

**February 13, 2020**

**Senate Judiciary  
Neutral Testimony  
Senate Bill 333 – Competency to Stand Trial**

**Hon. Amy Harth  
Chief Judge, 6<sup>th</sup> Judicial District**

Good afternoon, Chairman Wilborn, and members of the committee. Thank you for the opportunity to appear today to provide neutral testimony on SB 333. My name is Amy Harth and I am the Chief Judge of the 6<sup>th</sup> Judicial District. I sit in Paola.

SB 333 establishes a new procedure for handling situations in which a defendant has been deemed incompetent to stand trial. The procedure would apply when a judge has determined (1) the defendant is unlikely to attain competence in the foreseeable future, and (2) the incompetence is solely due to a condition that makes the defendant ineligible for involuntary commitment.

While there are many components to the new procedure proposed in SB 333 I am here to focus on one: conditional release of the defendant under New Section 6. SB 333 requires that a defendant who is placed on conditional release be supervised by the district court probation and parole services. The court is permitted to set conditions on the person's release "to ensure the defendant's well-being and the public's safety."

Defendants who would be placed on conditional release under SB 333 have serious, intractable conditions that have caused them to be deemed incompetent to stand trial. Some will be subject to a comprehensive reentry program that includes vocational rehabilitation and ongoing counseling. Court services officers do not currently have the necessary expertise or time to oversee what may be complicated release conditions for these defendants. Because this is a new process it is difficult to anticipate the full spectrum of release requirements that may be imposed, but persons who suffer from the relevant conditions may be best served through supervision by an individual with specialized mental health training.

Please also note that while the number of people placed on conditional release under the new procedure in SB 333 is expected to be very small, the Judicial Branch does not have adequate resources to staff new, time-consuming cases. The supervisory role should be assigned to persons with appropriate training and resources given that conditional release is an important step in completing the rehabilitation process.

On behalf of the Judicial Branch, I request that you adopt an amendment to SB 333 that would modify the supervision provisions in New Section 6. The amendment would grant the court discretion to assign an appropriate person to supervise the defendant while ensuring that a court services officer is not assigned to that task. A copy of the proposed amendment is attached to my testimony. The Judicial Council is aware of this proposed amendment and does not oppose it.

Thank you for hearing our concerns and considering this amendment. I am happy to stand for any questions you may have.

1 designee, the district court shall order that a hearing be held on the  
 2 proposed change in placement, conditional release or discharge. The court  
 3 shall give notice of the hearing to the facility where the defendant is  
 4 placed, to the district or county attorney and to the defendant or the  
 5 defendant's attorney. The county or district attorney shall provide victim  
 6 notification regarding the hearing. The court may order the defendant to  
 7 undergo an evaluation by a person designated by the court. If the court  
 8 orders an evaluation, copies of the report shall be given to the district or  
 9 county attorney and to the defendant or the defendant's attorney at least  
 10 seven days prior to the hearing.

11 (d) At the hearing, the court shall receive all relevant evidence,  
 12 including the written findings and recommendations of the secretary or  
 13 secretary's designee, and shall determine whether the defendant's  
 14 placement shall be changed to a more or less restrictive setting or whether  
 15 the defendant shall be conditionally released pursuant to section 6, and  
 16 amendments thereto, or discharged pursuant to section 7, and amendments  
 17 thereto. The defendant shall have the right to present evidence at the  
 18 hearing and to cross-examine any witnesses called by the district or county  
 19 attorney. The county or district attorney shall notify any victims of the  
 20 outcome of the hearing.

21 New Sec. 6. (a) If the court orders conditional release, the court may  
 22 order the defendant be placed in an appropriate facility or community  
 23 services program. ~~A defendant on conditional release shall be supervised~~  
 24 ~~by the district court probation and parole services.~~ The court may set  
 25 conditions to the release to ensure the defendant's well-being and the  
 26 public's safety. ←

27 (b) In order to ensure the safety and welfare of a defendant who is to  
 28 be conditionally released and the citizenry of the state, the court may allow  
 29 the defendant to remain in custody at a facility under the supervision of the  
 30 secretary for aging and disability services for a period of time not to  
 31 exceed 45 days in order to permit sufficient time for the secretary or the  
 32 secretary's designee to prepare recommendations to the court for a suitable  
 33 reentry program for the defendant and allow adequate time for the county  
 34 or district attorney to provide victim notification. The reentry program  
 35 shall be specifically designed to facilitate the return of the defendant to the  
 36 community as a functioning, self-supporting citizen, and may include  
 37 appropriate supportive provisions for assistance in establishing residency,  
 38 securing gainful employment, undergoing needed vocational rehabilitation,  
 39 receiving marital and family counseling, and any other outpatient services  
 40 that appear beneficial.

41 (c) At any time during the conditional release period, a conditionally  
 42 released defendant, through the defendant's attorney, or the county or  
 43 district attorney may file a motion for modification of the conditions of

*A defendant on conditional release shall be supervised by an individual appointed by the court who monitors the defendant's compliance with conditions imposed on the defendant's release, if any, and reports to the court as the court directs. The individual appointed by the court shall not be a court services officer.*