



House of Representatives

General Assembly

File No. 541

February Session, 2012

Substitute House Bill No. 5367

House of Representatives, April 19, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING COMPETENCY TO STAND TRIAL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (i) to (r), inclusive, of section 54-56d of the
2 2012 supplement to the general statutes are repealed and the following
3 is substituted in lieu thereof (*Effective October 1, 2012*):

4 (i) The placement of the defendant for treatment for the purpose of
5 rendering the defendant competent shall comply with the following
6 conditions: (1) The period of placement under the order or
7 combination of orders shall not exceed the period of the maximum
8 sentence which the defendant could receive on conviction of the
9 charges against the defendant or eighteen months, whichever is less;
10 (2) the placement shall be either (A) in the custody of the
11 Commissioner of Mental Health and Addiction Services, the
12 Commissioner of Children and Families or the Commissioner of
13 Developmental Services, except that any defendant placed for
14 treatment with the Commissioner of Mental Health and Addiction
15 Services may remain in the custody of the Department of Correction

16 pursuant to subsection (p) of this section; or, (B) if the defendant or the
17 appropriate commissioner agrees to provide payment, in the custody
18 of any appropriate mental health facility or treatment program which
19 agrees to provide treatment to the defendant and to adhere to the
20 requirements of this section; and (3) the court shall order the
21 placement, on either an inpatient or an outpatient basis, which the
22 court finds is the least restrictive placement appropriate and available
23 to restore competency. If outpatient treatment is the least restrictive
24 placement for a defendant who has not yet been released from a
25 correctional facility, the court shall consider whether the availability of
26 such treatment is a sufficient basis on which to release the defendant
27 on a promise to appear, conditions of release, cash bail or bond. If the
28 court determines that the defendant may not be so released, the court
29 shall order treatment of the defendant on an inpatient basis at a mental
30 health facility or facility for persons with intellectual disability. Not
31 later than twenty-four hours after the court orders placement of the
32 defendant for treatment for the purpose of rendering the defendant
33 competent, the examiners shall transmit information obtained about
34 the defendant during the course of an examination pursuant to
35 subsection (d) of this section to the health care provider named in the
36 court's order.

37 (j) The person in charge of the treatment facility, or such person's
38 designee, or the Commissioner of Mental Health and Addiction
39 Services with respect to any defendant who is in the custody of the
40 Commissioner of Correction pursuant to subsection (p) of this section,
41 shall submit a written progress report to the court (1) at least seven
42 days prior to the date of any hearing on the issue of the defendant's
43 competency; (2) whenever he or she believes that the defendant has
44 attained competency; (3) whenever he or she believes that there is not a
45 substantial probability that the defendant will attain competency
46 within the period covered by the placement order; (4) whenever,
47 within the first one hundred twenty days of the period covered by the
48 placement order, he or she believes that the defendant would be
49 eligible for civil commitment pursuant to subdivision (2) of subsection
50 (h) of this section; or (5) whenever he or she believes that the

51 defendant is still not competent but has improved sufficiently such
52 that continued inpatient commitment is no longer the least restrictive
53 placement appropriate and available to restore competency. The
54 progress report shall contain: (A) The clinical findings of the person
55 submitting the report and the facts on which the findings are based; (B)
56 the opinion of the person submitting the report as to whether the
57 defendant has attained competency or as to whether the defendant is
58 making progress, under treatment, toward attaining competency
59 within the period covered by the placement order; (C) the opinion of
60 the person submitting the report as to whether the defendant appears
61 to be eligible for civil commitment to a hospital for psychiatric
62 disabilities pursuant to subsection (m) of this section and the
63 appropriateness of such civil commitment, if there is not a substantial
64 probability that the defendant will attain competency within the
65 period covered by the placement order; and (D) any other information
66 concerning the defendant requested by the court, including, but not
67 limited to, the method of treatment or the type, dosage and effect of
68 any medication the defendant is receiving. Not later than five business
69 days after the court finds either that the defendant will not attain
70 competency within the period of any placement order under this
71 section or that the defendant has regained competency, the person in
72 charge of the treatment facility, or such person's designee, or the
73 Commissioner of Mental Health and Addiction Services with respect
74 to any defendant who is in the custody of the Commissioner of
75 Correction pursuant to subsection (p) of this section, shall provide a
76 copy of the written progress report to the examiners who examined the
77 defendant pursuant to subsection (d) of this section.

78 (k) (1) Whenever any placement order for treatment is rendered or
79 continued, the court shall set a date for a hearing, to be held within
80 ninety days, for reconsideration of the issue of the defendant's
81 competency. Whenever the court (A) receives a report pursuant to
82 subsection (j) of this section which indicates that (i) the defendant has
83 attained competency, (ii) the defendant will not attain competency
84 within the remainder of the period covered by the placement order,
85 (iii) the defendant will not attain competency within the remainder of

86 the period covered by the placement order absent administration of
87 psychiatric medication for which the defendant is unwilling or unable
88 to provide consent, (iv) the defendant would be eligible for civil
89 commitment pursuant to subdivision (2) of subsection (h) of this
90 section, or (v) the defendant is still not competent but has improved
91 sufficiently such that continued inpatient commitment is no longer the
92 least restrictive placement appropriate and available to restore
93 competency, or (B) receives a report pursuant to subparagraph (A)(iii)
94 of subdivision (2) of subsection (h) of this section which indicates that
95 (i) the application for civil commitment of the defendant has been
96 denied or has not been pursued by the Commissioner of Mental Health
97 and Addiction Services, or (ii) the defendant is unwilling or unable to
98 comply with a treatment plan despite reasonable efforts of the
99 treatment facility to encourage the defendant's compliance, the court
100 shall set the matter for a hearing not later than ten days after the report
101 is received. The hearing may be waived by the defendant only if the
102 report indicates that the defendant is competent. With respect to a
103 defendant who is in the custody of the Commissioner of Correction
104 pursuant to subsection (p) of this section, the Commissioner of Mental
105 Health and Addiction Services shall retain responsibility for providing
106 testimony at any hearing under this subsection. The court shall
107 determine whether the defendant is competent or is making progress
108 toward attaining competency within the period covered by the
109 placement order. If the court finds that the defendant is competent, the
110 defendant shall be returned to the custody of the Commissioner of
111 Correction or released, if the defendant has met the conditions for
112 release, and the court shall continue with the criminal proceedings. If
113 the court finds that the defendant is still not competent but that the
114 defendant is making progress toward attaining competency, the court
115 may continue or modify the placement order. If the court finds that the
116 defendant is still not competent but that the defendant is making
117 progress toward attaining competency and inpatient placement is no
118 longer the least restrictive placement appropriate and available to
119 restore competency, the court shall consider whether the availability of
120 such less restrictive placement is a sufficient basis on which to release

121 the defendant on a promise to appear, conditions of release, cash bail
122 or bond and may order continued treatment to restore competency on
123 an outpatient basis. If the court finds that the defendant is still not
124 competent and will not attain competency within the remainder of the
125 period covered by the placement order absent administration of
126 psychiatric medication for which the defendant is unwilling or unable
127 to provide consent, the court shall proceed as provided in subdivisions
128 (2), (3) and (4) of this subsection. If the court finds that the defendant is
129 eligible for civil commitment, the court may order placement of the
130 defendant at a treatment facility pending civil commitment
131 proceedings pursuant to subdivision (2) of subsection (h) of this
132 section.

133 (2) If the court finds that the defendant will not attain competency
134 within the remainder of the period covered by the placement order
135 absent administration of psychiatric medication for which the
136 defendant is unwilling or unable to provide consent, and after any
137 hearing held pursuant to subdivision (3) of this subsection, the court
138 may order the involuntary medication of the defendant if the court
139 finds by clear and convincing evidence that: (A) To a reasonable
140 degree of medical certainty, involuntary medication of the defendant
141 will render the defendant competent to stand trial, (B) an adjudication
142 of guilt or innocence cannot be had using less intrusive means, (C) the
143 proposed treatment plan is narrowly tailored to minimize intrusion on
144 the defendant's liberty and privacy interests, (D) the proposed drug
145 regimen will not cause an unnecessary risk to the defendant's health,
146 and (E) the seriousness of the alleged crime is such that the criminal
147 law enforcement interest of the state in fairly and accurately
148 determining the defendant's guilt or innocence overrides the
149 defendant's interest in self-determination.

150 (3) (A) If the court finds that the defendant is unwilling or unable to
151 provide consent for the administration of psychiatric medication, and
152 prior to deciding whether to order the involuntary medication of the
153 defendant under subdivision (2) of this subsection, the court shall
154 appoint a health care guardian who shall be a licensed health care

155 provider with specialized training in the treatment of persons with
156 psychiatric disabilities to represent the health care interests of the
157 defendant before the court. Notwithstanding the provisions of section
158 52-146e, such health care guardian shall have access to the psychiatric
159 records of the defendant. Such health care guardian shall file a report
160 with the court not later than thirty days after his or her appointment.
161 The report shall set forth such health care guardian's findings and
162 recommendations concerning the administration of psychiatric
163 medication to the defendant, including the risks and benefits of such
164 medication, the likelihood and seriousness of any adverse side effects
165 and the prognosis with and without such medication. The court shall
166 hold a hearing on the matter not later than ten days after receipt of
167 such health care guardian's report and shall, in deciding whether to
168 order the involuntary medication of the defendant, take into account
169 such health care guardian's opinion concerning the health care
170 interests of the defendant.

171 (B) The court, in anticipation of considering continued involuntary
172 medication of the defendant under subdivision (4) of this subsection,
173 shall order the health care guardian to file a supplemental report
174 updating the findings and recommendations contained in the health
175 care guardian's report filed under subparagraph (A) of this
176 subdivision.

177 (4) If, after the defendant has been found to have attained
178 competency by means of involuntary medication ordered under
179 subdivision (2) of this subsection, the court determines by clear and
180 convincing evidence that the defendant will not remain competent
181 absent the continued administration of psychiatric medication for
182 which the defendant is unable to provide consent, and after any
183 hearing held pursuant to subdivision (3) of this subsection and
184 consideration of the supplemental report of the health care guardian,
185 the court may order continued involuntary medication of the
186 defendant if the court finds by clear and convincing evidence that: (A)
187 To a reasonable degree of medical certainty, continued involuntary
188 medication of the defendant will maintain the defendant's competency

189 to stand trial, (B) an adjudication of guilt or innocence cannot be had
190 using less intrusive means, (C) the proposed treatment plan is
191 narrowly tailored to minimize intrusion on the defendant's liberty and
192 privacy interests, (D) the proposed drug regimen will not cause an
193 unnecessary risk to the defendant's health, and (E) the seriousness of
194 the alleged crime is such that the criminal law enforcement interest of
195 the state in fairly and accurately determining the defendant's guilt or
196 innocence overrides the defendant's interest in self-determination.
197 Continued involuntary medication ordered under this subdivision
198 may be administered to the defendant while the criminal charges
199 against the defendant are pending and the defendant is in the custody
200 of the Commissioner of Correction or the Commissioner of Mental
201 Health and Addiction Services. An order for continued involuntary
202 medication of the defendant under this subdivision shall be reviewed
203 by the court every one hundred eighty days while such order remains
204 in effect. The court shall order the health care guardian to file a
205 supplemental report for each such review. After any hearing held
206 pursuant to subdivision (3) of this subsection and consideration of the
207 supplemental report of the health care guardian, the court may
208 continue such order if the court finds, by clear and convincing
209 evidence, that the criteria enumerated in subparagraphs (A) to (E),
210 inclusive, of this subdivision are met.

211 (5) The state shall hold harmless and indemnify any health care
212 guardian appointed by the court pursuant to subdivision (3) of this
213 subsection from financial loss and expense arising out of any claim,
214 demand, suit or judgment by reason of such health care guardian's
215 alleged negligence or alleged deprivation of any person's civil rights or
216 other act or omission resulting in damage or injury, provided the
217 health care guardian is found to have been acting in the discharge of
218 his or her duties pursuant to said subdivision and such act or omission
219 is found not to have been wanton, reckless or malicious. The
220 provisions of subsections (b), (c) and (d) of section 5-141d shall apply
221 to such health care guardian. The provisions of chapter 53 shall not
222 apply to a claim against such health care guardian.

223 (l) If a defendant who has been ordered placed for treatment on an
224 inpatient basis at a mental health facility or [mental retardation] a
225 facility for persons with intellectual disability is released from such
226 facility on a furlough or for work, therapy or any other reason and fails
227 to return to the facility in accordance with the terms and conditions of
228 the defendant's release, the person in charge of the facility, or such
229 person's designee, shall, within twenty-four hours of the defendant's
230 failure to return, report such failure to the prosecuting authority for
231 the court location which ordered the placement of the defendant. Upon
232 receipt of such a report, the prosecuting authority shall, within
233 available resources, make reasonable efforts to notify any victim or
234 victims of the crime for which the defendant is charged of such
235 defendant's failure to return to the facility. No civil liability shall be
236 incurred by the state or the prosecuting authority for failure to notify
237 any victim or victims in accordance with this subsection. The failure of
238 a defendant to return to the facility in which the defendant has been
239 placed may constitute sufficient cause for the defendant's rearrest
240 upon order by the court.

241 (m) (1) If at any time the court determines that there is not a
242 substantial probability that the defendant will attain competency
243 within the period of treatment allowed by this section, or if at the end
244 of such period the court finds that the defendant is still not competent,
245 the court shall consider any recommendation made by the examiners
246 pursuant to subsection (d) of this section and any opinion submitted
247 by the treatment facility pursuant to subparagraph (C) of subsection (j)
248 of this section regarding eligibility for, and the appropriateness of, civil
249 commitment to a hospital for psychiatric disabilities and shall either
250 release the defendant from custody or order the defendant placed in
251 the custody of the Commissioner of Mental Health and Addiction
252 Services, the Commissioner of Children and Families or the
253 Commissioner of Developmental Services. If the court orders the
254 defendant placed in the custody of the Commissioner of Children and
255 Families or the Commissioner of Developmental Services, the
256 commissioner given custody, or the commissioner's designee, shall
257 then apply for civil commitment in accordance with sections 17a-75 to

258 17a-83, inclusive, or 17a-270 to 17a-282, inclusive. If the court orders
259 the defendant placed in the custody of the Commissioner of Mental
260 Health and Addiction Services, the court may order the commissioner,
261 or the commissioner's designee, to apply for civil commitment in
262 accordance with sections 17a-495 to 17a-528, inclusive, or order the
263 commissioner, or the commissioner's designee, to provide services to
264 the defendant in a less restrictive setting, provided the examiners have
265 determined in the written report filed pursuant to subsection (d) of this
266 section or have testified pursuant to subsection (e) of this section that
267 such services are available and appropriate. If the court orders the
268 defendant placed in the custody of the Commissioner of Mental Health
269 and Addiction Services and orders the commissioner to apply for civil
270 commitment pursuant to this subsection, the court may order the
271 commissioner to give the court notice when the defendant is released
272 from the commissioner's custody if such release is prior to the
273 expiration of the time within which the defendant may be prosecuted
274 for the crime with which the defendant is charged, provided such
275 order indicates when such time expires. If the court orders the
276 defendant placed in the custody of the Commissioner of
277 Developmental Services for purposes of commitment under any
278 provision of sections 17a-270 to 17a-282, inclusive, the court may order
279 the Commissioner of Developmental Services to give the court notice
280 when the defendant's commitment is terminated if such termination is
281 prior to the expiration of the time within which the defendant may be
282 prosecuted for the crime with which the defendant is charged,
283 provided such order indicates when such time expires.

284 (2) The court shall hear arguments as to whether the defendant
285 should be released or should be placed in the custody of the
286 Commissioner of Mental Health and Addiction Services, the
287 Commissioner of Children and Families or the Commissioner of
288 Developmental Services.

289 (3) If the court orders the release of a defendant charged with the
290 commission of a crime that resulted in the death or serious physical
291 injury, as defined in section 53a-3, of another person, or with a

292 violation of subdivision (2) of subsection (a) of section 53-21,
293 subdivision (2) of subsection (a) of section 53a-60 or section 53a-60a,
294 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b, or orders the
295 placement of such defendant in the custody of the Commissioner of
296 Mental Health and Addiction Services or the Commissioner of
297 Developmental Services, the court may, on its own motion or on
298 motion of the prosecuting authority, order, as a condition of such
299 release or placement, periodic examinations of the defendant as to the
300 defendant's competency at intervals of not less than six months. Such
301 an examination shall be conducted in accordance with subsection (d)
302 of this section. Periodic examinations ordered by the court under this
303 subsection shall continue until the court finds that the defendant has
304 attained competency or until the time within which the defendant may
305 be prosecuted for the crime with which the defendant is charged, as
306 provided in section 54-193 or 54-193a, has expired, whichever occurs
307 first.

308 (4) Upon receipt of the written report as provided in subsection (d)
309 of this section, the court shall, upon the request of either party filed not
310 later than thirty days after the court receives such report, conduct a
311 hearing as provided in subsection (e) of this section. Such hearing shall
312 be held not later than ninety days after the court receives such report.
313 If the court finds that the defendant has attained competency, the
314 defendant shall be returned to the custody of the Commissioner of
315 Correction or released, if the defendant has met the conditions for
316 release, and the court shall continue with the criminal proceedings.

317 (5) The court shall dismiss, with or without prejudice, any charges
318 for which a nolle prosequi is not entered when the time within which
319 the defendant may be prosecuted for the crime with which the
320 defendant is charged, as provided in section 54-193 or 54-193a, has
321 expired. Notwithstanding the record erasure provisions of section 54-
322 142a, police and court records and records of any state's attorney
323 pertaining to a charge which is nolleed or dismissed without prejudice
324 while the defendant is not competent shall not be erased until the time
325 for the prosecution of the defendant expires under section 54-193 or 54-

326 193a. A defendant who is not civilly committed as a result of an
327 application made by the Commissioner of Mental Health and
328 Addiction Services, the Commissioner of Children and Families or the
329 Commissioner of Developmental Services pursuant to this section shall
330 be released. A defendant who is civilly committed pursuant to such an
331 application shall be treated in the same manner as any other civilly
332 committed person.

333 (n) The cost of the examination effected by the Commissioner of
334 Mental Health and Addiction Services and of testimony of persons
335 conducting the examination effected by the commissioner shall be paid
336 by the Department of Mental Health and Addiction Services. The cost
337 of the examination and testimony by physicians appointed by the
338 court shall be paid by the Judicial Department. If the defendant is
339 indigent, the fee of the person selected by the defendant to observe the
340 examination and to testify on the defendant's behalf shall be paid by
341 the Public Defender Services Commission. The expense of treating a
342 defendant placed in the custody of the Commissioner of Mental Health
343 and Addiction Services, the Commissioner of Children and Families or
344 the Commissioner of Developmental Services pursuant to subdivision
345 (2) of subsection (h) of this section or subsection (i) of this section shall
346 be computed and paid for in the same manner as is provided for
347 persons committed by a probate court under the provisions of sections
348 17b-122, 17b-124 to 17b-132, inclusive, 17b-136 to 17b-138, inclusive,
349 17b-194 to 17b-197, inclusive, 17b-222 to 17b-250, inclusive, 17b-256,
350 17b-263, 17b-340 to 17b-350, inclusive, 17b-689b and 17b-743 to 17b-
351 747, inclusive.

352 (o) Until the hearing is held, the defendant, if not released on a
353 promise to appear, conditions of release, cash bail or bond, shall
354 remain in the custody of the Commissioner of Correction unless
355 hospitalized as provided in sections 17a-512 to 17a-517, inclusive.

356 (p) (1) This section shall not be construed to require the
357 Commissioner of Mental Health and Addiction Services to place any
358 [violent] defendant who presents a significant security, safety or

359 medical risk in a [mental institution] hospital for psychiatric
360 disabilities which does not have the trained staff, facilities [and] or
361 security to accommodate such a person, as determined by the
362 Commissioner of Mental Health and Addiction Services in
363 consultation with the Commissioner of Correction.

364 (2) If a defendant is placed for treatment with the Commissioner of
365 Mental Health and Addiction Services pursuant to subsection (i) of this
366 section and such defendant is not placed in a hospital for psychiatric
367 disabilities pursuant to a determination made by the Commissioner of
368 Mental Health and Addiction Services under subdivision (1) of this
369 subsection, the defendant shall remain in the custody of the
370 Commissioner of Correction. The Commissioner of Correction shall be
371 responsible for the medical and psychiatric care of the defendant, and
372 the Commissioner of Mental Health and Addiction Services shall
373 remain responsible to provide other appropriate services to restore
374 competency.

375 (3) If a defendant remains in the custody of the Commissioner of
376 Correction pursuant to subdivision (2) of this subsection and the court
377 finds that the defendant is still not competent and will not attain
378 competency within the remainder of the period covered by the
379 placement order absent administration of psychiatric medication for
380 which the defendant is unwilling or unable to provide consent, the
381 court shall proceed as provided in subdivisions (2), (3) and (4) of
382 subsection (k) of this section. Nothing in this subdivision shall prevent
383 the court from making any other finding or order set forth in
384 subsection (k) of this section.

385 (q) This section shall not prevent counsel for the defendant from
386 raising, prior to trial and while the defendant is not competent, any
387 issue susceptible of fair determination.

388 (r) Actual time spent in confinement on an inpatient basis pursuant
389 to this section shall be credited against any sentence imposed on the
390 defendant in the pending criminal case or in any other case arising out
391 of the same conduct in the same manner as time is credited for time

392 spent in a correctional facility awaiting trial.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	54-56d(i) to (r)

Statement of Legislative Commissioners:

In section 1(i)(2), "A" was moved for proper form.

JUD *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Department of Developmental Services; Correction, Dept.	GF - Potential Cost	See Below	See Below
Mental Health & Addiction Serv., Dept.	GF - Potential Savings	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill adds provisions related to the placement of defendants in the Department of Correction (DOC) or the Department of Developmental Services (DDS) for those committed to the Department of Mental Health and Addiction Services (DMHAS). This change may result in a minimal number of additional commitments to DOC and DDS and an offsetting reduction of placements in DMHAS. The savings in DMHAS would be associated with decreased overtime and professional services expenditures.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 5367

AN ACT CONCERNING COMPETENCY TO STAND TRIAL.

SUMMARY:

By law, a court may order a defendant it finds incompetent to stand trial to the custody of the Department of Mental Health and Addiction Services (DMHAS) commissioner for the purpose of rendering him or her competent. These defendants are placed in a mental health facility unless they are too violent to be accommodated.

This bill expands the exception to placement, specifies that those defendants not placed remain in the Department of Correction's (DOC) custody, and outlines the responsibilities of both commissioners with respect to them.

If a defendant is a person with an intellectual disability and a court determines at any time that he or she is not likely to attain competency or is not competent at the end of the placement period (see BACKGROUND), the law allows a court to order him or her placed in the custody of the developmental services commissioner for civil commitment. The bill allows the court to order the commissioner to notify it if the department releases the defendant before the statute of limitations for prosecuting him or her has expired.

EFFECTIVE DATE: October 1, 2012

DEFENDANTS PLACED IN CUSTODY OF DMHAS

The bill expands the DMHAS commissioner's authority to refuse to place certain defendants in mental health facilities.

Under current laws, he does not have to place a violent defendant in a mental institution that lacks the facility, security, and trained staff

to accommodate him or her. The bill, instead, allows the commissioner to exclude any defendant from a hospital for psychiatric disabilities who (1) presents a significant security, safety, or medical risk and (2) the commissioner, in consultation with the DOC commissioner, determines that the staff, facility, or security cannot accommodate the defendant. Any defendant not placed in such a hospital remains in DOC custody. In these cases, the DOC is responsible for the defendant's medical and psychiatric care. DMHAS is responsible for:

1. providing other services to restore his or her competency,
2. (a) submitting to the court reports on the defendant's progress and (b) a written progress report to the medical professionals who initially decided the defendant's competency if he or she attains competency or a court determines he or she will not attain competency within the placement period, and
3. providing testimony at any hearing to reconsider the defendant's competency.

A court must determine whether to involuntarily medicate the defendant if it finds that he or she (1) will not attain competency during the placement period without psychiatric medication and (2) is unable or unwilling to consent to taking the medication. The court must appoint a health care guardian to represent the defendant and hold a hearing before making this decision.

BACKGROUND

Incompetency to Stand Trial

A criminal defendant is incompetent to stand trial if he or she cannot understand the charges or aid in his or her defense. In most cases, the defendant is placed in DMHAS custody for treatment meant to restore his or her competency. He or she may be held for the maximum length of the sentence for the crime with which he or she is charged or 18 months, whichever is less.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 43 Nay 0 (04/02/2012)