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## Judiciary Committee

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### ESSB 5176

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

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

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Carrell and Hewitt).

#### Brief Summary of Engrossed Substitute Bill

- Allows pre-transport screening of defendants who have had misdemeanor charges dismissed due to unrestored incompetence, and release of those who do not meet involuntary treatment criteria.
- Modifies procedures and standards for involuntary treatment of persons who have been deemed incompetent to stand trial for violent felonies.
- Provides additional notification and review requirements for release of certain involuntarily detained people.

**Hearing Date:** 3/13/13

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

#### **Background:**

##### Incompetency.

A person is incompetent to stand trial in a criminal case 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.

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

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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 charges the court must release the person or commit them to a hospital or secure mental health facility for the purposes of an ITA evaluation. If the charge dismissed was a serious misdemeanor, and the person was in custody at the time of dismissal, the person is transferred for evaluation at an evaluation and treatment facility; if on conditional release, evaluation will be performed by a designated mental health professional (DMHP) at a location chosen by that professional. The evaluation period is for up to 72 hours.

At the end of the evaluation period, a petition may be directly filed for either 90 or 180 additional days of treatment, depending on the underlying dismissed charge. If, after evaluation of a person who has had misdemeanor charges dismissed due to incompetency, the DMHP or professional person who performed the evaluation decides not to file for commitment, the release recommendation is presented to the superior court. The court must review the recommendation within 48 hours.

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

A person who has had felony charges dismissed due to incompetency may be detained for a period of up to 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. The person may be released prior to the end of the term of commitment if they no longer meet the commitment criteria.

#### Commitment of a Person Found Not Guilty by Reason of Insanity.

A person may be committed as "criminally insane" if the person is found not guilty by reason of insanity (NGRI) and the fact finder determines that the person presents a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court, other persons, or institutions. Insanity in a criminal case means that the person was, at the time of the act underlying the charge, unable to perceive the nature and quality of the act or unable to tell right from wrong with respect to the particular act because of a mental disease or defect. The maximum term of commitment following an NGRI acquittal is equal to the maximum possible sentence for any offense charged against the person committed. A person committed as criminally insane may petition for conditional release or final release by making an application to the Secretary of The Department of Social and Health Services (DSHS), or by making a direct petition to the court.

### Release of Involuntarily Detained People.

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 immediately upon escape, of a person who is committed after a dismissal of a sex, violent, or felony harassment offense.

Legislation in 2010 created a public safety review panel to independently review and assess the DSHS's proposals for conditional release, furlough, temporary leave, and similar changes in commitment status of people found not guilty by reason of insanity. The panel provides written determinations of the public safety risk presented by any release recommendation, and may offer alternative recommendations. The panel's recommendations are submitted to the court with the DSHS recommendations.

The panel must submit a report to the Legislature by December 1, 2014, regarding observed changes in statewide consistency of evaluations and decisions concerning changes in the commitment status of persons found NGRI. The panel's report will also address whether the panel should be given the authority to make release decisions and monitor release conditions.

### **Summary of Bill:**

#### Evaluations 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. Court discretion to release a defendant who has had felony charges dismissed is eliminated.

If the charge dismissed due to incompetency is a serious misdemeanor, and the defendant is in custody at the time of the dismissal, a DMHP or other professional person must be permitted to screen the defendant prior to transport to an evaluation and treatment facility and release the defendant if civil commitment criteria are not met. The requirement of a 48-hour hold before discharge for superior court notification and review is eliminated.

Notice must be given to the prosecutor and defense attorney whenever a civil commitment petition is not filed for a felony or serious misdemeanor defendant after dismissal of charges based on the person being incompetent to stand trial.

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

On an initial petition for commitment of a person who has had a violent felony dismissed due to incompetency, in addition to the standard criteria for commitment, the court must make a finding as to whether the person was charged with a violent felony and whether the acts the person committed constitute a violent offense as defined in statute.

If the court makes an affirmative finding that the person committed a violent offense, the length of commitment must be until such time as the person no longer meets grounds for involuntary commitment, subject to six-month court reviews. The commitment ends on the review date unless the facility files a petition for review alleging that the person still qualifies for commitment. At the court review, the court must continue the commitment if the facility

presents prima facie evidence that commitment criteria are met, except that the court must conduct a full evidentiary hearing if the committed person presents proof that the person's condition has so changed that the person no longer meets grounds for civil commitment.

The first and subsequent treatment intervals of persons committed after having a felony dismissed, but where no special finding has been made, are for a set 180 days.

#### 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 of a sex, violent, or felony harassment offense.

The jurisdiction of the independent NGRI review panel is expanded to require the panel to review decisions and provide advice regarding persons indefinitely committed under the ITA where the court has made an additional finding that person committed acts constituting a violent offense. DSHS must notify the PSRP at least 30 days before releasing a person who is found to have committed a violent offense. The panel's report to the Legislature will include recommendations as to whether further changes in the law are appropriate concerning such individuals.

When a person committed as criminally insane submits a direct petition for release to the court, the petition must be served upon the court, the prosecuting attorney, and the Secretary of DSHS. Upon receipt of service, the Secretary must determine whether reasonable grounds exist for release and provide the recommendation to all parties and the court.

When filing a release petition for a person committed as criminally insane who will be transferred upon release to a correctional facility to serve a sentence for a class A felony, the petitioner must show that the person's mental disease or defect is manageable within a correctional facility, but need not prove that the person does not present a substantial danger to other persons or a substantial likelihood of committing criminal acts that jeopardize public safety or security if released.

**Appropriation:** None.

**Fiscal Note:** Requested on March 8, 2013.

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