



DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

Don Jordan, Secretary

**Senate Judiciary Committee**  
**March 2, 2009**

**SB 272 – Persons Incompetent to Stand Trial**

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# **SB 272 – Persons Incompetent to Stand Trial**

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Chairman Owens and members of the Committee, I am John House, an attorney with SRS. I thank you for the opportunity to appear before you today to discuss SB 272.

While we understand the concerns and risks associated with the release of some individuals who have allegedly committed serious offenses, SRS has concerns about the construct of this bill and some of the apparent assumptions contained within it, and also about the operational and resource impact that the terms of this bill, if enacted and implemented, would likely create over time.

To begin with, the first and most critical assumption that this bill appears to be based on is that incompetency to stand trial somehow equates with mental illness, which then equates with dangerousness. In fact, those conditions are actually quite different, both clinically and legally. In addition, there appears to be an assumption that the more time someone is held for treatment in a state institution, the greater the likelihood is of that person being restored to competency, which is not true. Finally, there is an assumption that a state psychiatric institution is an appropriate place to detain someone indefinitely, based upon “presumed” or “deemed” dangerousness.

The effect of those assumptions is seen in some of the key terms of this bill, including the creation of a new (and different) standard for initial commitment: A person is presumed to be a danger to self or others if charged with certain felony crimes; and then found incompetent to stand trial. That presumption can be overcome only if a court finds both no possibility of the person being a future danger to self/others and no future likelihood to commit another person felony. Those are very high burdens which are not likely to be overcome by the obviously necessary medical determinations. In addition, the bill creates an additional new (and different) standard for ultimate release: A person is deemed to remain a danger to self or others if they had been charged with a serious or inherently dangerous felony; and continues to be incompetent to stand trial.

The net effect of these changes is that people who are found to be not competent to stand trial (i.e., who either cannot understand the nature of the charges against them or cannot effectively assist in their defense, or both), under the terms of this bill, would be held indefinitely – having had no actual determination of guilt, and regardless of their actual need for mental health treatment – in a state institution and at significant cost. This would include people with cognitive deficits who cannot be restored to competency, no matter the efforts made to do so, and who could and should be better served in other manners.

We are concerned that these assumptions, built into the terms of this bill, would invite a strong challenge to the law on constitutional grounds. The terms of this bill seem to be in clear opposition to



U.S. Supreme Court holdings that mere presumed or perceived dangerousness alone is not a valid reason to hold someone in a psychiatric hospital. Those rulings, as well as other due process issues, drove the enactment of our current law. In fact, some of the terms of this bill would seem to be taking us backward to revive many of the same, specific concerns which resulted in the enactments the Legislature adopted in 1992 and that constitute our current law.

In addition, the operational and resource impact of this bill on the state psychiatric hospitals could potentially be quite significant. It is likely that, if implemented as written, the terms of this bill would require a significant expansion of state psychiatric hospital services, or would result in a much longer waiting list for people in need of those services. Already, today there are 37 people awaiting admission for state psychiatric hospital forensic evaluations or services. Some have been waiting for months. That level of unmet need would be exacerbated by the inevitable increase in the length of stay for people who are committed to a state hospital for competency evaluation and treatment, with little likelihood of timely release, under the terms of this bill.

Now, there are many potential variables driving the resources impact of this bill, including the number of people evaluated, the number of those who can be restored to competency, and the actual decisions of the many courts who would be committing defendants to the state institutions for competency treatment. To develop an estimate of the potential impact, we assumed that the practice of courts and of the parties involved in these cases would be similar to the cases where defendants have been found not guilty based upon reasons of mental disease or defect, a statutory construct similar to what is proposed in this bill.

The estimate starts with the 108 people who were committed for competency evaluation and treatment in FY08. It then assumes that those people would be held for periods of time closely resembling the periods of time to which people committed after being found not guilty based upon a reason of mental disease or defect are held (which is over 3,100 days for those currently in this status). The estimate builds from that base and increases the number of people continuing to be admitted, but then not being timely discharged, over the four years of the estimated period. The estimate uses a cost of \$390.50 per day (times 365 days a year) which was the average daily rate for the two state psychiatric hospitals in FY08. Finally, the estimate assumes that the people already in place for competency treatment will essentially cycle out, and that there will be no increase in the number of people committed for competency evaluation and treatment.

The following chart reflects the estimated increase in the number of people receiving competency-related treatment when all of the assumptions are applied in full; then when applied at 50% and 25% of the estimated impact:



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State Fiscal Year	FY10	FY11	FY12	FY13	Total for all four FYs
<b>Increase in people – 25% estimate</b>	27	54	81	108	270
<b>Increase in costs – 25% estimate</b>	\$3,848,377	\$7,696,755	\$11,545,132	\$15,393,510	\$38,483,775
<b>Increase in people – 50% estimate</b>	54	108	162	216	540
<b>Increase in costs – 50% estimate</b>	\$7,696,755	\$15,393,510	\$23,090,265	\$30,787,020	\$76,967,550
<b>Increase in people – full estimate</b>	108	216	324	432	1080
<b>Increase in costs – full estimate</b>	\$15,393,510	\$30,787,020	\$46,180,530	\$61,574,040	\$153,935,100

Some additional factors to consider when anticipating the operational and resource impact of this bill on the state psychiatric hospitals: The current physical capacity of the hospitals would be able to accommodate an expansion of only 30 people. Any increase beyond 30 people would require new construction to accommodate the capacity growth.

Again, we do appreciate the opportunity to present this information to the Committee for its consideration. I would be happy to answer any questions you may have at this time.