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AN ACT

To amend and reenact Code of Criminal Procedure Article 648(A)(introductory paragraph), (B)(1) and (B)(3)(introductory paragraph), to enact Code of Criminal Procedure Article 648(A)(2)(c), and to repeal Code of Criminal Procedure Article 648(B)(2), relative to mental capacity to proceed to trial in criminal cases; to provide with respect to the burden of proof regarding mental capacity determinations; to provide for procedure after determination of mental capacity; to require that certain criteria be satisfied; to repeal provisions authorizing the release of a defendant on probation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

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

* * *

(2) * * *

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

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

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

18 * * *

19 (3) If, after the hearing, the court determines ~~the mentally defective~~
 20 ~~defendant incapable of standing trial, is a danger to himself or others, and~~ **that the**
 21 **incompetent defendant** is unlikely in the foreseeable future to be capable of
 22 standing trial, the court shall order ~~commitment to a designated and medically~~
 23 ~~suitable treatment facility~~ **the defendant released or remanded to the custody of**
 24 **the Department of Health and Hospitals which, within ten days exclusive of**
 25 **weekends and holidays, may institute civil commitment proceedings pursuant**
 26 **to Title 28 of the Louisiana Revised Statutes of 1950, or release the defendant.**
 27 **The defendant shall remain in custody pending such civil commitment**
 28 **proceedings.** ~~Such a judgment shall constitute an order of civil commitment. **If the**~~
 29 ~~**defendant is committed to a treatment facility pursuant to Title 28 of the**~~
 30 ~~**Louisiana Revised Statutes of 1950,**~~ However, the director of the institution

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

8 * * *

9 Section 2. Code of Criminal Procedure Article 648(B)(2) is hereby repealed.

10 Section 3. This Act shall become effective upon signature by the governor or, if not
 11 signed by the governor, upon expiration of the time for bills to become law without signature
 12 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 13 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 14 effective on the day following such approval.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____