

Regular Session, 2010

SENATE BILL NO. 350

BY SENATOR GUILLORY

CRIMINAL PROCEDURE. Provides for court jurisdiction once a defendant has been determined incompetent. (8/15/10)

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AN ACT

To enact Code of Criminal Procedure Art. 648(D), relative to mental incapacity; to provide for certain procedures relative to an incompetent defendant not capable of standing trial; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Art. 648 is hereby enacted to read as follows:

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

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D. When the superintendent of the institution is of the opinion that a person committed pursuant to this Section can be discharged or can be released on probation, without danger to others or to himself, he shall recommend the discharge or release of the person in a report to a review panel comprised of the person's treating physician, the clinical director of the facility to which the person is committed, and a physician or a psychologist who served on the sanity commission which recommended commitment of the person. If any member of the panel is unable to serve, a physician or psychologist engaged in the practice of clinical or counseling psychology with at least three years experience in the

1 field of mental health shall be appointed by the remaining members. The panel
2 shall review all reports received promptly. After review, the panel shall make
3 a recommendation to the court by which the person was committed as to the
4 person's mental condition and whether he can be discharged conditionally, or
5 unconditionally, or placed on probation without being a danger to others or
6 himself. If the review panel recommends to the court that the person be
7 discharged, conditionally or unconditionally, or placed on probation, the court
8 shall conduct a contradictory hearing following notice to the counsel for the
9 committed person and the district attorney. A person committed pursuant to
10 this Section may make application to the review panel for discharge or for
11 release on probation. Such application by a committed person may not be filed
12 until the committed person has been confined for a period of at least six months
13 after the original commitment. If the recommendation of the review panel or
14 the court is adverse, the applicant shall not be permitted to file another
15 application until one year has elapsed from the date of determination. The
16 superintendent of the institution shall, under Subsection A and B of this Section,
17 transmit a copy of this report and recommendation to the person committed,
18 his attorney, and to the district attorney of the parish from which the person
19 was committed. Upon receipt of the superintendent's report filed in conformity
20 with this Subsection, the review panel may examine the committed person and
21 report, to the court promptly, whether he can be safely discharged,
22 conditionally or unconditionally, or be safely released on probation, without
23 danger to others or to himself. The committed person or the district attorney
24 may also retain a physician or psychologist engaged in the practice of clinical
25 or counseling psychology with at least three years experience in the field of
26 mental health to examine the committed person for the same purpose. The
27 physician's report shall be filed with the court. Upon receipt by the
28 superintendent of the facility to which the person has been committed of the
29 recommendation of the hospital-based treatment team that the person is

1 **appropriate for probated outpatient status as set forth in this Section, the**
2 **superintendent shall immediately forward such recommendation to the**
3 **administrator of the conditional release program, together with the proposed**
4 **aftercare plan. The administrator shall submit to the review panel a**
5 **recommended plan, if appropriate, for outpatient supervision and monitoring.**
6 **The plan shall set forth any additional terms and conditions to be followed**
7 **during outpatient status. After considering the report or reports filed pursuant**
8 **to this Subsection, the court may continue the commitment or hold a**
9 **contradictory hearing to determine whether the committed person is no longer**
10 **a mentally ill person as defined by R.S.28:2(14) and can be discharged, or**
11 **released, without being dangerous to others as defined by R.S. 28:2(3) or**
12 **dangerous to self as defined by R.S. 28:2(4). At the hearing the burden shall be**
13 **upon the state to seek continuance of the confinement by proving by clear and**
14 **convincing evidence that the committed person is currently both mentally ill**
15 **and dangerous. After the hearing, and upon filing written findings of fact and**
16 **conclusions of law, the court may order the committed person discharged,**
17 **released on probation, subject to specified conditions for a fixed or an**
18 **indeterminate period, or recommitted to the state mental institution. A copy of**
19 **the judgment and order containing the written findings of fact and conclusions**
20 **or law shall be forwarded to the administrator of the forensic facility. Notice**
21 **to the counsel for the committed person and the district attorney for the**
22 **contradictory hearing shall be given at least thirty days prior to the hearing.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michael Bell.

DIGEST

Proposed law provides for the superintendent of the institution to recommend the discharge or release of the person in a report to a review panel comprised of the person's treating physician, the clinical director of the facility to which the person is committed, and a physician or a psychologist who served on the sanity commission which recommended commitment of the person.

Proposed law provides for the review panel to make a recommendation to the court by which the person was committed as to the person's mental condition and whether he can be

discharged conditionally, or unconditionally, or placed on probation without being a danger to others or himself.

Proposed law provides for the court to conduct a contradictory hearing if the panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation.

Proposed law provides that the burden of proof is on the state to prove that the committed person is in need of continued confinement and the proof has to be by clear and convincing evidence that the person is currently both mentally ill and dangerous.

Proposed law provides for the court to file written findings of fact and conclusions of law if it orders the committed person discharged, released on probation, subject to specified conditions for a fixed or an indeterminate period, or recommitted to the state mental institution.

Effective August 15, 2010.

(Adds C.Cr.P. Art. 648(D))