

House Study Bill 678

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON MADDOX)

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:
4 TLSB 5464HC 80
5 jm/sh/8

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1 1 Section 1. Section 13B.4, subsection 1, Code Supplement
1 2 2003, is amended to read as follows:
1 3 1. The state public defender shall coordinate the
1 4 provision of legal representation of all indigents under
1 5 arrest or charged with a crime, seeking postconviction relief,
1 6 against whom a contempt action is pending, in proceedings
1 7 under section 811.1A or chapter 229A or 812, in juvenile
1 8 proceedings, on appeal in criminal cases, on appeal in
1 9 proceedings to obtain postconviction relief when ordered to do
1 10 so by the district court in which the judgment or order was
1 11 issued, and on a reopening of a sentence proceeding, and may
1 12 provide for the representation of indigents in proceedings
1 13 instituted pursuant to section 908.11. The state public
1 14 defender shall not engage in the private practice of law.
1 15 Sec. 2. Section 229A.7, subsection 1, Code 2003, is
1 16 amended to read as follows:
1 17 1. If the person charged with a sexually violent offense
1 18 has been found incompetent to stand trial and the person is
1 19 about to be released pursuant to ~~section 812.5~~ chapter 812, or
1 20 the person has been found not guilty of a sexually violent
1 21 offense by reason of insanity, if a petition has been filed
1 22 seeking the person's commitment under this chapter, the court
1 23 shall first hear evidence and determine whether the person did
1 24 commit the act or acts charged. At the hearing on this issue,
1 25 the rules of evidence applicable in criminal cases shall
1 26 apply, and all constitutional rights available to defendants
1 27 at criminal trials, other than the right not to be tried while
1 28 incompetent, shall apply. After hearing evidence on this
1 29 issue, the court shall make specific findings on whether the
1 30 person did commit the act or acts charged, the extent to which
1 31 the person's incompetence or insanity affected the outcome of
1 32 the hearing, including its effect on the person's ability to
1 33 consult with and assist counsel and to testify on the person's
1 34 own behalf, the extent to which the evidence could be
1 35 reconstructed without the assistance of the person, and the
2 1 strength of the prosecution's case. If after the conclusion
2 2 of the hearing on this issue, the court finds, beyond a
2 3 reasonable doubt, that the person did commit the act or acts
2 4 charged, the court shall enter a final order, appealable by
2 5 the person, on that issue, and may proceed to consider whether
2 6 the person should be committed pursuant to this chapter.
2 7 Sec. 3. Section 331.653, subsection 63, Code Supplement
2 8 2003, is amended to read as follows:
2 9 63. Carry out duties relating to the confinement of
2 10 persons ~~with mental illness or who are considered~~ dangerous
2 11 persons under section 811.1A or persons with a mental disorder
2 12 as provided in ~~section 812.5~~ chapter 812.
2 13 Sec. 4. NEW SECTION. 811.1A DETENTION HEARING.
2 14 1. When a defendant is awaiting sentencing after
2 15 conviction for a felony or is pursuing an appeal in such a
2 16 case following sentencing, and the defendant would otherwise
2 17 be eligible to be admitted to bail under this chapter, but it
2 18 appears by clear and convincing evidence that if released the
2 19 defendant is likely to pose a danger to another person or to
2 20 the property of others, the defendant may be detained under
2 21 the authority of this section and in the manner provided in
2 22 subsection 2.

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

2 25 a. The prosecuting attorney may initiate a detention
2 26 hearing by a verified ex parte written motion. Upon such
2 27 motion, the district court may issue a warrant for the
2 28 immediate arrest of the defendant, if the defendant is not in
2 29 custody.

2 30 b. The defendant shall be brought before the district
2 31 court within twenty-four hours after arrest, or if the
2 32 defendant is in custody, the defendant shall be brought before
2 33 the district court within twenty-four hours of the prosecuting
2 34 attorney's filing of the motion. The detention hearing shall
2 35 be held within seventy-two hours of the defendant's arrest, or
3 1 if the defendant is in custody, the detention hearing shall be
3 2 held within seventy-two hours of the filing of the motion.

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

3 9 d. Testimony of the defendant given during the hearing
3 10 shall not be admissible on the issue of guilt in any other
3 11 judicial proceeding, except that such testimony shall be
3 12 admissible in proceedings under section 811.2, subsection 8,
3 13 and section 811.8, and in perjury proceedings.

3 14 e. Appeals from orders of detention may be taken in the
3 15 manner provided under section 811.2, subsection 7.

3 16 f. If the trial court issues an order of detention, the
3 17 order shall be accompanied by a written finding of fact and
3 18 the reasons for the detention order.

3 19 g. For the purposes of such proceedings, the trial court
3 20 is not divested of jurisdiction by the filing of a notice of
3 21 appeal.

3 22 Sec. 5. Section 812.3, Code 2003, is amended to read as
3 23 follows:

3 24 812.3 MENTAL INCOMPETENCY OF ACCUSED.

~~3 25 1. If at any stage of a criminal proceeding it reasonably
3 26 appears, the defendant, the defense attorney, or the
3 27 prosecutor, upon application to the court, alleges specific
3 28 facts showing that the defendant is suffering from a mental
3 29 disorder which prevents the defendant from appreciating the
3 30 charge, understanding the proceedings, or assisting
3 31 effectively in the defense, the court shall suspend further
3 32 proceedings must be suspended and shall schedule a hearing had
3 33 upon that question within five days to determine if probable
3 34 cause exists to sustain the allegations. The applicant has
3 35 the burden of establishing probable cause. The court may on
4 1 its own motion schedule a hearing if the parties have failed
4 2 or refused to make an application under this section and the
4 3 court finds that there are specific facts showing that a
4 4 hearing should be held on the question alleged. The defendant
4 5 shall not be compelled to testify at the hearing and any
4 6 testimony of the defendant given during the hearing shall not
4 7 be admissible on the issue of guilt, except such testimony
4 8 shall be admissible in proceedings under section 811.2,
4 9 subsection 8, and section 811.8, and in perjury proceedings.~~

~~4 10 2. Upon a finding of probable cause sustaining the
4 11 allegations, the court shall suspend further criminal
4 12 proceedings and order the defendant to undergo a psychiatric
4 13 evaluation to determine whether the defendant is suffering a
4 14 mental disorder which prevents the defendant from appreciating
4 15 the charge, understanding the proceedings, or assisting
4 16 effectively in the defense. The order shall also authorize
4 17 the evaluator to provide treatment necessary and appropriate
4 18 to facilitate the evaluation. If an evaluation has been
4 19 conducted within thirty days of the probable cause finding,
4 20 the court is not required to order a new evaluation and may
4 21 use the recent evaluation during a hearing under this chapter.
4 22 Any party is entitled to a separate psychiatric evaluation by
4 23 a psychiatrist or licensed, doctorate-level psychologist of
4 24 the party's own choosing.~~

4 25 Sec. 6. Section 812.4, Code 2003, is amended by striking
4 26 the section and inserting in lieu thereof the following:

4 27 812.4 HEARING.

4 28 1. A hearing shall be held within fourteen days of the
4 29 filing of the order for an evaluation, or within five days of
4 30 the court's motion or the filing of an application if the
4 31 defendant has had a psychiatric evaluation within thirty days
4 32 of the probable cause finding and upon which the court decides
4 33 to rely. Pending the hearing, no further proceedings shall be

4 34 taken under the complaint or indictment and the defendant's
4 35 right to a speedy indictment and speedy trial shall be tolled
5 1 until the court finds the defendant competent to stand trial.
5 2 2. The defendant shall be entitled to representation by
5 3 counsel, including appointed counsel if indigent, and shall be
5 4 entitled to the right of cross-examination and to present
5 5 evidence.

5 6 3. Testimony of the defendant given during the hearing
5 7 shall not be admissible on the issue of guilt in any other
5 8 judicial proceeding, except that such testimony shall be
5 9 admissible in proceedings under section 811.2, subsection 8,
5 10 and section 811.8, and in perjury proceedings.

5 11 Sec. 7. Section 812.5, Code 2003, is amended by striking
5 12 the section and inserting in lieu thereof the following:

5 13 812.5 COMPETENCY HEARING == FINDINGS.

5 14 The court shall receive all relevant and material evidence
5 15 offered at the hearing and shall not be bound by the formal
5 16 rules of evidence. The evidence shall include the psychiatric
5 17 evaluation ordered under section 812.3 or conducted within
5 18 thirty days of the probable cause finding.

5 19 1. If the court finds the defendant is competent to stand
5 20 trial, the court shall reinstate the criminal proceedings
5 21 suspended under section 812.3.

5 22 2. If the court, by a preponderance of the evidence, finds
5 23 the defendant is suffering from a mental disorder which
5 24 prevents the defendant from appreciating the charge,
5 25 understanding the proceedings, or assisting effectively in the
5 26 defense, the court shall suspend the criminal proceedings
5 27 indefinitely and order the defendant to be placed in a
5 28 treatment program pursuant to section 812.6 and shall make
5 29 further findings of record as necessary under section 812.6.

5 30 Sec. 8. NEW SECTION. 812.6 PLACEMENT AND TREATMENT.

5 31 1. If the court finds the defendant does not pose a danger
5 32 to the public peace and safety, is otherwise qualified for
5 33 pretrial release, and is willing to cooperate with treatment,
5 34 the court shall order, as a condition of pretrial release,
5 35 that the defendant obtain mental health treatment designed to
6 1 restore the defendant to competency.

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

6 11 a. A defendant who poses a danger to the public peace or
6 12 safety, or who is otherwise not qualified for pretrial
6 13 release, shall be committed as a safekeeper to the custody of
6 14 the director of the department of corrections at the Iowa
6 15 medical and classification center, or other appropriate
6 16 treatment facility as designated by the director, for
6 17 treatment designed to restore the defendant to competency.

6 18 b. A defendant who does not pose a danger to the public
6 19 peace or safety, but is otherwise being held in custody, or
6 20 who refuses to cooperate with treatment, shall be committed to
6 21 the custody of the director of human services at a department
6 22 of human services facility for treatment designed to restore
6 23 the defendant to competency.

6 24 3. A defendant ordered to obtain treatment or committed to
6 25 a facility under this section may refuse treatment by
6 26 chemotherapy or other somatic treatment. The defendant's
6 27 right to refuse chemotherapy treatment or other somatic
6 28 treatment shall not apply if in the judgment of the director
6 29 or the director's designee of the facility where the defendant
6 30 has been committed determines such treatment is necessary to
6 31 preserve the life of the defendant or to appropriately control
6 32 behavior of the defendant that is likely to result in physical
6 33 injury to the defendant or others. If in the judgment of the
6 34 director of the facility or the director's designee where the
6 35 defendant has been committed, chemotherapy or other somatic
7 1 treatments are necessary and appropriate to restore the
7 2 defendant to competency and the defendant refuses to consent
7 3 to the use of these treatment modalities, the director of the
7 4 facility or the director's designee shall request from the
7 5 district court that ordered the commitment of the defendant an
7 6 order authorizing treatment by chemotherapy or other somatic
7 7 treatments.

7 8 Sec. 9. NEW SECTION. 812.7 MENTAL STATUS REPORTS.

7 9 The psychiatrist or licensed doctorate-level psychologist

7 10 providing outpatient treatment to the defendant, or the
7 11 director of the facility where the defendant is being held and
7 12 treated pursuant to a court order, shall provide a written
7 13 status report to the court regarding the defendant's mental
7 14 disorder within thirty days of the defendant's placement
7 15 pursuant to section 812.6. The report shall also state
7 16 whether it appears that the defendant can be restored to
7 17 competency in a reasonable amount of time. Progress reports
7 18 shall be provided to the court every sixty days or less
7 19 thereafter until the defendant's competency is restored or the
7 20 placement of the defendant is terminated.

7 21 Sec. 10. NEW SECTION. 812.8 RESTORATION OF MENTAL
7 22 COMPETENCY.

7 23 1. At any time, upon a finding by a psychiatrist or
7 24 licensed doctorate-level psychologist that there is a
7 25 substantial probability that the defendant has acquired the
7 26 ability to appreciate the charge, understand the proceedings,
7 27 and effectively assist in the defendant's defense, the
7 28 psychiatrist or licensed doctorate-level psychologist
7 29 providing outpatient treatment to the defendant or the
7 30 director of the inpatient facility shall immediately notify
7 31 the court. After receiving notice the court shall proceed as
7 32 provided in subsection 4.

7 33 2. At any time, a treating psychiatrist or licensed
7 34 doctorate-level psychologist may notify the court that the
7 35 defendant receiving outpatient treatment will require
8 1 inpatient services to continue benefiting from treatment or
8 2 that it is appropriate for a defendant receiving inpatient
8 3 treatment services to receive outpatient treatment services.
8 4 Upon receiving notification, the court shall proceed as
8 5 provided under subsection 4.

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

8 15 4. Upon receiving a notification under this section, the
8 16 court shall schedule a hearing to be held within fourteen
8 17 days. The court shall also issue an order to transport the
8 18 defendant to the hearing if the defendant is in custody or is
8 19 being held in an inpatient facility. The defendant shall be
8 20 transported by the sheriff of the county where the court's
8 21 motion or the application pursuant to section 812.3 was filed.

8 22 5. If the court finds by a preponderance of the evidence
8 23 that the defendant's competency has been restored, the court
8 24 shall terminate the placement pursuant to section 812.6, and
8 25 reinstate the criminal proceedings against the defendant, and
8 26 may order continued treatment to maintain the competency of
8 27 the defendant.

8 28 6. If the court finds by a preponderance of the evidence
8 29 that the defendant remains incompetent to stand trial but is
8 30 making progress in regaining competency, the court shall
8 31 continue the placement ordered pursuant to section 812.6.

8 32 7. The court may change the placement of a defendant and
8 33 the placement may be more restrictive if necessary for the
8 34 continued progress of the defendant's treatment as shown by
8 35 clear and convincing evidence.

9 1 8. If the court finds by a preponderance of the evidence
9 2 that there is no substantial probability the defendant's
9 3 competency will be restored in a reasonable amount of time,
9 4 the court shall terminate the commitment under section 812.6
9 5 in accordance with the provisions of section 812.9.

9 6 Sec. 11. NEW SECTION. 812.9 LENGTH OF PLACEMENT == OTHER
9 7 COMMITMENT PROCEEDINGS == CRIMINAL PROCEEDINGS AFTER
9 8 TERMINATION OF PLACEMENT.

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

9 21 the criminal offense of which the defendant is accused shall
9 22 be dismissed with prejudice.

9 23 2. When the defendant's commitment equals eighteen months,
9 24 the court shall schedule a hearing to determine whether the
9 25 defendant is competent to stand trial pursuant to section
9 26 812.8, subsection 5. If the defendant is not competent to
9 27 stand trial after eighteen months, the court shall terminate
9 28 the placement under section 812.6 in accordance with the
9 29 provisions of subsection 1.

9 30 3. Upon the termination of the defendant's placement
9 31 pursuant to subsection 1, or pursuant to section 812.8,
9 32 subsection 8, the state may commence civil commitment
9 33 proceedings or any other appropriate commitment proceedings.

9 34 4. If after termination of the defendant's placement
9 35 pursuant to subsection 2 or pursuant to section 812.8,
10 1 subsection 8, it appears that the defendant has regained
10 2 competency, the state may make application to reinstate the
10 3 prosecution of the defendant and hearing shall be held on the
10 4 matter in the same manner as if the court has received notice
10 5 under section 812.8, subsection 4.

10 6 Sec. 12. Section 815.7, Code 2003, is amended to read as
10 7 follows:

10 8 815.7 FEES TO ATTORNEYS.

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

10 33 Sec. 13. Section 815.9, subsection 1, unnumbered paragraph
10 34 1, Code 2003, is amended to read as follows:

10 35 For purposes of this chapter, ~~chapter chapters~~ 13B, ~~chapter~~
11 1 229A, ~~chapter~~ 232, ~~chapter~~ 665, ~~chapter~~ 812, 814, ~~chapter and~~
11 2 822, ~~and section~~ 811.1A, and the rules of criminal procedure,
11 3 a person is indigent if the person is entitled to an attorney
11 4 appointed by the court as follows:

11 5 Sec. 14. Section 815.10, subsection 1, Code 2003, is
11 6 amended to read as follows:

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

11 25 Sec. 15. Section 904.201, subsection 3, paragraph b, Code
11 26 2003, is amended to read as follows:

11 27 b. Persons committed by the courts as mentally incompetent
11 28 to stand trial ~~under section 812.4 pursuant to section 812.6.~~

11 29 Sec. 16. Sections 812.1 and 812.2, Code 2003, are
11 30 repealed.

11 31

EXPLANATION

11 32 This bill relates to detaining criminal defendants who are
11 33 mentally incompetent or who are dangerous to others or
11 34 property.

11 35 CONFINEMENT OF DANGEROUS PERSONS. The bill moves Code
12 1 sections 812.1 and 812.2 relating to the confinement of
12 2 dangerous persons to Code chapter 811, and makes some related
12 3 changes. Current law and the bill provide that a person who
12 4 is awaiting sentencing and who is suspected of being a danger
12 5 to another person or property may be denied bail. The county
12 6 attorney may file a verified ex parte motion requesting a
12 7 detention hearing and asking the court for the immediate
12 8 arrest of the defendant, if the person is not already in
12 9 custody. The bill provides that the detention hearing must be
12 10 brought before the judge within 72 hours of the defendant's
12 11 arrest, or if the defendant is in custody, within 72 hours of
12 12 the filing of the motion. If the court finds by clear and
12 13 convincing evidence that the person is a danger to another
12 14 person or property, the person shall be denied bail.

12 15 MENTAL INCOMPETENCY == SUSPENSION OF CRIMINAL PROCEEDINGS.
12 16 The bill amends Code chapter 812 relating to detaining a
12 17 criminal defendant who is mentally incompetent to stand trial.
12 18 The bill provides that at any stage of a criminal proceeding,
12 19 the defendant, the defense attorney, or the prosecutor may
12 20 make an application to the court stating specific facts
12 21 showing that the defendant is suffering from a mental disorder
12 22 and is not competent to stand trial. The bill also provides
12 23 the court may make its own motion, if either party in the
12 24 criminal proceeding fails to make an application. The court
12 25 shall schedule a hearing within five days to determine if
12 26 probable cause exists to sustain the allegations. If the
12 27 court determines probable cause exists, the court shall
12 28 suspend further proceedings, the defendant's right to a speedy
12 29 indictment and speedy trial is tolled, and a hearing must be
12 30 held on the defendant's competency to determine whether the
12 31 defendant appreciates the charge, understands the proceedings,
12 32 and can effectively assist in the defendant's defense. The
12 33 court shall order a psychiatric evaluation of the defendant,
12 34 or if a recent evaluation exists, the court may use that
12 35 evaluation in the competency hearing. The bill provides that
13 1 any party is entitled to a separate evaluation by a
13 2 psychiatrist of the party's own choosing.

13 3 The bill provides that a competency hearing shall be held
13 4 within 14 days of the filing of the order for a psychiatric
13 5 evaluation, or within five days of the filing of an
13 6 application, if a recent evaluation will be used in the
13 7 hearing.

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

13 20 PLACEMENT AND TREATMENT. At the conclusion of the
13 21 competency hearing, under the bill, if the court finds the
13 22 defendant does not pose a danger to the public peace and
13 23 safety, is qualified for pretrial release, and is willing to
13 24 cooperate with treatment, the court shall order the person to
13 25 undergo mental health treatment designed to restore the
13 26 defendant to competency.

13 27 If the court finds by clear and convincing evidence the
13 28 defendant does pose a danger to the public peace or safety, or
13 29 is not qualified for pretrial release, or does not cooperate
13 30 with treatment, the court shall commit the defendant to an
13 31 appropriate inpatient treatment facility. The bill provides
13 32 that, if the defendant poses a danger to the public peace or
13 33 safety, or is not qualified for pretrial release, the
13 34 defendant shall be committed as a safekeeper to the custody of
13 35 the director of the department of corrections for treatment.
14 1 If the defendant does not pose a danger to the public peace or
14 2 safety but is otherwise being held in custody, the defendant
14 3 shall be placed in a facility operated by the department of
14 4 human services for treatment.

14 5 The bill provides that the defendant is not required to
14 6 take chemotherapy or other somatic treatments, but if the
14 7 director believes such treatments are necessary to preserve

14 8 the defendant's life or to appropriately control behavior, the
14 9 defendant must take the treatments. The bill provides that if
14 10 the defendant refuses chemotherapy or other somatic treatments
14 11 during treatment ordered pursuant to the bill, the director of
14 12 the facility treating the defendant may request an order from
14 13 the court authorizing such treatment methods.

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

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

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

14 33 The bill provides that if the treating psychiatrist or
14 34 doctorate=level psychologist finds the defendant would benefit
14 35 from either a more restrictive or less restrictive placement
15 1 for treatment, the psychiatrist or doctorate=level
15 2 psychologist shall notify the court and a hearing shall be set
15 3 on the matter by the court within 14 days of being notified.

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

15 26 LENGTH OF PLACEMENT AND OTHER PROCEEDINGS. A defendant
15 27 shall not be placed pursuant to the bill for a period greater
15 28 than the maximum term of confinement for the criminal offense
15 29 for which the defendant is accused or 18 months, whichever is
15 30 shorter. The bill provides that if the length of the
15 31 defendant's placement equals the maximum length of the term of
15 32 confinement for which the defendant is accused, the criminal
15 33 offense shall be dismissed by the court with prejudice. The
15 34 bill provides that when the defendant's placement equals 18
15 35 months, the court shall schedule a hearing to determine
16 1 whether the competency of the defendant has been restored.
16 2 Under the bill, if the defendant's mental competency has not
16 3 been restored, the court shall terminate the placement of the
16 4 defendant.

16 5 The bill provides that if placement is terminated, the
16 6 state may commence civil commitment proceedings under Code
16 7 chapter 229 or 229A. After termination of the placement, if
16 8 the criminal proceedings have not been dismissed with
16 9 prejudice the state may seek to file an application seeking to
16 10 reinstate the criminal proceedings if it appears the
16 11 competency of the defendant has been restored.

16 12 PAYMENT OF COSTS. The bill amends Code chapter 815
16 13 regarding certain court and indigent defense costs to include
16 14 relevant costs incurred under new Code section 811.1A and
16 15 rewritten Code chapter 812.

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