

2007 DRAFTING REQUEST

Bill

Received: 12/07/2006

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Jablonsky

This file may be shown to any legislator: NO

Drafter: phurley

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Addl. Drafters:

Subject: Criminal Law - miscellaneous
Criminal Law - procedure

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Jablonsky, BB-0213 -

Topic:

DHFS to start treatment

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>
/?	phurley 12/08/2006	kfollett 12/12/2006		_____			
/1			nmatzke 12/12/2006	_____	cduerst 12/12/2006		

FE Sent For:

<END>

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/?	phurley	11/gf 12/12	nwn 12/12	nwn/rs 12/12			

FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Treatment to Competency
- Tracking Code: BB0213
- SBO team: Health and Insurance
- SBO analyst: Susan Jablonsky
 - Phone: 267-9546
 - Email: sue.jablonsky@wisconsin.gov
- Agency acronym: DHFS
- Agency number: 435

I would like to amend language to allow DHFS to start treatment to competency in locked jails in addition to the mental health institutes as described in the attached memo.

Priority - Medium

Mental Health Treatment to Competency Revisions

Current Language

- s. 20.435 (2) (bj)
- s. 971.14 (3) (d)
- s. 971.14 (5) (a)
- s. 971.14 (5) (b)
- s. 971.14 (5) (c)

Proposed Change

Modify s. 20.435 (2) (bj) to read as follows:

Biennially, the amounts in the schedule for outpatient competency examinations and treatment services; for payment by the department of costs for treatment and services for persons released under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2003 stats., or s. 971.17 (3) (d) or (4) (e) or 980.08 (4) (g), for which the department has contracted with county departments under s. 51.41 (3) (aw) 1. d., with other public agencies, or with private agencies to provide the treatment and services.

Modify s. 971.14 (3) (d) to read as follows:

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 also provide an opinion as to whether the individual's treatment should occur in an inpatient facility designated by the Department of Health and Family Services, or should be conducted in a jail or locked unit of a facility or as a condition of bail or bond.

Modify s. 971.14 (5) (a) to read as follows:

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 and Family Services for placement in an appropriate institution the department to determine whether treatment shall occur in an appropriate institution designated by the department, or in community based treatment conducted in a jail or locked unit of a facility 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. Days spent in commitment under this paragraph are considered days spent in custody under s. 973.155.

Modify s. 971.14 (5) (b) to read as follows:

The defendant shall be periodically reexamined by the ~~treatment facility~~ Department of Health and Family 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 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.

Modify s. 971.14 (5) (c) to read as follows:

Upon receiving a report under par. (b), indicating the defendant has regained competency or is not competent and unlikely to become competent in the remaining commitment period, the court shall hold a hearing within 14 days of receipt of the report, and the court shall proceed under sub. (4). If the court determines that the defendant has become competent, the defendant shall be discharged from commitment and the criminal proceeding shall be resumed. If the court determines that the defendant is making sufficient progress toward becoming competent, the commitment shall continue.

Background and Rationale for the Change

For approximately two years, a 20-25 person wait list for admission to the forensic units at the two state Mental Health Institutes (MHIs) has existed. The highest percentage of admissions to the MHIs in the forensic programs is persons committed under s. 971.14 (5) for Treatment to Competency to Proceed to Trial. These individuals have been examined and found not competent to proceed to trial based on an existing mental illness. Current statute requires that persons committed to the Department of Health and Family Services (DHFS) for treatment to competency must be placed in either Mendota or Winnebago Mental Health Institutes (MMHI/WMHI) for treatment to occur. These individuals have been found to be in need of psychiatric treatment and holding them in jail until bed space is available is a violation of their right to prompt and adequate treatment. The proposed statutory language change would allow more flexibility in location of treatment for this population and compel courts to set hearings in a timely manner.

Desired Effective Date: Upon Passage of the Budget Bill
Agency: DHFS
Agency Contact: Janet Fredrick
Phone: 266-5380

Jablonsky, Sue - DOA

From: Forsaith, Andrew [FORSAAC@dhs.state.wi.us]
Sent: Monday, December 04, 2006 4:38 PM
To: Jablonsky, Sue - DOA; [wisconsin.gov]; James Johnston
Cc: Easterday, John T - DHFS; Harris, Linda A - DHFS; Santala, Sinikka S - DHFS; Bove, Fredi-
Ellen E - DHFS; Fredrick, Janet C - DHFS; Moore, Donna J - DHFS
Subject: Treatment to Competency Statutory Language Proposal
Attachments: 07-09 Mental Health Treatment to Competency Revisions.doc



07-09 Mental
Health Treatment ...

Jim and Sue -- Attached is an additional statutory language proposal that we ask be considered for the Governor's Budget. It would allow the Department greater flexibility in delivering "treatment to competency" services to people determined to be not competent to stand trial. The additional flexibility is requested to address waiting lists for forensic beds at the mental health institutes.

It is critical that we have the statutory change 1) to be able to deliver needed mental health services to people who are currently housed without services in county jails and 2) for the Department to avoid legal liability for not serving these individuals.

Thank you for considering this request so late in the process. Please let us know if you have any questions or would like to meet to discuss the proposal.

add to file

DOA:.....Jablonsky, BB-0213 - DHFS to start treatment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

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

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

OTHER COURTS AND PROCEDURE

Under current law, if a court has reason to doubt the competency of a defendant in a criminal case, the court may require DOC to examine the defendant to determine whether the person is competent to proceed to trial. If DOC determines that the person is not competent, but may attain competency with treatment, the court is required to suspend the criminal proceedings and commit the defendant to the custody of DHFS for placement in an appropriate mental health institution for up to 12 months, or for ~~for~~ the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. *DHFS*

X
X
X

~~Under the bill, a defendant who is deemed incompetent may, as determined by the the department of health and family services, be treated in a mental health institution or may receive treatment in a jail or a locked unit of a facility. *The bill*~~

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

2 SECTION 1. 20.435 (2) (bj) of the statutes is amended to read:

1 20.435 (2) (bj) *Competency examinations and conditional and supervised*
 2 *release services.* Biennially, the amounts in the schedule for outpatient competency
 3 examinations and treatment services; and for payment by the department of costs
 4 for treatment and services for persons released under s. 980.06 (2) (c), 1997 stats.,
 5 s. 980.08 (5), 2003 stats., or s. 971.17 (3) (d) or (4) (e) or 980.08 (4) (g), for which the
 6 department has contracted with county departments under s. 51.42 (3) (aw) 1. d.,
 7 with other public agencies, or with private agencies to provide the treatment and
 8 services.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327; 2005 a. 15, 22; 2005 a. 25 ss. 29 to 331, 2498 to 2500, 2510; 2005 a. 74, 107, 199, 228, 264, 388, 406, 434.

9 **SECTION 2.** 971.14 (3) (d) of the statutes is amended to read:

10 971.14 (3) (d) If the examiner reports that the defendant lacks competency, the
 11 examiner's opinion regarding the likelihood that the defendant, if provided
 12 treatment, may be restored to competency within the time period permitted under
 13 sub. (5) (a). The examiner shall provide an opinion as to whether the individual's
 14 treatment should occur in an inpatient facility designated by the department of
 15 health and family services or should be conducted in a jail or locked unit of a facility
 16 on as a condition of bail or bond.

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.

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

18 971.14 (5) (a) If the court determines that the defendant is not competent but
 19 is likely to become competent within the period specified in this paragraph if
 20 provided with appropriate treatment, the court shall suspend the proceedings and
 21 commit the defendant to the custody of the department of health and family services

1 ~~for placement in an appropriate institution. The department of health and family~~
 2 ~~services shall determine whether treatment shall occur in an institution, or in a~~
 3 ~~community-based treatment conducted in a jail or a locked unit of a facility, or as a~~
 4 ~~condition of bail or bond, and the defendant shall be placed as appropriate for a~~
 5 period of time not to exceed 12 months, or the maximum sentence specified for the
 6 most serious offense with which the defendant is charged, whichever is less. Days
 7 spent in commitment under this paragraph are considered days spent in custody
 8 under s. 973.155.

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

10 971.14 (5) (b) The defendant shall be periodically reexamined by the ~~treatment~~
 11 ~~facility~~ department of health and family services examiners. Written reports of
 12 examination shall be furnished to the court 3 months after commitment, 6 months
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 14 expiration of commitment. Each report shall indicate either that the defendant has
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22 **SECTION 5.** 971.14 (5) (c) of the statutes is amended to read:

1 971.14 (5) (c) Upon receiving a report under par. (b), indicating the defendant
2 has regained competency or is not competent and unlikely to become competent in
3 the remaining commitment period, the court shall hold a hearing within 14 days of
4 receipt of the report, and the court shall proceed under sub. (4). If the court
5 determines that the defendant has become competent, the defendant shall be
6 discharged from commitment and the criminal proceeding shall be resumed. If the
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(END)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1067/1

PJH:kjf:nnw

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3 (END)