

SENATE BILL REPORT

ESB 5221

As Amended by House, April 25, 2013

Title: An act relating to notification of release of a person following dismissal of charges based on incompetence to stand trial.

Brief Description: Requiring notification of release of a person following dismissal of charges based on incompetence to stand trial.

Sponsors: Senators Kohl-Welles, Carrell and Darneille.

Brief History:

Committee Activity: Human Services & Corrections: 1/24/13, 2/04/13 [DP].

Passed Senate: 2/27/13, 49-0.

Passed House: 4/09/13, 94-0; 4/25/13, 98-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Harper and Padden.

Staff: Kevin Black (786-7747)

Background: A criminal defendant is incompetent to stand trial if the defendant does not have the capacity to understand the proceedings or sufficient ability to assist in their own defense. When a court finds that a defendant is incompetent to stand trial, the defendant may not be placed on trial unless and until competency is restored. If the defendant remains incompetent after the conclusion of any competency restoration treatment for which the defendant is eligible, the court must dismiss the charges without prejudice and may order the defendant to be transferred to a state hospital or an evaluation and treatment facility for a civil commitment evaluation.

A person is eligible for civil commitment when, as the result of a mental disorder, the person presents a likelihood of serious harm or is gravely disabled. When a person is evaluated for civil commitment following dismissal of a felony based on incompetent to stand trial, the person may also be eligible for civil commitment if it is proven that the person has committed acts constituting a felony and, as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. Because the standards for incompetent to

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stand trial and civil commitment are different, an evaluation for civil commitment following dismissal based on incompetent to stand trial sometimes results in a determination that the person does not meet civil commitment criteria. In that case, the facility releases the person without filing a civil commitment petition. If the previous charge was a misdemeanor, the evaluator must forward the recommendation for release without a petition for civil commitment to the superior court of the county in which the criminal charge was dismissed for review.

Summary of Engrossed Bill: A mental health facility that determines to release a person instead of filing a civil commitment petition for a person referred to the mental health facility for a civil commitment evaluation following dismissal of criminal charges based on incompetent to stand trial must provide written notice to the prosecuting attorney and defense attorney within 24 hours of the determination.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill addresses a constituent concerned for her safety. A person was aggressively harassing and threatening the constituent at her apartment building and was charged with misdemeanor charges of harassment and violation of a protection order. These misdemeanor charges were dismissed based on incompetent to stand trial. The person was released from the state hospital later in the same week without a civil commitment petition being filed. The constituent moved to another residence because she fears for her safety. This bill will help ensure that victims receive notification when dangerous persons are released.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor.

House Amendment(s): Notice must be provided to the prosecutor and defense attorney at least 24 hours prior to release of a person when a mental health facility determines not to file a civil commitment petition for a person referred for a civil commitment evaluation following dismissal of criminal charges based on incompetent to stand trial. The notice may be given by electronic mail, facsimile, or any other means reasonably likely to communicate the information immediately.