

Regular Session, 2010

HOUSE BILL NO. 462

BY REPRESENTATIVE MILLS

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 648(A)(2), relative to procedures  
3 after a determination of mental capacity or incapacity; to provide for treatment after  
4 a determination of mental capacity or incapacity; to provide with respect to inpatient  
5 and outpatient treatment for persons charged with certain crimes; and to provide for  
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 648(A)(2) is hereby amended and  
9 reenacted 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 \* \* \*

17 (2)(a) ~~If Except as otherwise provided for in Subsubparagraph (b) of this~~  
18 ~~Subparagraph, if the person is charged with a felony, or a misdemeanor classified as~~  
19 ~~an offense against the person, or with a misdemeanor violation of R.S. 14:35.3, and~~  
20 ~~is~~ considered by the court to be likely to commit crimes of violence, and the court  
21 determines that his mental capacity is likely to be restored within ninety days as a  
22 result of treatment, the court may order immediate jail-based treatment by the  
23 Department of Health and Hospitals not to exceed ninety days; ~~otherwise,~~  
24 ~~Otherwise,~~ if his capacity cannot be restored within ninety days and inpatient

1 treatment is recommended, the court shall commit the defendant to the Feliciana  
 2 Forensic Facility.

3 (b) If a person is charged with a felony violation of the Uniform Controlled  
 4 Dangerous Substances Law, except for violations punishable under the provisions  
 5 of R.S. 40:966(D) and (F) and R.S. 40:967(F)(1)(b) and (c), (2), and (3), and the  
 6 court determines that his mental capacity cannot be restored within ninety days, the  
 7 court shall release the person for outpatient competency restoration or other  
 8 appropriate treatment.

9 (c) If a person is charged with a misdemeanor classified as an offense against  
 10 a person, except for a misdemeanor violation of R.S. 14:35.3, and the court  
 11 determines that his mental capacity cannot be restored within ninety days, the court  
 12 shall release the person for outpatient competency restoration or other appropriate  
 13 treatment.

14 ~~(b)~~ (d) If a defendant committed to the Feliciana Forensic Facility is held in  
 15 a parish jail for one hundred eighty days after the court's determination that he lacks  
 16 the mental capacity to proceed, the court shall order a status conference to be held  
 17 with the defense and the district attorney present, and for good cause shown and on  
 18 motion of the defendant or the district attorney or on the court's own motion, the  
 19 court shall order a contradictory hearing to determine whether there has been a  
 20 change in the defendant's condition or other circumstances sufficient to warrant a  
 21 modification of the previous order.

22 ~~(c)~~ (e) If a defendant committed to the Feliciana Forensic Facility is held in  
 23 a parish jail for one hundred eighty days after the initial status conference provided  
 24 in Item ~~(b)~~ (d) of this Subparagraph, the court shall order a contradictory hearing to  
 25 determine whether to release the defendant or to order the appropriate authorities to  
 26 institute civil commitment proceedings pursuant to R.S. 28:54. The defendant shall  
 27 remain in custody pending such civil commitment proceedings. If the defendant is  
 28 civilly committed to a treatment facility pursuant to Title 28 of the Louisiana  
 29 Revised Statutes of 1950, the director of the institution designated for the patient's

1 treatment shall, in writing, notify the court and the district attorney when the patient  
2 is to be discharged or conditionally discharged, as long as the charges are pending.

3 \* \* \*

4 Section 2. This Act shall become effective upon signature by the governor or, if not  
5 signed by the governor, upon expiration of the time for bills to become law without signature  
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
8 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_