

18 U.S.C. § 4246 Commitments in the Eastern District of North Carolina: 2000 to the Present

Background

Since 1986, the Office of the Federal Public Defender has represented individuals facing civil commitment under 18 U.S.C. § 4246 in the Eastern District of North Carolina. Our lawyers have felt that the number of § 4246 commitment cases handled by our office has increased substantially in recent years but were uncertain how our current case load compared to historic averages. It also seemed that the mix of § 4246 cases may have changed and that we were seeing more commitments involving defendants found not competent to stand trial and fewer involving defendants at the end of their prison sentences.

In order to determine whether these intuitive impressions were correct, we reviewed all § 4246 commitments handled by this office from 2000 to the present day.

Findings

As the chart below shows, the findings were interesting. During the last nine, almost ten years, our office has handled 104 cases; 88 involved defendants not competent; 16 involved defendants at the end of their sentence. Our review confirms our impression that the number of § 4246 cases has grown rapidly in recent years. In 2005 the number of cases ballooned to a high of 16; the caseload has remained relatively steady since that time at a level 2 or 3 times higher than previously seen. Most recently, the number of cases increased to 18 commitments in 2009. With 4 more § 4246 hearings set for December, the total number of cases for this year may be 22.

We see no obvious reason for this increase. We can speculate that the government has become more active in seeking commitment or that the population of FMC-Butner has changed and now contains more candidates for commitment than in past years.

Whatever the reasons, the implications for practitioners are clear. As the data shows, the great majority of commitments involve individuals found not competent to stand trial. While in some cases, a lawyer might desire, and indeed press for, a determination of incompetency as a means of avoiding trial and conviction, counsel must be aware that such a strategy carries its own risks. For some defendants, a finding of incompetency may lead to civil commitment of indefinite, perhaps lifetime, duration. Especially in cases where the criminal penalty is short, it may be in the client's best interest to be found competent.

Obviously, in many, if not most cases, the competence of the defendant is beyond the lawyer's purview. However, in close cases, the lawyer must take into account, and explain to the client if he can, the increasingly likely possibility of civil commitment if the client is unable to proceed to trial.

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YEAR	# of Commitments	§ 4241(d)	Post-Conviction
2000	10	10	0
2001	5	4	1
2002	7	4	3
2003	7	3	4
2004	4	4	0
2005	16	13	3
2006	11	11	0
2007	14	11	3
2008	12	12	0
2009	18	16	2
Total	104	88	16
Total %	100%	84.62%	15.38%