
Judiciary Committee

HB 2289

Title: An act relating to the release and commitment of persons involuntarily committed after the dismissal of a felony.

Brief Description: Concerning the release and commitment of persons involuntarily committed after the dismissal of a felony.

Sponsors: Representatives Kilduff, Muri, Jinkins, Fey, Sawyer and Gregerson.

Brief Summary of Bill

- Provides for concurrent notification to law enforcement and the prosecuting attorney when the superintendent does not seek an additional period of commitment for a person committed under the Involuntary Treatment Act following the dismissal of a felony offense.
- Allows for a prosecutor to intervene by filing a new petition for civil commitment in instances when the superintendent does not pursue an additional period of commitment or modifies the term of commitment.
- Provides for law enforcement notification from the prosecuting attorney when intervention or the re-filing of charges is not sought.
- Expands the role of the Public Safety Review Panel (PSRP).
- Creates a new process by which a prosecuting attorney can petition the court for PSRP review of a release.

Hearing Date: 1/11/18

Staff: Ingrid Lewis (786-7289).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 their own defense. A court may require a competency evaluation of a defendant whenever the issue of competency is raised. 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 proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency or dismiss the charges without prejudice. If the defendant undergoes restoration but cannot be restored to competency within the designated period, the criminal case must be dismissed without prejudice. A defendant who has a felony charge dismissed is committed to a state hospital for up to 72 hours for an evaluation for civil commitment under the Involuntary Treatment Act (ITA), which sets forth the procedures, rights, and requirements for involuntary civil commitment. At the end of the 72-hour evaluation period, a petition may be filed for up to 180 additional days of treatment.

Grounds and Procedures for Involuntary Commitment Following 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. If the grounds for commitment have been proven, but treatment less restrictive than detention will be in the best interest of the person or others, the court may order a less restrictive alternative placement for the term of the commitment.

No order under the ITA may exceed 180 days, but commitment may be renewed upon successive petitions and hearings. The grounds for subsequent petitions match those for the initial petition for commitment, and additional factors are considered in the analysis of likelihood of repeating a similar act, including progress in treatment and the public safety. The person may be released prior to the end of the term of commitment if they either no longer meet the commitment criteria of likelihood of harm to self or others, have a grave disability, or there is a less restrictive alternative, or both.

Violent felonies.

On an initial petition for commitment of a person who has had a violent felony charge dismissed due to incompetency, in addition to the standard criteria for commitment, the court must make a finding as to whether the acts the person committed constitute a violent offense as defined in statute. Legislation passed in 2013 altered the recommitment process for persons with an affirmative special finding.

On subsequent petitions for continued commitment of a person for whom a court has made an affirmative special finding at the initial petition, the person will be committed for up to an additional 180 days upon presentation of prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood that the

person will commit acts similar to the criminal behavior. The committed person may challenge the renewed commitment with an admissible expert opinion indicating that the person's condition has changed such that his or her mental disorder or developmental disability no longer presents a substantial likelihood that he or she will commit acts similar to the charged criminal behavior.

A court cannot retroactively apply a special finding, and a person who has had a violent felony charge dismissed due to incompetency and an initial petition for commitment prior to the effective date of the 2013 amendment cannot receive a special finding by the court.

In 2015, the statute addressing the special finding and subsequent commitment was challenged as unconstitutional as a violation of due process, but was recently upheld.

Notice of Release of Involuntarily Detained Persons.

Mental health facility superintendents must give advance written notice of changes in the commitment status of persons committed under the ITA following dismissal of a felony offense.

The prosecuting attorney of the county in which the criminal charges against the committed person were dismissed is entitled to notice of impending release within 45 days of the release.

Prosecutors can refile criminal charges if there is a good faith basis to believe that the committed person is competent or can be restored in a reasonable period of time.

Prosecutors can also intervene when the superintendent modifies a commitment order for a person for whom a court has determined committed acts constituting a felony and, as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts.

Public Safety Review Panel.

The Public Safety Review Panel (PSRP) serves as an advisory body that independently reviews and assesses proposals by the Department of Social and Health Services (DSHS) for conditional release, furlough, temporary leave, and similar changes in commitment status of persons found not guilty by reason of insanity and persons committed under the ITA where the court has made an additional special finding that the person committed acts constituting a violent offense.

The PSRP provides written determinations of the public safety risk presented by any release recommendation, and may offer alternative recommendations. The PSRP's recommendations are submitted to the court with the DSHS recommendations.

Summary of Bill:

Release of Involuntarily Detained Persons.

Notice.

At least 45 days prior to the expiration of a commitment, the superintendent must provide the chief of police and the sheriff in the person's jurisdiction of residence, as well as the sheriff of the county in which the felony dismissal occurred, notice of an impending release of a person

committed under the Involuntary Treatment Act (ITA) following the dismissal of a felony offense.

A prosecutor who chooses not to refile charges upon the release of a person committed under the ITA following the dismissal of a violent felony as defined by statute must provide notification of the decision to not refile to the chief of police and sheriff in the person's jurisdiction of residence and the sheriff in the county in which the felony charges were dismissed.

Intervention by the Prosecutor.

When the superintendent does not pursue an additional period of commitment or modifies a commitment order of a person who a court has determined committed acts constituting a felony and, as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts, or a person committed following the dismissal of a sex, violent, or felony harassment offense, the prosecuting attorney may intervene by filing a new petition for civil commitment to begin immediately upon expiration of the current order. The venue for the proceeding must be in the county in which the petition is filed.

A prosecuting attorney who does not intervene shall provide written notification of the declination to the chief of police and sheriff in the person's jurisdiction of residence and the sheriff in the county in which the felony charges were dismissed, no later than 7 days before the release.

Public Safety Review Panel.

A prosecuting attorney can petition the court to enter an affirmative finding prior to the conditional, early, or final release of a person who was civilly committed after the dismissal of a sex, violent, or felony harassment offense, and whose initial commitment order was entered prior to July 28, 2013. The purpose of the affirmative finding is to determine whether changes in the commitment status must be reviewed by the Public Safety Review Panel (PSRP). The petition must be filed within 10 days of the prosecuting attorney's receipt of notice of the impending release. A copy of the petition must be provided to the superintendent, and the committed person's attorney and guardian or conservator, if any. Venue may be in the jurisdiction where the person is committed.

An affirmative finding can be made if the court finds by clear, cogent, and convincing evidence that: (1) the charge(s) underlying the finding of incompetence was a violent felony as defined in statute; (2) the person was initially committed prior to July 28, 2013, after the dismissal of a felony; and (3) as a result of a mental disorder or developmental disability, the person continues to present a substantial likelihood of repeating similar acts or of committing criminal acts that could jeopardize public safety. If an affirmative finding is made, the PSRP must review the release decision within 7 days. The PSRP's review cannot delay the committed person's release.

The jurisdiction of the PSRP is expanded to require the panel to provide advice regarding persons committed under the ITA where the court has made an affirmative finding as described above.

Appropriation: None.

Fiscal Note: Requested on 1/4/18.

Effective Date: The bill contains multiple effective dates.