

FEB 24 2004
PUBLIC SAFETY

HOUSE FILE 2332
BY MASCHER

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to detaining or the placement of criminal
2 defendants who are dangerous or mentally incompetent.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2332

1 Section 1. Section 13B.4, subsection 1, Code Supplement
2 2003, is amended to read as follows:

3 1. The state public defender shall coordinate the
4 provision of legal representation of all indigents under
5 arrest or charged with a crime, seeking postconviction relief,
6 against whom a contempt action is pending, in proceedings
7 under section 811.1A or chapter 229A or 812, in juvenile
8 proceedings, on appeal in criminal cases, on appeal in
9 proceedings to obtain postconviction relief when ordered to do
10 so by the district court in which the judgment or order was
11 issued, and on a reopening of a sentence proceeding, and may
12 provide for the representation of indigents in proceedings
13 instituted pursuant to section 908.11. The state public
14 defender shall not engage in the private practice of law.

15 Sec. 2. Section 229A.7, subsection 1, Code 2003, is
16 amended to read as follows:

17 1. If the person charged with a sexually violent offense
18 has been found incompetent to stand trial and the person is
19 about to be released pursuant to ~~section-812-5~~ chapter 812, or
20 the person has been found not guilty of a sexually violent
21 offense by reason of insanity, if a petition has been filed
22 seeking the person's commitment under this chapter, the court
23 shall first hear evidence and determine whether the person did
24 commit the act or acts charged. At the hearing on this issue,
25 the rules of evidence applicable in criminal cases shall
26 apply, and all constitutional rights available to defendants
27 at criminal trials, other than the right not to be tried while
28 incompetent, shall apply. After hearing evidence on this
29 issue, the court shall make specific findings on whether the
30 person did commit the act or acts charged, the extent to which
31 the person's incompetence or insanity affected the outcome of
32 the hearing, including its effect on the person's ability to
33 consult with and assist counsel and to testify on the person's
34 own behalf, the extent to which the evidence could be
35 reconstructed without the assistance of the person, and the

1 strength of the prosecution's case. If after the conclusion
2 of the hearing on this issue, the court finds, beyond a
3 reasonable doubt, that the person did commit the act or acts
4 charged, the court shall enter a final order, appealable by
5 the person, on that issue, and may proceed to consider whether
6 the person should be committed pursuant to this chapter.

7 Sec. 3. Section 331.653, subsection 63, Code Supplement
8 2003, is amended to read as follows:

9 63. Carry out duties relating to the confinement of
10 persons ~~with-mental-illness-or~~ who are considered dangerous
11 persons under section 811.1A or persons with a mental disorder
12 as provided in ~~section-812-5~~ chapter 812.

13 Sec. 4. NEW SECTION. 811.1A DETENTION HEARING.

14 1. When a defendant is awaiting sentencing after
15 conviction for a felony or is pursuing an appeal in such a
16 case following sentencing, and the defendant would otherwise
17 be eligible to be admitted to bail under this chapter, but it
18 appears by clear and convincing evidence that if released the
19 defendant is likely to pose a danger to another person or to
20 the property of others, the defendant may be detained under
21 the authority of this section and in the manner provided in
22 subsection 2.

23 2. The following procedures shall apply to a detention
24 hearing:

25 a. The prosecuting attorney may initiate a detention
26 hearing by a verified ex parte written motion. Upon such
27 motion, the district court may issue a warrant for the
28 immediate arrest of the defendant, if the defendant is not in
29 custody.

30 b. The defendant shall be brought before the district
31 court within twenty-four hours after arrest, or if the
32 defendant is in custody, the defendant shall be brought before
33 the district court within twenty-four hours of the prosecuting
34 attorney's filing of the motion. The detention hearing shall
35 be held within seventy-two hours of the defendant's arrest, or

1 if the defendant is in custody, the detention hearing shall be
2 held within seventy-two hours of the filing of the motion.

3 c. The defendant shall be entitled to representation by
4 counsel, including appointed counsel if indigent, and shall be
5 entitled to the right of cross-examination and to present
6 information, to testify, and to present witnesses in the
7 defendant's own behalf, but shall not be entitled to being
8 admitted to bail.

9 d. Testimony of the defendant given during the hearing
10 shall not be admissible on the issue of guilt in any other
11 judicial proceeding, except that such testimony shall be
12 admissible in proceedings under section 811.2, subsection 8,
13 and section 811.8, and in perjury proceedings.

14 e. Appeals from orders of detention may be taken in the
15 manner provided under section 811.2, subsection 7.

16 f. If the trial court issues an order of detention, the
17 order shall be accompanied by a written finding of fact and
18 the reasons for the detention order.

19 g. For the purposes of such proceedings, the trial court
20 is not divested of jurisdiction by the filing of a notice of
21 appeal.

22 Sec. 5. Section 812.3, Code 2003, is amended to read as
23 follows:

24 812.3 MENTAL INCOMPETENCY OF ACCUSED.

25 1. If at any stage of a criminal proceeding ~~it reasonably~~
26 appears, the defendant, the defense attorney, or the
27 prosecutor, upon application to the court, alleges specific
28 facts showing that the defendant is suffering from a mental
29 disorder which prevents the defendant from appreciating the
30 charge, understanding the proceedings, or assisting
31 effectively in the defense, the court shall suspend further
32 proceedings ~~must-be-suspended~~ and shall schedule a hearing ~~had~~
33 upon-that-question within five days to determine if probable
34 cause exists to sustain the allegations. The applicant has
35 the burden of establishing probable cause. The court may on

1 its own motion schedule a hearing if the parties have failed
2 or refused to make an application under this section and the
3 court finds that there are specific facts showing that a
4 hearing should be held on the question alleged. The defendant
5 shall not be compelled to testify at the hearing and any
6 testimony of the defendant given during the hearing shall not
7 be admissible on the issue of guilt, except such testimony
8 shall be admissible in proceedings under section 811.2,
9 subsection 8, and section 811.8, and in perjury proceedings.

10 2. Upon a finding of probable cause sustaining the
11 allegations, the court shall suspend further criminal
12 proceedings and order the defendant to undergo a psychiatric
13 evaluation to determine whether the defendant is suffering a
14 mental disorder which prevents the defendant from appreciating
15 the charge, understanding the proceedings, or assisting
16 effectively in the defense. The order shall also authorize
17 the evaluator to provide treatment necessary and appropriate
18 to facilitate the evaluation. If an evaluation has been
19 conducted within thirty days of the probable cause finding,
20 the court is not required to order a new evaluation and may
21 use the recent evaluation during a hearing under this chapter.
22 Any party is entitled to a separate psychiatric evaluation by
23 a psychiatrist or licensed, doctorate-level psychologist of
24 the party's own choosing.

25 Sec. 6. Section 812.4, Code 2003, is amended by striking
26 the section and inserting in lieu thereof the following:

27 812.4 HEARING.

28 1. A hearing shall be held within fourteen days of the
29 filing of the order for an evaluation, or within five days of
30 the court's motion or the filing of an application if the
31 defendant has had a psychiatric evaluation within thirty days
32 of the probable cause finding and upon which the court decides
33 to rely. Pending the hearing, no further proceedings shall be
34 taken under the complaint or indictment and the defendant's
35 right to a speedy indictment and speedy trial shall be tolled

1 until the court finds the defendant competent to stand trial.

2 2. The defendant shall be entitled to representation by
3 counsel, including appointed counsel if indigent, and shall be
4 entitled to the right of cross-examination and to present
5 evidence.

6 3. Testimony of the defendant given during the hearing
7 shall not be admissible on the issue of guilt in any other
8 judicial proceeding, except that such testimony shall be
9 admissible in proceedings under section 811.2, subsection 8,
10 and section 811.8, and in perjury proceedings.

11 Sec. 7. Section 812.5, Code 2003, is amended by striking
12 the section and inserting in lieu thereof the following:

13 812.5 COMPETENCY HEARING -- FINDINGS.

14 The court shall receive all relevant and material evidence
15 offered at the hearing and shall not be bound by the formal
16 rules of evidence. The evidence shall include the psychiatric
17 evaluation ordered under section 812.3 or conducted within
18 thirty days of the probable cause finding.

19 1. If the court finds the defendant is competent to stand
20 trial, the court shall reinstate the criminal proceedings
21 suspended under section 812.3.

22 2. If the court, by a preponderance of the evidence, finds
23 the defendant is suffering from a mental disorder which
24 prevents the defendant from appreciating the charge,
25 understanding the proceedings, or assisting effectively in the
26 defense, the court shall suspend the criminal proceedings
27 indefinitely and order the defendant to be placed in a
28 treatment program pursuant to section 812.6 and shall make
29 further findings of record as necessary under section 812.6.

30 Sec. 8. NEW SECTION. 812.6 PLACEMENT AND TREATMENT.

31 1. If the court finds the defendant does not pose a danger
32 to the public peace and safety, is otherwise qualified for
33 pretrial release, and is willing to cooperate with treatment,
34 the court shall order, as a condition of pretrial release,
35 that the defendant obtain mental health treatment designed to

1 restore the defendant to competency.

2 2. If the court finds by clear and convincing evidence
3 that the defendant poses a danger to the public peace or
4 safety, or that the defendant is otherwise not qualified for
5 pretrial release, or the defendant refuses to cooperate with
6 treatment, the court shall commit the defendant to an
7 appropriate inpatient treatment facility as provided in
8 paragraphs "a" and "b". The defendant shall receive mental
9 health treatment designed to restore the defendant to
10 competency.

11 a. A defendant who poses a danger to the public peace or
12 safety, or who is otherwise not qualified for pretrial
13 release, shall be committed as a safekeeper to the custody of
14 the director of the department of corrections at the Iowa
15 medical and classification center, or other appropriate
16 treatment facility as designated by the director, for
17 treatment designed to restore the defendant to competency.

18 b. A defendant who does not pose a danger to the public
19 peace or safety, but is otherwise being held in custody, or
20 who refuses to cooperate with treatment, shall be committed to
21 the custody of the director of human services at a department
22 of human services facility for treatment designed to restore
23 the defendant to competency.

24 3. A defendant ordered to obtain treatment or committed to
25 a facility under this section may refuse treatment by
26 chemotherapy or other somatic treatment. The defendant's
27 right to refuse chemotherapy treatment or other somatic
28 treatment shall not apply if in the judgment of the director
29 or the director's designee of the facility where the defendant
30 has been committed determines such treatment is necessary to
31 preserve the life of the defendant or to appropriately control
32 behavior of the defendant that is likely to result in physical
33 injury to the defendant or others. If in the judgment of the
34 director of the facility or the director's designee where the
35 defendant has been committed, chemotherapy or other somatic

1 treatments are necessary and appropriate to restore the
2 defendant to competency and the defendant refuses to consent
3 to the use of these treatment modalities, the director of the
4 facility or the director's designee shall request from the
5 district court that ordered the commitment of the defendant an
6 order authorizing treatment by chemotherapy or other somatic
7 treatments.

8 Sec. 9. NEW SECTION. 812.7 MENTAL STATUS REPORTS.

9 The psychiatrist or licensed doctorate-level psychologist
10 providing outpatient treatment to the defendant, or the
11 director of the facility where the defendant is being held and
12 treated pursuant to a court order, shall provide a written
13 status report to the court regarding the defendant's mental
14 disorder within thirty days of the defendant's placement
15 pursuant to section 812.6. The report shall also state
16 whether it appears that the defendant can be restored to
17 competency in a reasonable amount of time. Progress reports
18 shall be provided to the court every sixty days or less
19 thereafter until the defendant's competency is restored or the
20 placement of the defendant is terminated.

21 Sec. 10. NEW SECTION. 812.8 RESTORATION OF MENTAL
22 COMPETENCY.

23 1. At any time, upon a finding by a psychiatrist or
24 licensed doctorate-level psychologist that there is a
25 substantial probability that the defendant has acquired the
26 ability to appreciate the charge, understand the proceedings,
27 and effectively assist in the defendant's defense, the
28 psychiatrist or licensed doctorate-level psychologist
29 providing outpatient treatment to the defendant or the
30 director of the inpatient facility shall immediately notify
31 the court. After receiving notice the court shall proceed as
32 provided in subsection 4.

33 2. At any time, a treating psychiatrist or licensed
34 doctorate-level psychologist may notify the court that the
35 defendant receiving outpatient treatment will require

1 inpatient services to continue benefiting from treatment or
2 that it is appropriate for a defendant receiving inpatient
3 treatment services to receive outpatient treatment services.
4 Upon receiving notification, the court shall proceed as
5 provided under subsection 4.

6 3. At any time upon a finding by a treating psychiatrist
7 or licensed doctorate-level psychologist that there is no
8 substantial probability that the defendant will be restored to
9 competency in a reasonable amount of time, the psychiatrist or
10 licensed doctorate-level psychologist providing outpatient
11 treatment to the defendant or the director of the inpatient
12 facility shall immediately notify the court. Upon receiving
13 notification, the court shall proceed as provided under
14 subsection 4.

15 4. Upon receiving a notification under this section, the
16 court shall schedule a hearing to be held within fourteen
17 days. The court shall also issue an order to transport the
18 defendant to the hearing if the defendant is in custody or is
19 being held in an inpatient facility. The defendant shall be
20 transported by the sheriff of the county where the court's
21 motion or the application pursuant to section 812.3 was filed.

22 5. If the court finds by a preponderance of the evidence
23 that the defendant's competency has been restored, the court
24 shall terminate the placement pursuant to section 812.6, and
25 reinstate the criminal proceedings against the defendant, and
26 may order continued treatment to maintain the competency of
27 the defendant.

28 6. If the court finds by a preponderance of the evidence
29 that the defendant remains incompetent to stand trial but is
30 making progress in regaining competency, the court shall
31 continue the placement ordered pursuant to section 812.6.

32 7. The court may change the placement of a defendant and
33 the placement may be more restrictive if necessary for the
34 continued progress of the defendant's treatment as shown by
35 clear and convincing evidence.

1 8. If the court finds by a preponderance of the evidence
2 that there is no substantial probability the defendant's
3 competency will be restored in a reasonable amount of time,
4 the court shall terminate the commitment under section 812.6
5 in accordance with the provisions of section 812.9.

6 Sec. 11. NEW SECTION. 812.9 LENGTH OF PLACEMENT -- OTHER
7 COMMITMENT PROCEEDINGS -- CRIMINAL PROCEEDINGS AFTER
8 TERMINATION OF PLACEMENT.

9 1. Notwithstanding section 812.8, the defendant shall not
10 remain under placement pursuant to section 812.6 beyond the
11 expiration of the maximum term of confinement for the criminal
12 offense of which the defendant is accused, or eighteen months
13 from the date of the original adjudication of incompetence to
14 stand trial, including time in jail, or the time when the
15 court finds by a preponderance of the evidence that there is
16 no substantial probability that the defendant will be restored
17 to competency in a reasonable amount of time under section
18 812.8, subsection 8, whichever occurs first. When the
19 defendant's placement in an inpatient facility equals the
20 length of the maximum term of confinement, the complaint for
21 the criminal offense of which the defendant is accused shall
22 be dismissed with prejudice.

23 2. When the defendant's commitment equals eighteen months,
24 the court shall schedule a hearing to determine whether the
25 defendant is competent to stand trial pursuant to section
26 812.8, subsection 5. If the defendant is not competent to
27 stand trial after eighteen months, the court shall terminate
28 the placement under section 812.6 in accordance with the
29 provisions of subsection 1.

30 3. Upon the termination of the defendant's placement
31 pursuant to subsection 1, or pursuant to section 812.8,
32 subsection 8, the state may commence civil commitment
33 proceedings or any other appropriate commitment proceedings.

34 4. If after termination of the defendant's placement
35 pursuant to subsection 2 or pursuant to section 812.8,

1 subsection 8, it appears that the defendant has regained
2 competency, the state may make application to reinstate the
3 prosecution of the defendant and hearing shall be held on the
4 matter in the same manner as if the court has received notice
5 under section 812.8, subsection 4.

6 Sec. 12. Section 815.7, Code 2003, is amended to read as
7 follows:

8 815.7 FEES TO ATTORNEYS.

9 An attorney who has not entered into a contract authorized
10 under section 13B.4 and who is appointed by the court to
11 represent any person charged with a crime in this state,
12 seeking postconviction relief, against whom a contempt action
13 is pending, appealing a criminal conviction, appealing a
14 denial of postconviction relief, or subject to a proceeding
15 under section 811.1A or chapter 229A or 812, or to serve as
16 counsel for any person or guardian ad litem for any child in
17 juvenile court, shall be entitled to reasonable compensation
18 and expenses. For appointments made on or after July 1, 1999,
19 the reasonable compensation shall be calculated on the basis
20 of sixty dollars per hour for class "A" felonies, fifty-five
21 dollars per hour for class "B" felonies, and fifty dollars per
22 hour for all other cases. The expenses shall include any sums
23 as are necessary for investigations in the interest of
24 justice, and the cost of obtaining the transcript of the trial
25 record and briefs if an appeal is filed. The attorney need
26 not follow the case into another county or into the appellate
27 court unless so directed by the court. If the attorney
28 follows the case into another county or into the appellate
29 court, the attorney shall be entitled to compensation as
30 provided in this section. Only one attorney fee shall be so
31 awarded in any one case except that in class "A" felony cases,
32 two may be authorized.

33 Sec. 13. Section 815.9, subsection 1, unnumbered paragraph
34 1, Code 2003, is amended to read as follows:

35 For purposes of this chapter, chapter chapters 13B, chapter

1 229A, chapter 232, chapter 665, chapter 812, 814, chapter and
2 822, and section 811.1A, and the rules of criminal procedure,
3 a person is indigent if the person is entitled to an attorney
4 appointed by the court as follows:

5 Sec. 14. Section 815.10, subsection 1, Code 2003, is
6 amended to read as follows:

7 1. The court, for cause and upon its own motion or upon
8 application by an indigent person or a public defender, shall
9 appoint the state public defender's designee pursuant to
10 section 13B.4, to represent an indigent person at any stage of
11 the criminal, postconviction, contempt, commitment under
12 chapter 229A, detention under section 811.1A, competency under
13 chapter 812, or juvenile proceedings or on appeal of any
14 criminal, postconviction, contempt, commitment under chapter
15 229A, detention under section 811.1A, competency under chapter
16 812, or juvenile action in which the indigent person is
17 entitled to legal assistance at public expense. However, in
18 juvenile cases, the court may directly appoint an existing
19 nonprofit corporation established for and engaged in the
20 provision of legal services for juveniles. An appointment
21 shall not be made unless the person is determined to be
22 indigent under section 815.9. Only one attorney shall be
23 appointed in all cases, except that in class "A" felony cases
24 the court may appoint two attorneys.

25 Sec. 15. Section 904.201, subsection 3, paragraph b, Code
26 2003, is amended to read as follows:

27 b. Persons committed by the courts as mentally incompetent
28 to stand trial ~~under-section-812-4~~ pursuant to section 812.6.

29 Sec. 16. Sections 812.1 and 812.2, Code 2003, are
30 repealed.

31 EXPLANATION

32 This bill relates to detaining criminal defendants who are
33 mentally incompetent or who are dangerous to others or
34 property.

35 CONFINEMENT OF DANGEROUS PERSONS. The bill moves Code

1 sections 812.1 and 812.2 relating to the confinement of
2 dangerous persons to Code chapter 811, and makes some related
3 changes. Current law and the bill provide that a person who
4 is awaiting sentencing and who is suspected of being a danger
5 to another person or property may be denied bail. The county
6 attorney may file a verified ex parte motion requesting a
7 detention hearing and asking the court for the immediate
8 arrest of the defendant, if the person is not already in
9 custody. The bill provides that the detention hearing must be
10 brought before the judge within 72 hours of the defendant's
11 arrest, or if the defendant is in custody, within 72 hours of
12 the filing of the motion. If the court finds by clear and
13 convincing evidence that the person is a danger to another
14 person or property, the person shall be denied bail.

15 MENTAL INCOMPETENCY -- SUSPENSION OF CRIMINAL PROCEEDINGS.
16 The bill amends Code chapter 812 relating to detaining a
17 criminal defendant who is mentally incompetent to stand trial.
18 The bill provides that at any stage of a criminal proceeding,
19 the defendant, the defense attorney, or the prosecutor may
20 make an application to the court stating specific facts
21 showing that the defendant is suffering from a mental disorder
22 and is not competent to stand trial. The bill also provides
23 the court may make its own motion, if either party in the
24 criminal proceeding fails to make an application. The court
25 shall schedule a hearing within five days to determine if
26 probable cause exists to sustain the allegations. If the
27 court determines probable cause exists, the court shall
28 suspend further proceedings, the defendant's right to a speedy
29 indictment and speedy trial is tolled, and a hearing must be
30 held on the defendant's competency to determine whether the
31 defendant appreciates the charge, understands the proceedings,
32 and can effectively assist in the defendant's defense. The
33 court shall order a psychiatric evaluation of the defendant,
34 or if a recent evaluation exists, the court may use that
35 evaluation in the competency hearing. The bill provides that

1 any party is entitled to a separate evaluation by a
2 psychiatrist of the party's own choosing.

3 The bill provides that a competency hearing shall be held
4 within 14 days of the filing of the order for a psychiatric
5 evaluation, or within five days of the filing of an
6 application, if a recent evaluation will be used in the
7 hearing.

8 COMPETENCY HEARING. The bill provides that the court shall
9 receive all relevant and material evidence at the competency
10 hearing and the court shall not be bound by the rules of
11 evidence. If the court finds the defendant is competent to
12 stand trial, the court shall reinstate the criminal
13 proceedings against the defendant. If the court, by a
14 preponderance of the evidence, finds the defendant is
15 suffering from a mental disorder which prevents the defendant
16 from appreciating the charge, understanding the proceedings,
17 or assisting effectively in the defense, the court shall
18 suspend the criminal proceedings indefinitely and order the
19 defendant be placed in a treatment program.

20 PLACEMENT AND TREATMENT. At the conclusion of the
21 competency hearing, under the bill, if the court finds the
22 defendant does not pose a danger to the public peace and
23 safety, is qualified for pretrial release, and is willing to
24 cooperate with treatment, the court shall order the person to
25 undergo mental health treatment designed to restore the
26 defendant to competency.

27 If the court finds by clear and convincing evidence the
28 defendant does pose a danger to the public peace or safety, or
29 is not qualified for pretrial release, or does not cooperate
30 with treatment, the court shall commit the defendant to an
31 appropriate inpatient treatment facility. The bill provides
32 that, if the defendant poses a danger to the public peace or
33 safety, or is not qualified for pretrial release, the
34 defendant shall be committed as a safekeeper to the custody of
35 the director of the department of corrections for treatment.

1 If the defendant does not pose a danger to the public peace or
2 safety but is otherwise being held in custody, the defendant
3 shall be placed in a facility operated by the department of
4 human services for treatment.

5 The bill provides that the defendant is not required to
6 take chemotherapy or other somatic treatments, but if the
7 director believes such treatments are necessary to preserve
8 the defendant's life or to appropriately control behavior, the
9 defendant must take the treatments. The bill provides that if
10 the defendant refuses chemotherapy or other somatic treatments
11 during treatment ordered pursuant to the bill, the director of
12 the facility treating the defendant may request an order from
13 the court authorizing such treatment methods.

14 RESTORATION OF COMPETENCY. After being ordered to undergo
15 treatment pursuant to the bill, the psychiatrist or doctorate-
16 level psychologist providing outpatient treatment or the
17 director of the facility providing inpatient treatment shall
18 provide a status report to the court within the first 30 days
19 of treatment, and at least every 60 days thereafter.

20 The bill provides that after placement, if the treating
21 psychiatrist or doctorate-level psychologist finds there is a
22 substantial probability the defendant has acquired the ability
23 to appreciate the charge, understand the proceedings, and
24 effectively assist in the defendant's defense, the
25 psychiatrist or psychologist, or the director of the facility
26 treating the defendant, shall notify the court, and a hearing
27 shall be set on the defendant's competency within 14 days of
28 being notified.

29 If there is a substantial probability the competency of the
30 defendant will not be restored, the court shall also be
31 notified, and a hearing shall be held within 14 days of the
32 court being notified.

33 The bill provides that if the treating psychiatrist or
34 doctorate-level psychologist finds the defendant would benefit
35 from either a more restrictive or less restrictive placement

1 for treatment, the psychiatrist or doctorate-level
2 psychologist shall notify the court and a hearing shall be set
3 on the matter by the court within 14 days of being notified.

4 RESTORATION OF COMPETENCY HEARING. Fourteen days after
5 receiving a notice that there is a substantial probability
6 that the competency of the defendant has been restored, or
7 there is a substantial probability the defendant's competency
8 will not be restored or the appropriate level of treatment
9 should be modified, the court shall hold a restoration of
10 competency hearing. Under the bill, if the court finds by a
11 preponderance of the evidence that the defendant's competency
12 has been restored, the court shall terminate the placement
13 pursuant to the bill and restore the criminal proceedings
14 against the defendant. The bill provides that if the court
15 finds by a preponderance of the evidence that the defendant's
16 competency has not been restored but the court finds the
17 defendant is making progress in regaining competency, the
18 court shall continue the placement. The bill provides that
19 the court may change the placement to a more restrictive or
20 less restrictive placement if proven by clear and convincing
21 evidence. The bill provides that if the court finds by a
22 preponderance of the evidence that there is a substantial
23 probability the defendant's competency will not be restored in
24 a reasonable amount of time, the court shall terminate the
25 placement.

26 LENGTH OF PLACEMENT AND OTHER PROCEEDINGS. A defendant
27 shall not be placed pursuant to the bill for a period greater
28 than the maximum term of confinement for the criminal offense
29 for which the defendant is accused or 18 months, whichever is
30 shorter. The bill provides that if the length of the
31 defendant's placement equals the maximum length of the term of
32 confinement for which the defendant is accused, the criminal
33 offense shall be dismissed by the court with prejudice. The
34 bill provides that when the defendant's placement equals 18
35 months, the court shall schedule a hearing to determine

1 whether the competency of the defendant has been restored.
2 Under the bill, if the defendant's mental competency has not
3 been restored, the court shall terminate the placement of the
4 defendant.

5 The bill provides that if placement is terminated, the
6 state may commence civil commitment proceedings under Code
7 chapter 229 or 229A. After termination of the placement, if
8 the criminal proceedings have not been dismissed with
9 prejudice the state may seek to file an application seeking to
10 reinstate the criminal proceedings if it appears the
11 competency of the defendant has been restored.

12 PAYMENT OF COSTS. The bill amends Code chapter 815
13 regarding certain court and indigent defense costs to include
14 relevant costs incurred under new Code section 811.1A and
15 rewritten Code chapter 812.

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