

1987 Assembly Bill 71

Date of enactment: November 19, 1987
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1987 Wisconsin Act 85

AN ACT to amend 971.14 (4) (b) of the statutes, relating to burden of persuasion at competency hearings.

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

SECTION 1. 971.14 (4) (b) of the statutes is amended to read:

971.14 (4) (b) If the district attorney, the defendant and defense counsel waive in open court their respective opportunities to present other evidence on the issue, the court shall promptly determine the defendant's competency on the basis of the report filed under sub. (3) or (5). In the absence of these waivers, the court shall hold an evidentiary hearing on the issue, at which the burden of persuasion shall rest on

the party seeking to establish that the defendant is not competent. Incompetency must be established. At the commencement of the hearing, the judge shall ask the defendant whether he or she claims to be competent or incompetent. If the defendant stands mute or claims to be incompetent, the defendant shall be found incompetent unless the state proves by the greater weight of the credible evidence that the defendant is competent. If the defendant claims to be competent, the defendant shall be found competent unless the state proves by evidence which is clear and convincing that the defendant is incompetent.