

**2015 DRAFTING REQUEST**

**Bill**

Received: 1/22/2015 Received By: chanaman  
Wanted: As time permits Same as LRB: -2439  
For: Van Wanggaard (608) 266-1832 By/Representing: Kyle  
May Contact: Drafter: chanaman  
Subject: Criminal Law - procedure Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Sen.Wanggaard@legis.wisconsin.gov  
Carbon copy (CC) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Competency laws if person is charged with certain crimes

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**Instructions:**

See attached

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**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>
/?	chanaman 1/25/2015	csicilia 1/28/2015	rschluet 1/28/2015	_____			
/P1	chanaman 2/17/2015	csicilia 2/18/2015		_____	mbarman 1/28/2015		State
/P2	chanaman 5/6/2015	csicilia 5/7/2015		_____	mbarman 2/18/2015		State
/P3	chanaman	csicilia		_____	lparisi		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	5/11/2015	5/11/2015			5/7/2015		
					mbarman	lparisi	State
					5/11/2015	5/11/2015	

FE Sent For:

At  
Intro.

<END>

## Hanaman, Cathlene

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**From:** Koenen, Kyle  
**Sent:** Thursday, January 22, 2015 8:30 AM  
**To:** Hanaman, Cathlene  
**Subject:** Email from LRB Website  
**Attachments:** 201501220827.pdf

Cathlene,

I wanted to get a draft going for a bill dealing with the competency laws in Wisconsin. Here are the changes as requested and I have included documentation from the District Attorney in Racine to describe the intent.

Changes to 971.45(5)

- If a person is charged with a "serious child sex offense" or a "serious felony" as defined in 939.62(2m),
- And it appears that the defendant is not competent but likely to become competent if provided with appropriate treatment
- The court shall suspend the proceedings and commit the defendant to the custody of the department for treatment until such time as the defendant is restored to competency

### **Kyle Koenen**

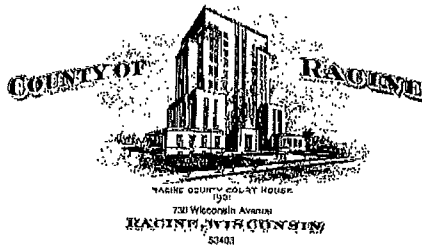
*Policy Advisor & Committee Clerk*

Senate Committee on Judiciary and Public Safety

Office of Senator Van Wanggaard

P: (608) 266-1832

E: [kyle.koenen@legis.wisconsin.gov](mailto:kyle.koenen@legis.wisconsin.gov)



**Office of the District Attorney**

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Jennifer Tanck-Adams  
Noah Wishau

istrict Attorney

December 03, 2014

Speaker Robin Vos  
Senator Van Wanngard

RE: Changes to Wis. Stat. Sec. 971.14 (5)(a)

*Roby's  
rush death*

Dear Robin and Van:

I'm writing this letter to request that you consider introducing legislation to increase the time period for restoring a person to competency under 971.14(5)(a). The current law allows violent criminals to escape any criminal penalty if they cannot be restored to competency within 12 months.

This law has resulted in the dismissal of homicide charges against Keith Abbott. Abbott was charged with a brutal homicide of a young woman. The woman was stabbed to death, stripped, wrapped in plastic and transported to Rock County by Abbott in his pickup truck. Her body was found in a farm field about 40 days after her disappearance. Her blood was found on Abbott's truck and his clothing. A copy of the criminal complaint is attached. Charges were filed in Rock County because the body was located there. Our office prosecuted the case.

Abbott's attorneys claimed that Abbott was not competent to stand trial. The court ordered a competency evaluation and eventually ordered that he be sent to Mendota for treatment to restore him to competency. At the end of a year, the court found that he was still not competent but could be restored to competency if he received additional treatment. The court dismissed the case because the time limit of 12 months expired.

A chapter 51 case was filed however, the court found that there was not sufficient evidence of mental illness and dismissed the case.

Abbott fell between the cracks of Chapter 971.14 and Chapter 51. As a result, he has literally gotten away with murder.

I would request a reasonable change to 971.14(5) as follows:

--if a person is charged with a "serious child sex offense" or a "serious felony" as defined in 939.62(2m),

--and it appears that the defendant is not competent but likely to become competent if provided with appropriate treatment

--the court shall suspend the proceedings and commit the defendant to the custody of the department for treatment until such time as the defendant is restored to competency.

This request eliminates the arbitrary "one year" rule under 971.14(5) and allows treatment until the defendant's competency is restored. It is a more reasonable approach and will avoid the harsh results that occurred here.

This request is urgent as well. If this can be passed soon, we can recharge Mr. Abbott. He is being held on some other charges but we are uncertain of how long we can continue to detain him.

Thank you for your consideration of this matter. If there is any further information that you need, please call me.



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

yjs

Wed  
1/28 please

SA  
mcd

Gen  
Cat

1 AN ACT ...; relating to: competency determination hearings and 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.

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:***

2 SECTION 1. 322.0767 (1) (a) of the statutes is amended to read:  
3 322.0767 (1) (a) If a person subject to a general court-martial is found to lack  
4 substantial mental capacity to understand the proceedings or assist in his or own

1 defense and the military judge determined that the person is likely to become  
2 competent within the period specified under s. 971.14 (5) (a) 1. (intro.), the  
3 court-martial convening authority for the person shall commit the person to the  
4 custody of the department of health services under s. 971.14 (5). If the military judge  
5 determines that the defendant is not likely to become competent in the time period  
6 specified under s. 971.14 (5) (a) 1. (intro.), the military judge shall suspend or  
7 terminate the general court-martial.

8 History: 2007 a. 20 s. 9121 (6) (a); 2007 a. 200; 2009 a. 180, 276.

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

9 322.0767 (1) (c) Upon receiving a report under s. 971.14 (5) (b), the  
10 court-martial shall make a determination as to whether the person has become  
11 competent. If the court-martial determines that the defendant has become  
12 competent, the court-martial shall terminate the commitment to the department of  
13 health services and resume the general court-martial. If the court-martial  
14 determines that the person is making sufficient progress toward becoming  
15 competent, the commitment shall continue. If the court-martial determines that the  
16 person is not likely to become competent to proceed in the time period specified under  
17 s. 971.14 (5) (a) 1. (intro.), the court-martial shall suspend or terminate the  
18 commitment order under this subsection.

19 History: 2007 a. 20 s. 9121 (6) (a); 2007 a. 200; 2009 a. 180, 276.

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

20 971.14 (3) (d) If the examiner reports that the defendant lacks competency, the  
21 examiner's opinion regarding the likelihood that the defendant, if provided  
22 treatment, may be restored to competency within the time period permitted under  
23 sub. (5) (a) 1. (intro.). The examiner shall provide an opinion as to whether the  
24 defendant's treatment should occur in an inpatient facility designated by the

INS X

1 department, in a community-based treatment program under the supervision of the  
 2 department, or in a jail or a locked unit of a facility that has entered into a voluntary  
 3 agreement with the state to serve as a location for treatment.

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; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a); 2009 a. 214.

4 **SECTION 4.** 971.14 (5) (a) 1. of the statutes is renumbered 971.14 (5) (a) 1.

5 (intro.) and amended to read:

6 971.14 (5) (a) 1. (intro.) If the court determines that the defendant is not  
 7 competent but is likely to become competent within ~~the period specified in this~~  
 8 paragraph 12 months or <sup>2</sup>within a period that is equal to the maximum sentence  
 9 specified for the most serious offense with which the defendant is charged, whichever  
 10 is less, if provided with appropriate treatment, the court shall do one of the following:

11 a. Except if subd. 1. b. applies, suspend the proceedings and commit the  
 12 defendant to the custody of the department for treatment for a period not to exceed  
 13 12 months, or the maximum sentence specified for the most serious offense with  
 14 which the defendant is charged, whichever is less.

15 1m. The department shall determine whether the defendant will receive  
 16 treatment in an appropriate institution designated by the department, while under  
 17 the supervision of the department in a community-based treatment program under  
 18 contract with the department, or in a jail or a locked unit of a facility that has entered  
 19 into a voluntary agreement with the state to serve as a location for treatment. The  
 20 sheriff shall transport the defendant to the institution, program, jail, or facility, as  
 21 determined by the department.

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; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a); 2009 a. 214.

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



1           971.14 (5) (a) 1. b. If the defendant is charged with a serious child sex offense,  
2 as defined in s. 939.62 (2m) (a) 1m., or a serious felony, as defined in s. 939.62 (2m)  
3 (a) 2m., suspend the proceedings and commit the defendant to the custody of the  
4 department for treatment until such time as the defendant is restored to competency  
5 or for the duration of <sup>the</sup> maximum sentence specified for the most serious offense with  
6 which the defendant is charged, whichever is less.

7           **SECTION 6.** 971.14 (5) (a) 2. of the statutes is amended to read:

8           971.14 (5) (a) 2. If, under subd. 1. 1m., the department commences services to  
9 a defendant in jail or in a locked unit, the department shall, as soon as possible,  
10 transfer the defendant to an institution or provide services to the defendant in a  
11 community-based treatment program consistent with this subsection.

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; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a); 2009 a. 214.

12           **SECTION 7.** 971.14 (5) (d) of the statutes is amended to read:

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

the

1 specified for the most serious offense with which the defendant is charged minus the  
2 days spent in previous commitments under this subsection, whichever is less. ✓

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; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a); 2009 a. 214.

3 **SECTION 8. Initial applicability.**

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

6 (END)

INS X

Section #. 971.14 (4) (d) of the statutes is amended to read:

1. (intro.)

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

**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; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a); 2009 a. 214.

## Hanaman, Cathlene

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**From:** Koenen, Kyle  
**Sent:** Monday, February 16, 2015 3:16 PM  
**To:** Hanaman, Cathlene  
**Subject:** LRB-1396/P1 Changes  
**Attachments:** DOJ Competency Comments.pdf

Cathlene,

I have included comments from DOJ on LRB-1396/P1. The two comments that we may need to address are B4 and C4. The second part of C4 raises a question specifically to me. On page 3 line 13 of the draft it says "If the court determines that the defendant is not competent but is likely to become competent within 12 months or a period that is equal to the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less...". Does this contradict the intent of this bill? Can the defendant basically wait out the 12 months still and be able to have a trial thrown out as a result? I think we are trying to eliminate the 12 month period.

Also, DOJ raised a legitimate point. If we go beyond a 12 month competency period, there should be a statutory mechanism for continued re-examinations and reports to the court for persons who remain under commitment past the 12 month period.

As soon as you review, can you give me a call to discuss? Thanks!

**Kyle Koenen**

*Policy Advisor & Committee Clerk*

Senate Committee on Judiciary and Public Safety

Office of Senator Van Wanggaard

P: (608) 266-1832

E: [kyle.koenen@legis.wisconsin.gov](mailto:kyle.koenen@legis.wisconsin.gov)

- A. Potential impact – how many persons likely to be affected.
1. As a practical matter, it is difficult to predict how many persons will be determined to be not competent, and likely to become competent within 12 months, but then fail to gain competency within that time period, thus triggering the effect of the proposed law's expanded duration of commitment.
  2. It is unknown to me how many persons charged with these crimes have competency issues/commitments.
- B. Potential impact – does the proposed law need additional provisions to ensure re-examination after 9 months have elapsed?
1. The proposed law does not appear to change the re-examination provisions of 971.14(5)(b), which require the department to re-examine the defendant and file written reports after 3 months, 6 months, 9 months, and within 30 days prior to the expiration of the commitment.
  2. Under the proposed law, there does not appear to be a statutory obligation to file a report after the 9 month report, because the next triggering event would be 30 days from the expiration of the commitment.
  3. Under the proposed law, the expiration of the commitment does not occur until the defendant is restored to competency, or the duration of the maximum sentence. This could be much longer than 9 months, without a requirement for additional reports to the court, because the end of the commitment period is not known (except for the maximum sentence).
  4. If I am reading this correctly, this is a problem. There should be a statutory mechanism for continued re-examinations and reports to the court for persons who remain under commitment past the 12 month period.
- C. Potential impact – should the proposed law add provisions for holding hearings for persons committed for longer than 12 months?
1. Under 971.14(5)(c), the requirement for a hearing is triggered by the filing and the content of a report under (5)(b). If no report is filed, no hearing results, as noted in II C above.
  2. The content of the report also matters. The language of 971.14(5)(c) requires a hearing only if the re-examination report indicates the defendant has regained competency, or is not competent and not likely to become competent within the remaining commitment period. The situation of a defendant who is not competent and likely to become competent [within the remaining commitment period] is not specifically addressed.
  3. I can see that the last sentence of (5)(c) allows a commitment to continue if the court determines that the defendant is making sufficient progress toward becoming competent, but that does not trigger the right to a hearing, it only authorizes a continued commitment based on the facts adduced at the hearing triggered by the report.
  4. It may be wise to consider adding provisions that afford a right to periodic hearings for persons committed for durations longer than 12 months on the basis that they

are likely to regain competency at some point in the future. Note that even under the proposed law, the court's original determination for commitment to competency requires a determination that the defendant is not competent but likely to become competent within 12 months [max sentence is not an end point for the crimes at issue here], so for the serious crimes defendant, the commitment will have already exceeded the court's original determination.

D. Potential impact –release of committed defendants into the community (no impact foreseen).

1. I am aware that 971.14(5)(a)(2) and (4) permit the department to treat committed defendants in the community, at the department's discretion.
2. The proposed law does not appear to change that practice or impose new requirements on the department.



State of Wisconsin  
2015 - 2016 LEGISLATURE

P2

LRB-1396/P1

CMH:cjs:rs

Stays

Wed 4/19 A.M. please

CS

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

AW

Comm Cat

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

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. (intro.), the court-martial shall suspend or terminate the  
21 commitment order under this subsection.

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

23           971.14 (3) (d) If the examiner reports that the defendant lacks competency, the  
24 examiner's opinion regarding the likelihood that the defendant, if provided  
25 treatment, may be restored to competency within the time period permitted under



1 sub. (5) (a) 1. (intro.). The examiner shall provide an opinion as to whether the  
2 defendant's treatment should occur in an inpatient facility designated by the  
3 department, in a community-based treatment program under the supervision of the  
4 department, or in a jail or a locked unit of a facility that has entered into a voluntary  
5 agreement with the state to serve as a location for treatment.

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

7 971.14 (4) (d) If the court determines that the defendant is not competent and  
8 not likely to become competent within the time period provided in sub. (5) (a) 1.  
9 (intro.), the proceedings shall be suspended and the defendant released, except as  
10 provided in sub. (6) (b).

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

13 971.14 (5) (a) 1. (intro.) If the court determines that the defendant is not  
14 competent but is likely to become competent within ~~the period specified in this~~  
15 ~~paragraph~~ 12 months or a period that is equal to the maximum sentence specified  
16 for the most serious offense with which the defendant is charged, whichever is less,  
17 if provided with appropriate treatment, the court shall do one of the following:

18 a. Except if subd. 1. b. applies, suspend the proceedings and commit the  
19 defendant to the custody of the department for treatment for a period not to exceed  
20 12 months, or the maximum sentence specified for the most serious offense with  
21 which the defendant is charged, whichever is less.

22 1m. The department shall determine whether the defendant will receive  
23 treatment in an appropriate institution designated by the department, while under  
24 the supervision of the department in a community-based treatment program under  
25 contract with the department, or in a jail or a locked unit of a facility that has entered

1 into a voluntary agreement with the state to serve as a location for treatment. The  
2 sheriff shall transport the defendant to the institution, program, jail, or facility, as  
3 determined by the department.

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

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

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

12 971.14 (5) (a) 2. If, under subd. ~~1.~~ 1m., the department commences services to  
13 a defendant in jail or in a locked unit, the department shall, as soon as possible,  
14 transfer the defendant to an institution or provide services to the defendant in a  
15 community-based treatment program consistent with this subsection.

MB  
4-16

16 SECTION 8. 971.14 (5) (d) of the statutes is amended to read:

17 971.14 (5) (d) If the defendant is receiving medication the court may make  
18 appropriate orders for the continued administration of the medication in order to  
19 maintain the competence of the defendant for the duration of the proceedings. If a  
20 defendant who has been restored to competency thereafter again becomes  
21 incompetent and par. (a) 1. b. does not apply, the maximum commitment period  
22 under par. (a) 1. shall be 18 months minus the days spent in previous commitments  
23 under this subsection, or 12 months, whichever is less. If a defendant who has been  
24 restored to competency thereafter again becomes incompetent and par. (a) 1. b.  
25 applies, the defendant shall be committed under par. (a) 1. until such time as the

1 defendant is restored to competency or for the duration of the maximum sentence  
2 specified for the most serious offense with which the defendant is charged minus the  
3 days spent in previous commitments under this subsection, whichever is less.

4 **SECTION 9. Initial applicability.**

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

7 (END)

**2015-2016 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1395/p2ins  
CMH:.....

1           Insert 4-16           X

2           **SECTION 1.** 971.14 (5) (b) of the statutes is amended to read:

3           971.14 (5) (b) The defendant shall be periodically reexamined by the  
4 department examiners. Written reports of examination shall be furnished to the  
5 court once every 3 months after commitment, ~~6 months after commitment, 9 months~~  
6 ~~after commitment~~ and within 30 days prior to the expiration of commitment. Each  
7 report shall indicate either that the defendant has become competent, that the  
8 defendant remains incompetent but that attainment of competency is likely within  
9 the remaining commitment period, or that the defendant has not made such progress  
10 that attainment of competency is likely within the remaining commitment period.  
11 Any report indicating such a lack of sufficient progress shall include the examiner's  
12 opinion regarding whether the defendant is mentally ill, alcoholic, drug dependent,  
13 developmentally disabled, or infirm because of aging or other like incapacities.

**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; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a); 2009 a. 214.

## Hanaman, Cathlene

---

**From:** Koenen, Kyle  
**Sent:** Tuesday, May 05, 2015 11:43 AM  
**To:** Hanaman, Cathlene  
**Subject:** FW: Competency Bill Changes

Cathlene,

We have another change to LRB-1396/P2 that we would like to address the concerns of DOJ. I have included my contact with DOJ below to explain the changes. What should we be looking at for periodic hearings to prevent due process issues? Would once quarterly be often enough or they could petition the court for a hearing for a shorter period of time? Let me know what you think and we can move forward.

Regards,

**Kyle Koenen**

*Policy Advisor & Committee Clerk*

Senate Committee on Judiciary & Public Safety

Office of Senator Van Wanggaard

(608) 266-1832

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**From:** Austin, Michael P [mailto:[austinmp@doj.state.wi.us](mailto:austinmp@doj.state.wi.us)]  
**Sent:** Monday, May 04, 2015 7:00 PM  
**To:** Koenen, Kyle  
**Subject:** Competency Bill

Kyle-

Sorry for the delay on this one. We'd recommend one last change to add a provision that affords a right to periodic hearings for persons committed for durations longer than 12 months on the basis that they are likely to regain competency at some point in the future. After that change then I think we are good to go from our end.

**Mike Austin**

**Government Affairs Director**

**Office of Attorney General Brad Schimel**

**114 East - State Capitol**

**Direct Phone: (608) 264-6367**

**[austinmp@doj.state.wi.us](mailto:austinmp@doj.state.wi.us)**



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1396/P2  
CMH:cjs:cs

13

today  
of Thurs. please

stay

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SAV

Gen Cat

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

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. ~~(intro.)~~, <sup>a. or b., whichever is applicable</sup>, the court-martial shall suspend or terminate the  
21 commitment order under this subsection.

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

23           971.14 (3) (d) If the examiner reports that the defendant lacks competency, the  
24 examiner's opinion regarding the likelihood that the defendant, if provided  
25 treatment, may be restored to competency within the time period permitted under

1 sub. (5) (a) 1. (intro.). The examiner shall provide an opinion as to whether the  
2 defendant's treatment should occur in an inpatient facility designated by the  
3 department, in a community-based treatment program under the supervision of the  
4 department, or in a jail or a locked unit of a facility that has entered into a voluntary  
5 agreement with the state to serve as a location for treatment.

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

7 971.14 (4) (d) If the court determines that the defendant is not competent and  
8 not likely to become competent within the time period provided in sub. (5) (a) 1.  
9 (intro.), the proceedings shall be suspended and the defendant released, except as  
10 provided in sub. (6) (b).

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

13 971.14 (5) (a) 1. (intro.) If the court determines that the defendant is not  
14 competent but is likely to become competent within ~~the period specified in this~~  
15 ~~paragraph 12 months or a period that is equal to the maximum sentence specified~~  
16 ~~for the most serious offense with which the defendant is charged, whichever is less,~~  
17 if provided with appropriate treatment, the court shall do one of the following:

18 a. Except if subd. 1. b. applies, suspend the proceedings and commit the  
19 defendant to the custody of the department for treatment for a period not to exceed  
20 12 months, or the maximum sentence specified for the most serious offense with  
21 which the defendant is charged, whichever is less.

22 1m. The department shall determine whether the defendant will receive  
23 treatment in an appropriate institution designated by the department, while under  
24 the supervision of the department in a community-based treatment program under  
25 contract with the department, or in a jail or a locked unit of a facility that has entered



1 into a voluntary agreement with the state to serve as a location for treatment. The  
2 sheriff shall transport the defendant to the institution, program, jail, or facility, as  
3 determined by the department.

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

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

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

12 971.14 (5) (a) 2. If, under subd. ~~1.~~ 1m., the department commences services to  
13 a defendant in jail or in a locked unit, the department shall, as soon as possible,  
14 transfer the defendant to an institution or provide services to the defendant in a  
15 community-based treatment program consistent with this subsection.

16 **SECTION 8.** 971.14 (5) (b) of the statutes is amended to read:

17 971.14 (5) (b) The defendant shall be periodically reexamined by the  
18 department examiners. Written reports of examination shall be furnished to the  
19 court once every 3 months after commitment, ~~6 months after commitment, 9 months~~  
20 ~~after commitment~~ and within 30 days prior to the expiration of commitment. Each  
21 report shall indicate either that the defendant has become competent, that the  
22 defendant remains incompetent but that attainment of competency is likely within  
23 the remaining commitment period, or that the defendant has not made such progress  
24 that attainment of competency is likely within the remaining commitment period.  
25 Any report indicating such a lack of sufficient progress shall include the examiner's

1 opinion regarding whether the defendant is mentally ill, alcoholic, drug dependent,  
2 developmentally disabled, or infirm because of aging or other like incapacities.

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

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.

16 **SECTION 10. Initial applicability.**

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

19 (END)

**2015-2016 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1396/p3ins  
CMH:.....

X 1           Insert 5-3

2           **SECTION 1.** 971.14 (5) (c) of the statutes is renumbered 971.14 (5) (c) 1. and  
3 amended to read:

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

11           3. If the court determines in a hearing required under subd. 1. or 2. that the  
12 defendant has become competent, the defendant shall be discharged from  
13 commitment and the criminal proceeding shall be resumed. If the court determines  
14 that the defendant is making sufficient progress toward becoming competent, the  
15 commitment shall continue.

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; 2007 a. 20 ss. 3871 to 3874, 9121 (6) (a); 2009 a. 214.

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

17           971.14 (5) (c) 2. If the defendant was committed under par. (a) 1. b., the court  
18 shall hold a hearing at the request of the defendant, but no more than twice a year,  
19 or, if the defendant makes no request, at least annually. At a hearing required under  
20 this subdivision, the court shall proceed under sub. (4) (b). If the court determines  
21 that the defendant is not competent and not likely to become competent in the  
22 remaining commitment period under par. (a) 1. b., the court shall proceed under sub.  
23 (6).



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1396/P3  
CMH:cjs:cs

*no changes*

*stays*

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

*Refer car*

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.

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***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.

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.

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.

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

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



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)

## Rose, Stefanie

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**From:** Hanaman, Cathlene  
**Sent:** Monday, May 11, 2015 3:00 PM  
**To:** Parisi, Lori; Barman, Mike; Rose, Stefanie; Basford, Sarah  
**Subject:** FW: Jacket LRB 1396

---

**From:** Koenen, Kyle  
**Sent:** Monday, May 11, 2015 2:59 PM  
**To:** Hanaman, Cathlene  
**Subject:** Jacket LRB 1396

Cathlene,  
We would like to get LRB 1396 jacketed for introduction. We will be sending co-sponsorship tomorrow. Thanks!

**Kyle Koenen**  
*Policy Advisor & Committee Clerk*  
Senate Committee on Judiciary & Public Safety  
Office of Senator Van Wanggaard  
(608) 266-1832