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**SFA**



**BILL ANALYSIS**

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Senate Bill 181 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator William Van Regenmorter  
Committee: Judiciary

Date Completed: 4-30-97

## RATIONALE

Under the Mental Health Code, upon a showing that a defendant in a criminal proceeding may be incompetent to stand trial, the trial court is required to order the defendant to undergo an examination to determine competency. If the defendant is not to be held in a jail or similar place of detention pending trial, the court must commit him or her to the Center for Forensic Psychiatry or another facility certified to perform trial competency examinations. Upon receiving a written report of the examination, the court must hold a hearing and determine the issue of the defendant's competency to stand trial. If the defendant is determined incompetent to stand trial, the court must determine whether there is a substantial probability that the defendant, if provided a course of treatment, will attain competency. If the defendant is determined incompetent to stand trial and the court determines that there is a substantial probability that, with treatment, he or she will attain competency, the court must order the defendant to undergo treatment.

The Code specifies that, if a defendant has not attained competency to stand trial, charges must be dismissed following 15 months of treatment after a person is determined incompetent to stand trial. The prosecutor then may petition the trial court for permission to refile the charges: The prosecutor may petition the court within a period of time after the charges were dismissed equal to one-third of the maximum sentence that the defendant could receive on the charges. If the maximum penalty is imprisonment for life, the prosecutor may petition the court for permission to refile the charges at any time.

Although it evidently is rare for the 15-month period to expire without a defendant's attaining competency, when the trial court does dismiss criminal charges after the 15-month period, personnel of the forensic center or other treatment facility typically will petition the probate court to assume jurisdiction over the individual and order his or her treatment under the Mental Health Code's

civil commitment procedures. At this point, the person is out of the realm of the criminal justice system, and it is possible that he or she will receive successful treatment and be released into the community without undergoing another assessment of his or her competency to stand trial and without the knowledge of the prosecutor or the court that had jurisdiction over the criminal matter. Some people believe that, if the period for refiling charges has not expired, an individual who was civilly committed after charges were dismissed following 15 months of treatment due to incompetency to stand trial, should have to undergo an examination for competency to stand trial before release or discharge from the civil commitment, and that the prosecutor should be notified of the person's impending release or discharge.

## CONTENT

The bill would amend the Mental Health Code to provide that, if a court ordered a person to be hospitalized under an initial or continuing order after felony charges were dismissed due to the 15-month limit on treatment for a person deemed incompetent to stand trial, the court would have to include both of the following statements in the order, unless the time for petitioning to refile the dismissed charges had elapsed:

- A requirement that, at least 30 days before the patient's scheduled release or discharge, the director of the treating facility notify the prosecutor's office in the county in which charges against the person were originally brought that the patient's release or discharge was pending.
- A requirement that, at least 30 days before the scheduled release or discharge, the patient undergo an examination to determine competency to stand trial. A copy of the written report of that examination would have to be submitted to the prosecutor's office, along with the notification of pending release

or discharge, and the report would be admissible in a competency hearing held by a court after completion of the exam.

In addition, a court would have to include those statements in an order if, after the dismissal of felony charges following 15 months of treatment after a person was determined incompetent to stand trial, the court had ordered a person 18 years of age or older to be judicially admitted to a treatment facility because he or she had been diagnosed as having mental retardation and could be reasonably expected to cause serious physical injury to himself or herself or another person within the near future, and had overtly acted in a manner substantially supportive of that expectation.

MCL 330.1476 & 330.1525

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

According to testimony before the Senate Judiciary Committee by a Jackson County assistant prosecutor, it is very rare for a person to be found incompetent to stand trial and undergo 15 months of treatment without attaining competency. In those few cases when this does occur and a person is committed by the probate court through civil procedures, the person is outside of the criminal justice system. Although criminal charges may be refiled, as long as one-third of the statutory maximum sentence has not elapsed, there is no current provision in law requiring that the prosecutor be notified of a person's release from civil commitment. Also, even if a prosecutor is aware of the person's release, there is no requirement that the person be assessed for trial competency before being released from civil commitment. Consequently, a person who had been charged with a criminal violation may be released into the community without the knowledge of law enforcement officials; if charges are refiled, the trial court may once again have to go through trial competency assessment procedures.

This situation came to light in Jackson County in 1994. A man who reportedly was a client of the county's community mental health system allegedly killed a woman by impaling her with a wooden table leg, claiming that she was a vampire. The man was found incompetent to stand to trial. After 15 months of treatment, he had not attained

competency and the charges were dismissed as required by law. Although this man apparently continues to receive mental health treatment under civil commitment procedures, there is no requirement that the prosecutor be notified when he will be released into the community or that he be assessed for trial competency before release.

When a person advances through the criminal justice system's trial competency assessment procedures, charges are dismissed, and the person is ordered committed by the probate court, he or she should have to be assessed for competency to stand trial before being released from that commitment if the period for refiling charges has not expired. In addition, since postdismissal treatment in these instances is ordered by the probate court through civil procedures, rather than the trial court through criminal procedures, it should be incumbent upon the treatment facility to give the prosecutor in the county in which charges were filed and dismissed notice of the person's pending release from court-ordered civil commitment. By establishing a mechanism for continued trial competency assessment and notification of prosecutors, the bill would allow criminal justice officials to monitor the progress of an accused criminal who was subject to civil commitment procedures. This, in turn, would provide for public protection by making law enforcement officials aware of the planned release into the community of a potentially dangerous individual.

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

The bill would require that individuals who had been placed in an institution due to incompetency to stand trial undergo a competency examination before release from the institution. The results of such an examination would be provided to the relevant county prosecutor. As the cost of one examination for an institutionalized population undergoing constant intensive treatment is relatively small, the bill would result in a minor cost to the Department of Community Health.

Fiscal Analyst: S. Angelotti  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.