

Regular Session, 2010

SENATE BILL NO. 449

BY SENATOR HEITMEIER

CRIMINAL PROCEDURE. Provides for procedures after a determination of mental capacity or incapacity. (8/15/10)

1 AN ACT
2 To amend and reenact Code of Criminal Procedure Art. 648(A), (B)(1), and the introductory
3 paragraph of Code of Criminal Procedure Art. 648(B)(3) and to enact Code of
4 Criminal Art. 648(B)(2), relative to procedures after a determination of mental
5 capacity or incapacity; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Art. 648(A), (B)(1), and the introductory
8 paragraph of Code of Criminal Procedure Art. 648(B)(3) are hereby amended and reenacted
9 and Code of Criminal Procedure Art. 648(B)(2) is hereby enacted to read as follows:

10 Art. 648. Procedure after determination of mental capacity or incapacity

11 A. The criminal prosecution shall be resumed unless the court determines by
12 a preponderance of the evidence that the defendant does not have the mental capacity
13 to proceed. If the court determines that the defendant lacks mental capacity to
14 proceed, the proceedings shall be suspended and one of the following dispositions
15 made:

16 (1) If the court determines that the defendant's mental capacity is likely to be
17 restored within ninety days by outpatient care and treatment at ~~an institution~~ a

1 **treatment facility** as defined by R.S. 28:2(~~28~~) while remaining in the custody of the
2 criminal authorities, and if the person is not charged with a felony or a misdemeanor
3 classified as an offense against the person and is considered by the court to be
4 unlikely to commit crimes of violence, then the court may order outpatient care and
5 treatment at any ~~institution~~ **treatment facility** as defined by R.S. 28:2(~~28~~).

6 (2)(a) If the person is charged with a ~~felony or a misdemeanor classified as~~
7 ~~an offense against the person and considered by the court to be likely to commit~~
8 ~~crimes of violence~~ **crime of violence as defined in R.S. 14:2(B)**, and if the court
9 determines that his mental capacity is likely to be restored within ninety days as a
10 result of treatment, the court may order immediate jail-based treatment by the
11 Department of Health and Hospitals not to exceed ninety days; otherwise, if his
12 capacity cannot be restored within ninety days and inpatient treatment is
13 recommended, the court shall commit the defendant to the Feliciana Forensic
14 Facility.

15 (b) If a defendant committed to the Feliciana Forensic Facility is held in a
16 parish jail for one hundred eighty days after the court's determination that he lacks
17 the mental capacity to proceed, ~~the court shall order a status conference to be held~~
18 ~~with the defense and the district attorney present, and for good cause shown and on~~
19 ~~motion of the defendant or the district attorney or on the court's own motion, the~~
20 ~~court shall order a contradictory hearing to determine whether there has been a~~
21 ~~change in the defendant's condition or other circumstances sufficient to warrant a~~
22 ~~modification of the previous order~~ **and the defendant's mental capacity has not**
23 **been restored, the court shall conduct a contradictory hearing to determine**
24 **whether the defendant is, or will in the foreseeable future be, capable of**
25 **standing trial in accordance with Paragraph B of this Article.**

26 (c) ~~If a defendant committed to the Feliciana Forensic Facility is held in a~~
27 ~~parish jail for one hundred eighty days after the initial status conference provided in~~
28 ~~Item (b) of this Subparagraph, the court shall order a contradictory hearing to~~
29 ~~determine whether to release the defendant or to order the appropriate authorities to~~

1 ~~institute civil commitment proceedings pursuant to R.S. 28:54. The defendant shall~~
2 ~~remain in custody pending such civil commitment proceedings. If the defendant is~~
3 ~~civily committed to a treatment facility pursuant to Title 28 of the Louisiana~~
4 ~~Revised Statutes of 1950, the director of the institution designated for the patient's~~
5 ~~treatment shall, in writing, notify the court and the district attorney when the patient~~
6 ~~is to be discharged or conditionally discharged, as long as the charges are pending.~~

7 B.(1) In no instance shall such custody, care, and treatment exceed the time
8 of the maximum sentence the defendant could receive if convicted of the crime with
9 which he is charged. At any time after commitment and on the recommendation of
10 the superintendent of the institution that the defendant will not attain the capacity to
11 proceed with his trial in the foreseeable future, **or as provided in Subsubparagraph**
12 **(A)(2)(b) of this Article,** the court shall, within sixty days and after at least ten days
13 notice to the district attorney, defendant's counsel and the Bureau of Legal Services
14 of the Department of Health and Hospitals, conduct a contradictory hearing to
15 determine whether the mentally defective defendant is, and will in the foreseeable
16 future be, incapable of standing trial ~~and whether he is a danger to himself or others.~~

17 **(2)(a) If the court determines that the defendant is and will in the**
18 **foreseeable future be incapable of standing trial, and the defendant has been**
19 **charged with a crime of violence as defined in R.S. 14:2(B) or has a history of**
20 **arrests for crimes of violence as defined in R.S. 14:2(B), then the court shall**
21 **additionally determine whether the defendant poses a danger to others or to**
22 **himself.**

23 **(b) If the defendant has not been charged with a crime of violence as**
24 **defined in R.S. 14:2(B) and does not have a history of arrests for crimes of**
25 **violence as defined in R.S. 14:2(B), then the defendant shall be deemed not to**
26 **pose a danger to others or himself.**

27 **(c)(i) If after the contradictory hearing, the court determines that the**
28 **defendant is and will in the foreseeable future be incapable of standing trial,**
29 **and that the defendant has been charged with a crime of violence as defined in**

1 R.S. 14:2(B) or has a history of arrests for crimes of violence as defined in R.S.
2 14:2(B), and the defendant is a danger to others or to himself, then the
3 defendant shall be referred for a special risk assessment in the trial court prior
4 to release from inpatient treatment or jail.

5 (ii) The special risk assessment shall be conducted by a sanity
6 commission appointed pursuant to Article 644 and shall be conducted within
7 thirty days of referral. The commission shall evaluate whether the defendant
8 can be discharged from inpatient treatment or jail, conditionally or
9 unconditionally, without posing a risk of danger to others or to himself. Within
10 thirty days of receiving the commission's evaluation, the trial court shall hold
11 a contradictory hearing to determine whether the defendant poses a substantial
12 risk of danger to others or to himself if unconditionally discharged. If after the
13 hearing and upon filing written findings of fact and conclusions of law, the court
14 finds by a preponderance of the evidence that the defendant poses a substantial
15 risk of danger to others or to himself if unconditionally discharged, the court
16 shall either continue the commitment or order the defendant released
17 conditionally as provided by Article 657.1(C). At any time subsequent to a court
18 order continuing the defendant in custody or conditionally releasing the
19 defendant, the defendant may move for a contradictory hearing to determine
20 whether there has been a change in the defendant's condition or other
21 circumstances sufficient to warrant a modification of the previous order.

22 (3) If, ~~after the hearing~~ at any time, the court determines that the
23 incompetent defendant is unlikely in the foreseeable future to be capable of standing
24 trial and is not a danger to himself or others, the court shall order the defendant
25 released or remanded to the custody of the Department of Health and Hospitals
26 which, within ten days exclusive of weekends and holidays, may institute civil
27 commitment proceedings pursuant to Title 28 of the Louisiana Revised Statutes of
28 1950, or release the defendant. The defendant shall remain in custody pending such
29 civil commitment proceedings. If the defendant is committed to a treatment facility

1 pursuant to Title 28 of the Louisiana Revised Statutes of 1950, the director of the
2 institution designated for the patient's treatment shall, in writing, notify the court and
3 the district attorney when the patient is to be discharged or conditionally discharged,
4 as long as the charges are pending. If not dismissed without prejudice at an earlier
5 trial, charges against an unrestorable incompetent defendant shall be dismissed on
6 the date upon which his sentence would have expired had he been convicted and
7 received the maximum sentence for the crime charged, or on the date five years from
8 the date of his arrest for such charges, whichever is sooner, except for the following
9 charges:

10 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Thomas L. Tyler.

DIGEST

Heitmeier (SB 449)

Present law requires resumption of a criminal prosecution unless a court determines, by preponderance of evidence, that the defendant lacks the mental capacity to proceed. Provides for various dispositions of the case if it is determined that a defendant lacks mental capacity to proceed to trial.

Present law provides that if a court determines that a defendant's mental capacity is likely to be restored within 90 days by outpatient care or treatment in an institution while in custody, and if he is not charged with a felony or misdemeanor classified as an offense against the person and the court considers it unlikely that he will commit a crime of violence, then the court may order outpatient care and treatment at any institution for mental health treatment. Proposed law retains these provisions but clarifies that outpatient care and treatment be at a treatment facility as defined in the mental health law.

Present law provides that one charged with a felony or misdemeanor classified as an offense against the person and is considered to be likely to commit crimes of violence, then the court may order immediate jail-based treatment by DHH not to exceed 90 days if it determines that his mental capacity is likely to be restored within 90 days as a result of treatment. Provides that if mental capacity cannot be restored within 90 days and inpatient treatment is recommended, then the court is required to commit the defendant to the Feliciana Forensic Facility. Proposed law retains these provisions except that the person must be charged with a crime of violence as defined by law for present law to apply.

Present law provides that if one is committed to the Feliciana Forensic Facility and held in a parish jail for 180 days after a court determination of lack of mental capacity, then requires the court to order a status conference with the defense and DA present, and for good cause shown on motion of the defendant or the DA or on motion of the court, the court is to order a contradictory hearing to determine if the defendant's condition or circumstances are sufficient to warrant a modification of its previous order.

Proposed law provides that a defendant committed to the Feliciana Forensic Facility and held in a parish jail for 180 days after a court determination that he lacks the mental capacity

to proceed, and if his mental capacity has not been restored, then requires the court to conduct a contradictory hearing to determine whether the defendant is, or will in the foreseeable future be, capable of standing trial in accordance with proposed law.

Present law provides that if a defendant is committed to the Feliciana Forensic Facility and held in a parish jail for 180 days after the initial status conference on his mental capacity, then requires the court to order a contradictory hearing to determine whether to release the defendant or to order appropriate authorities to institute civil commitment proceedings. Requires that the defendant remain in custody pending the civil commitment proceedings. Provides that if civilly committed to a treatment facility, then requires director of the institution designated for treatment to notify, in writing, the court and DA when the patient is to be discharged or conditionally discharged, as long as the charges are pending. Proposed law removes this provision.

Proposed law provides that a defendant charged with a crime of violence or if he has a history of arrests for crimes of violence and a court determines that he is, or will in the foreseeable future be, incapable of standing trial, then the court is to additionally determine whether the defendant poses a danger to others or to himself. Provides that a defendant not charged with a crime of violence and who has no history of arrests for crimes of violence, then he shall be deemed not to pose a danger to others or to himself.

Proposed law provides that if the court determines, after a contradictory hearing, that a defendant is and will in the foreseeable future be incapable of standing trial and if he has been charged with a crime of violence or has a history of arrests for crimes of violence and he is a danger to others or to himself, then requires that he be referred to a special risk assessment in the trial court prior to release from inpatient treatment or jail.

Proposed law requires that the special risk assessment be conducted by a sanity commission within 30 days of his referral. Requires that the commission evaluate whether the defendant can be discharged from inpatient treatment or jail, conditionally or unconditionally, without posing a risk of danger to others or to himself. Requires the trial court, within 30 days of receiving the commission's evaluation, to hold a contradictory hearing to determine if the defendant poses a substantial risk of danger to others or to himself if unconditionally discharged.

Proposed law provides that if after the hearing and upon filing written findings of fact and conclusions of law, the court finds by a preponderance of the evidence that the defendant poses a substantial risk of danger to others or to himself if unconditionally discharged, the court is to either continue the commitment or order the defendant released conditionally. Provides that any time after the court order continuing the defendant in custody or conditionally releasing the defendant, the defendant may move for a contradictory hearing to determine whether there has been a change in his condition or other circumstances sufficient to warrant a modification of the previous order.

Effective August 15, 2010.

(Amends C.Cr.P. Art. 648(A), (B)(1), (B)(3)(intro para); adds C.Cr.P. Art. 648(B)(2))