

---

## Judiciary Committee

---

### HB 1114

**Title:** An act relating to criminal incompetency and civil commitment.

**Brief Description:** Addressing criminal incompetency and civil commitment.

**Sponsors:** Representatives Pedersen, Rodne, Morrell, Nealey, Green and Jinkins.

#### Brief Summary of Bill

- Requires inpatient evaluations for involuntary treatment to occur at state hospitals.
- Modifies the standards for involuntary treatment of persons who have been deemed incompetent to stand trial for violent felonies.
- Automatically enrolls incompetent individuals with developmental disabilities in community-based developmental disability division benefits through DSHS when other program placement is not available.
- Provides additional notification and review requirements for release of certain involuntarily detained people.

**Hearing Date:** 1/24/13

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

##### Incompetency.

For purposes of criminal proceedings, a person is incompetent to stand trial if he or she lacks the capacity to understand the nature of the proceedings or is unable to assist in his or her own defense. A court may require a competency evaluation of a defendant whenever the issue of competency is raised, and a person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

If a person is found incompetent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency, or dismiss the charges without prejudice. If the defendant undergoes restoration but cannot be restored to competency within the designated time period, the criminal case must be dismissed without prejudice.

#### Evaluations and Petitions for Involuntary Treatment.

If a person's competency is not restored and charges have been dismissed, the person will be considered for commitment in the civil system. The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for an involuntary civil commitment. After the court dismisses felony or serious misdemeanor charges, the person is transferred to a hospital or other evaluation and treatment facility for 72 hours for purposes of an involuntary treatment evaluation. If a defendant whose serious misdemeanor charge was dismissed was not in custody at the time of the dismissal, a designated mental health professional will perform an evaluation at a location chosen by the professional. The statute addressing felony dismissals also allows the court to order the defendant's release. At the end of the 72 hour period, a petition for 90 or 180 additional days of treatment may be filed, depending on the underlying dismissed charge.

#### Grounds for Involuntary Treatment After a Felony Dismissal.

Petitions for involuntary commitment of someone whose felony criminal charges have been dismissed are subject to a commitment standard that is different than the normal involuntary treatment standard. A person who has been determined to be incompetent and has felony charges dismissed may be detained for a period of 180 days if the petitioner can prove by clear, cogent, and convincing evidence that the person has committed acts constituting a felony, and as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts.

No order of commitment under the ITA may exceed 180 days, but commitment may be renewed upon successive petitions and hearings. The grounds on subsequent petitions match those for the initial petition for commitment, but additional factors are considered in the analysis of likelihood of repeating similar acts, including life history, progress in treatment, and the public safety.

#### Alternative Placement for Individuals With Developmental Disabilities.

A defendant found incompetent must be evaluated as soon as possible to determine whether he or she has a developmental disability. When appropriate, and subject to available funds, incompetent defendants with developmental disabilities may be placed in an alternative secure placement. These programs are specifically reserved for the treatment and training of people with developmental disabilities, and are separate from other involuntary treatment programs.

#### Release of Involuntarily Detained People.

The Department of Social and Health Services (DSHS) must give advance written notice of a change in a detained person's detention status to the chief of police and sheriff in the person's jurisdiction of residence, and to victims and witnesses who have requested notice. Notice is required at least 30 days prior to release, authorized leave, or transfer to another facility, or upon escape, of a person who is committed after a dismissal of a sex, violent, or felony harassment offense.

2010 legislation created a public safety review panel to independently review and assess DSHS's proposals for conditional release, furlough, temporary leave, and similar changes in commitment

status of people found not guilty by reason of insanity (NGRI). The multi-disciplinary panel consists of seven members appointed by the Governor, and is tasked with completing independent assessments and providing written determinations of the public safety risk presented by any release recommendation. The panel may also offer alternative recommendations. The panel's recommendations are submitted to the court with the DSHS recommendations.

The 2010 legislation also contained a requirement that the panel report to the legislature regarding observed changes in statewide consistency of evaluations and decisions concerning changes in the commitment status of persons found NGRI, and whether the panel should be given the authority to make release decisions and monitor release conditions. That report is due to the legislature by December 1, 2014.

### **Summary of Bill:**

#### Evaluations and Petitions for Involuntary Treatment.

For criminal defendants who have had felony charges dismissed due to incompetency, evaluation for the purposes of filing a civil commitment petition under the ITA must occur at a state hospital, rather than a secure mental health facility or other evaluation and treatment facility. Criminal defendants who have had serious misdemeanors dismissed due to incompetency, and who are in custody at the time of the dismissal, must also be evaluated at a state hospital.

#### Grounds for Involuntary Treatment After a Felony Dismissal.

In an initial petition for commitment of a person who has had a violent felony dismissed due to incompetence, the criteria for commitment remain the same, but the court must make an additional finding. Specifically, the court must determine whether the mental disorder that results in a substantial likelihood of committing similar acts is a contributing factor to the person's continued inability to regain competence.

On subsequent petitions for continued commitment of a person who has had a violent felony charge dismissed, when the court has made the additional finding, the person will be committed for an additional 180 days whenever prima facie evidence exists that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the criminal behavior. The committed person may rebut the presumption of continued commitment if they can present an admissible expert opinion indicating that their condition has so changed that competence is restored, or that the mental disorder or developmental disability contributing to the incompetence no longer has an impact on the person's continuing risk to commit acts similar to the charged criminal behavior.

On subsequent petitions for involuntary commitment of a person who has had any felony charges dismissed, the person's continued incompetence is a factor in evaluating whether the person is likely to commit acts similar to the charged criminal behavior.

#### Alternative Placement for Individuals With Developmental Disabilities.

When a person is found in the competency evaluation process to have a developmental disability, and access to a program specifically reserved for incompetent defendants with developmental disabilities is not available to that person, DSHS is required to enroll the person into developmental disability division benefits in the community.

Release of Involuntarily Detained People.

The prosecuting attorney of the county in which the criminal charges against the committed person were dismissed is entitled to notice of impending release, change in commitment status, or escape of a person involuntarily committed after a felony dismissal, along with the police chiefs, sheriffs, victims, and witnesses who must already be notified.

The jurisdiction of the independent NGRI review panel is expanded, requiring the panel to review decisions and provide advice regarding persons committed under the ITA where the court has made an additional finding that the mental disorder that results in a substantial likelihood of committing similar acts is a contributing factor to the person's continued inability to regain competence. In particular, the panel must review all decisions to not seek further commitment. Requirements for the panel's report are also expanded to include recommendations as to "whether further changes in the law are necessary to enhance public safety in cases where incompetency thwarts operation of the criminal justice system and/or long-term commitment of the criminally insane."

**Appropriation:** None.

**Fiscal Note:** Requested on January 15, 2013.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.