

Statement in Support of 2015 Senate Bill 181

Rich Chiapete

Racine County District Attorney

Randall Schneider

Racine County Assistant District Attorney

Racine County District Attorney's Office

730 Wisconsin Ave.

Racine, WI 53403

262 636 3172

Current Law in Serious Felony Cases and Serious Child Sex Offenses

A defendant may be found to be incompetent if that person does not have the "present mental capacity to understand the proceedings and assist in his or her defense." Sec 971.14(3)(c).

If a court finds a person to be incompetent, the court must then decide whether the person is likely to regain competency within 12 months.

If a person is incompetent but likely to regain competency within 12 months, the court suspends the criminal case and commits the defendant to DHFS for a period of up to 12 months. The commitment can be inpatient or out patient. Sec 971.14(5)

The Problem

If that defendant is not restored to competency within 12 months, she/he is released from custody on the criminal case. Sec. 971.14(5).

That person may be committed under Chapter 51 if he/she qualifies for a commitment. In order to qualify for a Chapter 51 commitment, a person must be mentally ill and dangerous to himself or others. If that person does not qualify for the Chapter 51 commitment, he/she is released.

A Real Life Example

The State has charged KA with murdering his daughter in law. Her body was found with multiple stab wounds, nude, wrapped in plastic in a farm field. The victim's blood was located on the defendant's clothing and in his truck.

KA was found to be incompetent but likely to regain competency. He was committed to DHFS and was treated for 12 months.

At the end of 12 month, the doctors at Winnebago and Mendota stated that he was malingering (faking his symptoms) and was competent. The doctors hired by KA's defense attorney stated he was incompetent. The Court found him to be incompetent and released him.

A Chapter 51 commitment was filed. The doctors who evaluated him found that KA was not mentally ill. The Chapter 51 commitment was dismissed.

Solution

The solution that is proposed allows for the treatment of persons charged with serious felonies and serious child sex offenses until the person becomes competent. In order for the person to qualify the following criteria must apply:

1. The person is charged with a serious felony or serious child sex offense—these are listed in 939.62 (2m). These are violent crimes against persons.
2. The court must find that the defendant is currently incompetent and likely to regain competency.
3. The court may commit the person until he/she regains competency. The department shall reexamine the person every three months and submit a report to the court.

Rationale

1. The “12 month” rule under current law is an arbitrary timetable. Some mental illnesses may take longer than 12 months to treat.
2. The “12 month” rule encourages malingering and manipulation of the process. If a defendant can convince a doctor that he is incompetent and if he can continue the charade for 12 months, he/she may be released.
3. If a defendant is released after 12 months, he/she has no incentive to seek treatment to restore competency because charges could be reinstated.
4. There is no mechanism in the criminal court to require a defendant who has been released to obtain treatment for competency. The only mechanism is through the civil commitment process which may not apply.
5. This rule only applies to serious violent offenders. All other defendants would be subject to the 12 month rule.