



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

HB 2400 – Expanding Access to Justice in Civil Commitment

Background:

In our criminal justice system, an error by a defense attorney in filing a notice of appeal can be overcome under certain circumstances. If a defendant can show that the failure to file a timely notice of appeal is not attributable to them personally, the court has leave to extend the window to permit a filing of appeal. This allows a defendant to preserve their ability to access the remedy of appellate review even when their attorney misses a deadline. This can apply, for example, when a defense attorney accidentally files a motion for the wrong defendant, files the wrong motion, or simply fails to respond in a timely matter to the deadline for any reason.

This remedy does not exist for those who are facing a civil commitment action. This presents a particular injustice as individuals suffering from profound mental disorder are among the most vulnerable populations and may be least able to assert their rights in a timely manner without assistance. As the dismissal order which called this issue to the attention of the Department of Justice aptly explained, “The absence of authority in a delayed appeal in a civil commitment case is especially anomalous because, in most instances, the defendant is indigent, confined in a facility, and affected by mental illness or mental defect; therefore, at the mercy of court-appointed [counsel] to timely file notice of appeal. Arguably, the defendant in a civil commitment case is at even greater disadvantage than the defendant in a criminal case, the petitioner in a post-conviction relief case, and a party to a juvenile court proceeding to protect his or her interests, including timely filing notice of appeal. Yet, this court has no authority to grant relief where, as here, the failure to timely file notice of appeal is not attributable in any way to defendant. However, until the legislature acts to confer authority on this court to grant a delayed appeal in a civil commitment case, the court has no choice but to dismiss cases such as this one.”

Concept:

This bill brings civil commitment cases into alignment with other analogous case types in allowing an appeal to be filed when the allegedly mentally ill person misses a deadline through no fault of their own and can make a colorable claim of error. This will provide an important remedy to a vulnerable population who should be entitled to full appellate consideration of any legal issue.

Contact: Aaron Knott, Legislative Director, aaron.d.knott@doj.state.or.us, (503) 798-0987