



## Legislative Fiscal Bureau

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May 3, 2007

Joint Committee on Finance

Paper #442

### **Treatment-to-Competency Services (DHFS -- Institutions)**

#### *Bill Section*

[LFB 2007-09 Budget Summary: Page 336, #4]

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#### **CURRENT LAW**

Under Chapter 971 of the statutes, if a court determines that a criminal defendant is not competent to stand trial, but is likely to become competent within a period of time not to exceed twelve months or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less, the court suspends the criminal proceedings and commits the defendant to the custody of DHFS for placement in an appropriate institution where the defendant is to receive treatment-to-competency services. Following commitment, the defendant is periodically reexamined by the treatment facility, and written reports of these examinations are provided to the court three months after commitment, six months after commitment, nine months after commitment, and within 30 days prior to the expiration of commitment. Each such report must indicate that the defendant has either become competent, remains incompetent but is likely to attain competency within the remaining commitment period, or has not made such progress that competency is likely to be attained within the remaining commitment period.

Upon receiving these reports, the court conducts a hearing to determine if the defendant is competent to proceed to trial. If, after this hearing, the court determines the defendant has become competent, the defendant is discharged from commitment and the criminal proceedings resume. If the court determines the defendant is making sufficient progress toward becoming competent, the commitment continues. If the court determines it is unlikely the defendant will become competent within the remaining commitment period, the defendant is discharged from commitment and released, although the court can order the defendant be taken immediately into

custody by a law enforcement official and delivered to any of several facilities identified in statute.

Currently, all treatment-to-competency services mandated under Chapter 971 must be provided by the Department of Health and Family Services (DHFS) at one of the state mental health institutes, either the Mendota Mental Health Institute (MMHI), or the Winnebago Mental Health Institute (WMHI).

## **GOVERNOR**

*Funding.* Provide \$262,500 GPR in 2007-08, and \$345,500 in 2008-09 to fund the cost of providing treatment-to-competency services in settings other than the state mental health institutes to individuals determined not competent to proceed to criminal trial.

*Statutory Changes.* Provide that if an examiner appointed by the court to determine a criminal defendant's competency under Chapter 971 reports to the court that the defendant lacks competency, the examiner must provide an opinion as to whether the individual's treatment should occur in an inpatient facility designated by DHFS, or should be conducted in a jail or a locked unit of a facility, as a condition of bail or bond.

Require DHFS to determine whether treatment shall occur in an institution, or in a community-based treatment conducted in a jail or locked unit of a facility, as a condition of bail or bond, and to place the defendant accordingly. Specify that the reexaminations of the defendant required under Chapter 971 be conducted by DHFS examiners, rather than by the "treatment facility" as Chapter 971 currently provides. Provide that, in the event the court receives a reexamination report indicating that the defendant has regained competency, or is not competent and is unlikely to become competent in the remaining commitment period, the court must proceed to determine the defendant's competency within 14 days of receipt of that report. (Current law requires the court to conduct a competency hearing whenever it receives a reexamination report regarding the defendant, and does not specify the time period within which that competency hearing must occur.) Finally, modify the current appropriation for competency examinations and conditional and supervised release to allow DHFS to expend funds from that appropriation for treatment services.

## **DISCUSSION POINTS**

1. The administration has requested that the bill be modified so that s. 971.14(3)(d) of the statutes would 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 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."

In addition, the administration has requested that the bill be modified so that s. 971.14(5)(a) of the statutes would 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 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. "

2. As previously indicated, current law requires that all treatment-to-competency services provided by DHFS under Chapter 971 take place on an inpatient basis at either MMHI or WMHI.

3. There are currently 181 beds for forensic patients at MMHI, and 117 such beds at WMHI. For the past several years, these beds have not been sufficient to treat the number of defendants ordered to receive treatment-to-competency services under Chapter 971. As a result, DHFS established a waiting list in April, 2004, to monitor and manage the number of forensic patients waiting for a treatment bed at these two institutions. Since that date, there has been an average of between 20 and 25 individuals on that waiting list. Typically, about one-half of the persons on the waiting list are in Milwaukee County.

4. The length of time any particular individual remains on the waiting list depends on several factors, including the severity of the person's illness, and the court's hearing schedule. DHFS gives priority to patients with significant mental health needs and to patients who are at risk. While individual waiting times vary, some persons have remained on the waiting list for 60 days or longer.

5. Most defendants remain in jail while they are these awaiting treatment-to-competency services. Currently, there are 18 individuals in jail awaiting a treatment bed to become available at MMHI or WMHI.

6. In each case, a court has determined that these defendants are to receive treatment-to-competency services, and DHFS has been ordered to provide that treatment. In addition to concerns about the delay in providing these treatment services to defendants, DHFS has also expressed concern that holding these persons in jail without providing them court-ordered treatment-to-competency services could potentially be viewed as a violation of their rights.

7. DHFS would use the funding in the bill to establish a pilot program in Milwaukee County that would provide treatment-to-competency services in locations other than the state mental health institutes. The bill would allow those services to be provided in other DHFS facilities, a jail, or in the community if a patient is on bail or bond. Under the proposed pilot program, DHFS would contract with an outside vendor to provide these treatment-to-competency services.

8. The administration's cost estimates assume the pilot program would provide treatment-to-competency services to an average daily population (ADP) of six individuals. DHFS data indicates that the average length of time for someone to become competent when receiving these services is six months. Therefore, the administration assumes the pilot program would treat twelve persons during a twelve-month period.

9. Approximately 90% of the pilot program's projected costs relate to the provision of counseling services. The administration estimates those counseling services will include four visits per week at a cost of \$250 per visit. The administration developed these cost estimates by reviewing program materials from other states and by reviewing the current costs of the state's conditional release program. DHFS has also indicated that due to a lack of resources, it is not feasible to have current DHFS staff provide these treatment-to-competency services.

10. Based on the considerations cited above, the Committee could decide the Governor's recommendations, including the proposed statutory changes, are a reasonable attempt to address the current lack of capacity at the state mental health institutes to provide court-ordered treatment-to-competency services. Approving the Governor's recommendations would provide the necessary services to an estimated 12 persons per year, thereby reducing the current waiting list and somewhat reducing forensic patient capacity pressures at the state mental health institutes. In addition, proceeding with a limited pilot project, as proposed under the bill, would allow DHFS to develop additional experience regarding the cost and feasibility of providing these treatment services on an outpatient basis.

11. Alternatively, the Committee could delete the funding and statutory changes from the bill, reasoning that despite the current waiting list, defendants have received the required court-ordered treatment-to-competency services, albeit in some cases only after significant delays.

**ALTERNATIVES TO BILL**

1. Approve the Governor's recommendations, including the administration's proposed statutory changes described in Discussion Point 1.

<b>ALT 1</b>	<b>Change to Bill Funding</b>	<b>Change to Base Funding</b>
GPR	\$0	\$608,000

2. Delete provision.

<b>ALT 2</b>	<b>Change to Bill Funding</b>	<b>Change to Base Funding</b>
GPR	-\$608,000	\$0

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