

Forensic Mental Health Commitments

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Introduction

Each year a number of people are charged with crimes and, due to their mental condition, are found to be unable to assist in their defense and therefore are not competent to stand trial. The law has extensive provisions for determining whether individuals meet the standards for this type of incompetence finding and for providing treatment to try to return them to a competent state. In addition, a small number of individuals each year successfully plead “insanity” as a defense to a crime and are committed for the purpose of receiving mental health treatment. Each of these two provisions has extensive statutory and case law, the discussion of which is beyond the scope of this chapter. Thus, the following is a very brief overview of these two types of forensic commitments.

Incompetent to Stand Trial

Standard
Sec. 971.13(1), Wis. Stats.
Sec. 971.14(1)(c), Wis. Stats.

The standard used by the court to determine incompetence to stand trial is that the person “lacks substantial mental capacity to understand the proceedings or assist in his or her own defense.” The issue can be raised at any time during the criminal proceedings by either side or the judge. However, there must at least be a finding of probable cause that the individual committed the crime that s/he is charged with.

Examination
Sec. 971.14(2), Wis. Stats.

Once the competence issue is raised the court must arrange for a competency exam. This can be conducted on an outpatient basis and the Department of Health and Family Services (**DHFS**) has contracts with county Departments of Human Services (also called Department of Community Programs or Unified Services) in various parts of the state to provide such exams. Alternatively, the individual may be committed to an inpatient facility for up to 15 days, with one 15 day extension, for the examination. During this examination commitment the individual may receive treatment on a voluntary basis.

Court proceedings and determinations
Sec. 971.14(6), Wis. Stats.
Sec. 971.14(4) and (5), Wis. Stats.

After the examination is completed, a report is submitted to the court and a hearing is held. At this hearing the court may find that:

1. The individual is competent and the criminal proceedings should go forward;
2. The individual is incompetent and that s/he is not likely to regain competency in 12 months or the length of the maximum sentence for the most serious crime with which s/he is charged, whichever is less; or

3. The individual is incompetent but s/he is likely to regain competence in the above time period.

In the case of the second finding, the criminal charges are suspended and the individual is released unless s/he is believed to meet the standards for civil commitment or protective placement. If this is the case, s/he can be detained and proceedings under Chapter 51 or Chapter 55 are started.

If the third finding is made, the criminal proceedings are suspended and s/he is committed for treatment to the DHFS for up to 12 months or the period of the maximum sentence for the most serious crime s/he is charged with, whichever is less.

Commitment for treatment

If an individual is committed to DHFS for treatment, on a periodic basis treatment staff must report to the court as to whether the individual has regained competency or is continuing to make progress. Once the individual is determined by the court to have regained competency s/he is released from the commitment and the criminal proceedings are resumed.

Medication orders

Sec. 51.61(1)(g), Wis. Stats.
Sec. 971.14(5)(am), Wis. Stats.

Like patients under civil commitment, persons committed as incompetent to stand trial have a right to refuse medication and treatment unless an emergency exists or they have been found by a court to be incompetent to make the decision to refuse or accept treatment. The court may make this determination at the outset, during the hearing on the issue of competency to stand trial. If the determination regarding competency to refuse medication is not made at this hearing, the treatment facility can file a motion with the court requesting it to hold a hearing on the issue. The court must hold a hearing within ten days unless the individual, his or her attorney, or the district attorney request (and are granted) a postponement.

Conversion to Chapter 51 or 55

Sec. 971.14(6), Wis. Stats.

If at the end of the period of commitment or at any time during the commitment it is determined that the person is unlikely to regain competency, the court may release the person from the commitment and proceedings under Chapter 51 or 55 may be instituted. In this situation the person may be taken immediately into custody by a law enforcement officer and delivered to a facility appropriate for Chapter 51 emergency detention or Chapter 55 emergency protective placement. A statement of emergency detention or emergency protective placement is drafted by the district attorney or corporation counsel and given to the facility and court. The person's alleged crime may be used to meet the dangerousness requirement for commitment or protective placement; new evidence of dangerousness is not needed.

(For more information see Civil Commitment & Voluntary Treatment chapter, pg. 351 and Chapter 55: Protective Services & Placement chapter, pg. 342.)

Insanity Defense

Relationship to incompetency to stand trial

An individual who at the time of committing a crime lacked the mental capacity to appreciate the wrongfulness of his or her actions or to conform his or her conduct to the requirements of the law may plead not guilty by reason of mental disease or defect, which is commonly known as the “insanity defense.” Note that this relates to the mental status at the time of committing the crime and not at the time of the trial. In contrast, the incompetency to stand trial proceeding relates to the person’s mental status at trial and not at the time of committing the crime. Thus, these are two entirely separate proceedings which utilize different standards and procedures.

Proceedings

Sec. 971.16, Wis. Stats.

If one does decide to plead “insanity,” the court appoints one to three examiners, who examine the individual and report their findings to the court. The individual and the prosecution may also request to have their own examiners.

Standard

Sec. 971.165, Wis. Stats.

Wisconsin uses a bifurcated trial which means that there first is a trial where the prosecution must prove beyond a reasonable doubt that the person committed the crime. If this is proven, then there is a second stage of the trial where the individual must prove that at the time of the crime, due to mental disease or defect, s/he “lacked substantial capacity to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of the law.”

Commitment for treatment and conditional release

Sec. 971.17, Wis. Stats.

If s/he is successful, the individual is automatically committed to DHFS for treatment. Persons may be committed for a specific maximum period of time up to the maximum sentence for the crime. Upon commitment the court will hold a hearing to determine whether the person should be sent to an institution or placed into the community on conditional release. At this hearing the court can also determine whether the person is competent to refuse medication or treatment. If the person is committed to an institution, s/he can petition the court every six months to determine whether conditional release is appropriate. The person is eligible for conditional release unless the court finds s/he poses a significant risk of bodily harm to self or others or of serious property damage.

Competence to refuse treatment

Sec. 973.17 (3)(c), Wis. Stats.

Patients who have been committed as “not guilty by reason of mental disease or defect” have the right to refuse medications.¹ This right can be overcome by a showing that the patient is not competent to refuse treatment and is dangerous at the time treatment is sought, within the setting of the institution. The state must establish that its interest in maintaining the order and safety of its institutions requires treating the individual with psychiatric medications. This showing cannot rest solely on the basis of the fact that the person committed a serious crime in the past. Furthermore, the state must establish that the administration of psychiatric medications is in the patient’s medical interest.

These showings must be made in a hearing. The patient's rights in the hearing include notice of the hearing, the opportunity to be heard, a lay advocate or lawyer, the opportunity to call witnesses of one's own, cross examination of the state's witnesses and the right to appeal the medication decision. The statute requires that this hearing be conducted by a court.

Conditional release

Sec. 971.17(3) & (4), Wis. Stats.

If the person is found appropriate for conditional release, then DHFS and the appropriate county Department of Human Services must develop a plan for community treatment and follow-up care. DHFS may contract with the county department or another public or private agency to provide the necessary follow-up care. DHFS is financially responsible for providing services to persons on conditional release. Persons under conditional release will be supervised by probation and parole agents. The law also defines the procedures to be followed if the individual violates a condition of his or her release and the procedures for termination of the commitment.

Note: The above procedures concerning treatment and conditional release apply to persons committed after 1/1/91. Persons committed under the insanity defense prior to this date are governed by different procedures, particularly as related to obtaining a conditional release.

1. Enis v. Department of Health and Social Services, 962 F.Supp 1192 (W.D. WI 1996)