a hearing required under
25 this subdivision, the court shall proceed under sub. (4) (b). If the court determines

ASSEMBLY BILL 259**SECTION 10**

1 that the defendant is not competent and not likely to become competent in the
2 remaining commitment period under par. (a) 1. b., the court shall proceed under sub.
3 (6).

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

5 971.14 (5) (d) If the defendant is receiving medication the court may make
6 appropriate orders for the continued administration of the medication in order to
7 maintain the competence of the defendant for the duration of the proceedings. If a
8 defendant who has been restored to competency thereafter again becomes
9 incompetent and par. (a) 1. b. does not apply, the maximum commitment period
10 under par. (a) 1. shall be 18 months minus the days spent in previous commitments
11 under this subsection, or 12 months, whichever is less. If a defendant who has been
12 restored to competency thereafter again becomes incompetent and par. (a) 1. b.
13 applies, the defendant shall be committed under par. (a) 1. until such time as the
14 defendant is restored to competency or for the duration of the maximum sentence
15 specified for the most serious offense with which the defendant is charged minus the
16 days spent in previous commitments under this subsection, whichever is less.

17 **SECTION 12. Initial applicability.**

18 (1) This act first applies to court determinations under section 971.14 (5) (a) 1.
19 of the statutes that are made on the effective date of this subsection.

20 (END)