Involuntary Civil Commitment Related to Criminal Offenses

Updated December 2010

This compilation contains legislation, session laws, and codified statues. All statutes, laws, and bills listed in this compilation have been signed by the pertinent governor and enacted into law. This report was compiled using State Net and Lexis Search Services. This compilation is up-to-date as of the month it was created. However, please note we recommend checking both case law and current legislation for any possible modifications to the statutes listed below.

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ALA. CODE § 12-11-10 (2010). INVOLUNTARY COMMITMENT PROCEEDINGS.

Except as provided in Chapter 15 of this title, involuntary commitment proceedings, primarily cognizable before the probate courts, may be transferred to the circuit court for adjudication on motion of a party to the proceeding in probate court, according to rules governing transfer of these proceedings. Probate court offices shall maintain records of all commitment proceedings.

ALA. CODE § 15-16-41 (2010). INVOLUNTARY COMMITMENT; PROBABLE CAUSE HEARING.

If a defendant in a criminal case is found not guilty by reason of insanity, the court shall forthwith determine whether the defendant should be held for a hearing on the issue of his involuntary commitment to the Alabama State Department of Mental Health. If the court determines that there is probable cause to believe that the defendant is mentally ill and as a consequence of such mental illness poses a real and present threat of substantial harm to himself or to others, the court shall order the defendant into the custody of the sheriff until a hearing can be held to determine whether the defendant shall be involuntarily committed. If the court does not make such a determination, then the defendant shall be forthwith released from custody.

ALA. CODE § 15-16-42 (2010). INVOLUNTARY COMMITMENT; FINAL HEARING.

Whenever the court finds probable cause pursuant to Section 15-16-41, the court shall hold a final hearing within 30 days to determine whether the defendant shall be involuntarily committed.

ALA. CODE § 15-16-43 (2010). INVOLUNTARY COMMITMENT; FINDINGS OF COURT.

If, at the final hearing, the court finds that the defendant is mentally ill and as a consequence of such mental illness poses a real and present threat of substantial harm to himself or to others, the court shall order the defendant committed to the custody of the Commissioner of the Alabama State Department of Mental Health or to such other public facility as the court may order.

If the court does not make such a finding, then the defendant shall be released from custody forthwith.

ALA. CODE § 15-16-62 (2010). INVOLUNTARY COMMITMENT; AUTHORITY TO RELEASE.

When a defendant in a criminal case has been committed to the custody of the commissioner of the department or another facility as provided by Section 15-16-43, such

department or facility may not release such defendant from custody unless authorized to do so by court order as provided in this article.

ALA. CODE § 15-16-63 (2010). NOTICE OF RELEASE ELIGIBILITY.

Whenever the department or other facility with custody of a defendant is of the opinion that the defendant is no longer mentally ill, or that the defendant no longer poses a real and present threat of substantial harm to himself or to others by being at large, or no longer poses a real and present threat of substantial harm to himself or to others by being at large if certain conditions are imposed upon his release, the department or other facility shall give notice in writing to the court of that opinion. The department or other facility shall contemporaneously send copies of that notice to: the district attorney; the regional or community mental health facility which is or may be involved if the defendant is released; and the defendant, or his guardian, or his attorney. The department may include in such notice a conditional release plan if the department deems such a plan appropriate.

ALA. CODE § 15-16-64 (2010). HEARING.

The court shall set a hearing to be held within 30 days of its receipt of the notice described in Section 15-16-63, unless an order of release either with or without conditions is stipulated by the department and all the parties to whom notice is required in Section 15-16-63. The court shall give notice of the date of that hearing to the department and to all the parties to whom notice is required in Section 15-16-63.

ALA. CODE § 15-16-65 (2010). APPOINTMENT OF COUNSEL.

Where the defendant does not have an attorney, the court shall appoint him one for purposes of the hearing. Payment of appointed counsel for indigent defendants shall be at the same rates and with the same limitations as would apply if the hearing were a criminal prosecution.

ALA. CODE § 15-16-66 (2010). SPEEDY HEARING REQUIREMENT.

If a hearing is not held within 60 days of receipt by the court of the notice described in Section 15-16-63, the defendant shall be released forthwith unless for good cause shown the hearing is continued for a reasonable time.

ALA. CODE § 15-16-67 (2010). ORDER OF RELEASE.

If, after conducting the hearing, the court determines that the defendant is no longer mentally ill or no longer poses a real and present threat of substantial harm to himself or to others by being at large, the court shall order his release. If the court determines that the defendant is still mentally ill but no longer poses a real and present threat of substantial harm to himself or to others by being at large if his release is accompanied by certain conditions, the court shall order his release subject to those conditions necessary to prevent the defendant from posing a real and present threat of substantial harm to himself or to others.

ALA. CODE § 15-16-70 (2010). MODIFICATION OF CONDITIONS.

If at any time it appears that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court may, after a hearing, modify the release conditions or order the defendant returned to the Department of Mental Health for further treatment. All such hearings shall be preceded by notice to the department and to the parties required to be notified in Section 15-16-63. All such modifications and orders shall be guided by the standard of whether such modifications and orders are necessary to ensure that the defendant does not pose a real and present threat of substantial harm to himself or to others.

ALA. CODE § 22-52-31 (2010). CRIMINALS; INCOMPETENT TO STAND TRIAL.

(a) Upon certification by the superintendent of Bryce or Searcy Hospital or any other facility so designated by the commissioner that any person accused of a crime and committed to the custody of the department in one of its facilities has been determined by appropriate members of the medical staffs of said facilities as designated by the superintendent to be unable to attain the capacity to proceed to trial in the foreseeable future, the commissioner or his designee is hereby authorized to petition the judges of probate of Tuscaloosa or Mobile Counties or any judge of probate where such facility exists for an order of civil commitment to the Department of Mental Health. All of the subsequent provisions of this article shall apply where the commissioner seeks such order.

(b) Nothing in this section shall be construed to require any prosecuting attorney of the state, county or municipality to dismiss pending criminal charges against any defendant who has been voluntarily or involuntarily civilly committed because a determination was made that he did not have the capacity to proceed or continue to trial in the foreseeable future.

(c) Civil commitment to the custody of the Department of Mental Health shall have the effect of tolling the applicable statute of limitation of the crime for which the defendant is charged; and, once the defendant is released from said custody, the prosecuting attorney shall forthwith reinstate the charges and proceed with the prosecution of the case.

ALA. CODE § 22-52-32 (2010). CRIMINALS; COMPETENCE TO STAND TRIAL RESTORED.

Where the superintendent of Bryce or Searcy Hospital or any other facility so designated by the commissioner, after evaluation by appropriate members of the medical staffs of said facilities as so designated by the superintendent, has determined that any person accused of a crime and committed to the custody of the department in one of its facilities is competent to stand trial, or where the superintendent has been notified in writing by the committing court that charges have been nolle prossed or otherwise dismissed against any person currently confined to the custody of such facility, it shall be the duty of the superintendent to immediately notify in writing the court from which the person was committed. The court shall forthwith order the sheriff to remove the person from said

facility back to the county within 72 hours of receipt of such notice, Saturdays, Sundays and holidays excluded.

ALA. CODE § 22-52-33 (2010). NOT GUILTY BY REASON OF INSANITY.

Where any person who is currently in the custody of the department of mental health has been adjudicated "not guilty by reason of insanity" pursuant to the provisions of Sections 15-16-24, 15-16-25 [repealed], and 15-16-40 [repealed], the commissioner or his designee shall petition the judges of probate of Tuscaloosa or Mobile Counties or any judge of probate where such facility exists for an order of civil commitment to the Department of Mental Health.

ALA. CODE § 22-52-34 (2010). INVOLUNTARY CIVIL COMMITMENT.

(a) Where any person is in the custody of the Department of Mental Health pursuant to the provisions of Article 4 of this chapter, the commissioner shall direct the superintendent of Bryce or Searcy Hospital or any other facility so designated by the commissioner to reevaluate the mental condition of such person for a determination as to whether or not he or she meets the minimum standards for civil commitment as defined in Section 22-52-37. Where the sentence for which said person was committed has expired and where said person meets the minimum standards for involuntary civil commitment, the commissioner or his designee is hereby authorized to petition the judges of probate of Tuscaloosa or Mobile Counties or any judge of probate where such facility exists for an order of civil commitment to the Department of Mental Health. All of the subsequent provisions of this article shall apply where the commissioner seeks such an order.

(b) Where the evaluations report that any person does not meet the minimum standards for civil commitment, the superintendent shall immediately notify in writing the commissioner of the department of corrections of the State of Alabama, who shall forthwith remove the person within 72 hours of receipt of such notice, Saturdays, Sundays and holidays excluded, back to the custody of the Department of Corrections.

ALA. CODE § 22-52-37 (2010). DUE PROCESS -- APPEALS.

(a) Any civil commitment proceedings are to be conducted in accordance with the following constitutional due process standards:

(1) Adequate notice of the hearing and its purpose shall be given sufficiently in advance of the scheduled proceedings to permit a reasonable opportunity to prepare therefor.

(2) The person to be committed shall have the right to attend the hearing unless the court, after appropriate inquiry, determines that he or she is so mentally or physically ill as to be incapable of attendance.

(3) The subject of the hearing shall be informed of his right to counsel and to the appointment of counsel if indigent. Where the commitment of a presently confined patient is sought, a guardian ad litem who is an attorney shall be appointed.

(4) The guardian ad litem shall be entitled to a reasonable fee as compensation for services rendered for time in court and out of court, to be determined by the judge hearing the case. The decision of the judge as to the reasonableness of the fee shall be final, and the fee shall be payable, initially, by the Department of Mental Health. Such compensation shall, within 90 days, be reimbursed to the Department of Mental Health by the county from which the patient was originally committed by the circuit court acting pursuant to its powers in Sections 15-16-21, 15-16-22, 15-16-24 and 15-16-40 [repealed] or the county from which the patient was originally sentenced to the state penitentiary before transfer by the Governor pursuant to the provisions of Article 4 of this chapter.

(5) Any expenses incurred in carrying out the provisions of this section shall be reasonable as determined by the judge hearing the case, and his decision shall be final. Such expenses shall be payable, initially, by the Department of Mental Health. Such expenses shall, within 90 days, be reimbursed to the Department of Mental Health in the same manner as provided in subdivision (a)(4) of this section.

(6) Commitment hearings are to be conducted in surroundings as noncoercive as possible, and appropriate street dress made available to each subject, if not already available.

(7) No person shall be committed unless the judge finds the following minimum standards for civil commitment have been met:

a. That he is mentally ill;

b. That he poses a real and present threat of substantial harm to himself or to others;

c. That the danger has been evidenced by some factual basis to support the facility staffs' recommendation that recommitment, commitment or continued custody is necessary for the person's health and well-being. In order for a person to be committed or recommitted to the custody of the Department of Mental Health, the evidence presented must clearly and convincingly lay a factual basis for the conclusion that continued custody is necessary;

d. That there is treatment available for the illness diagnosed or that confinement of the dangerous but untreatable individual is necessary for his and the community's safety and well-being; and

e. That commitment or recommitment is the least restrictive alternative necessary and available for treatment of the person's illness.

(8) The necessity for commitment must be proved by evidence which is clear, unequivocal and convincing.

(9) At the hearing, the subject shall have the right to offer evidence, to be confronted with the witnesses against him and to cross-examine them and shall have the privilege

against self-incrimination. The rules of evidence applicable in other judicial proceedings in this state shall be followed in involuntary civil commitment proceedings.

(10) A full record of the proceedings, including findings for adequate review, shall be compiled and retained by the probate court.

(11) The guardian ad litem shall not be limited with respect to his power to waive any of his client's rights when, in his judgment and in the judgment of the judge of probate or, as the case may be, the circuit judge, after appropriate findings of fact, waiver is in the best interest of the client.

(b) An appeal from an order of the probate court either granting or denying a petition seeking to commit a person to the custody of the Department of Mental Health lies to the circuit court of Tuscaloosa or Mobile Counties for a trial de novo of the case without a jury. Notice of appeal shall be given in writing to the judge of probate within five days of the granting or denying the petition. Upon the filing of a notice of appeal, the person sought to be committed to, recommitted to or continued in the custody of the Department of Mental Health shall remain in the custody of said department pending an adjudication of the case in the circuit court. Upon the filing of a notice of appeal, the judge of probate shall certify the record to the clerk of the circuit court. The petition shall be set for a hearing by the circuit court within 30 days of the date of filing the notice of appeal. The hearing shall not be continued except upon motion in writing by the person sought to be committed for good cause. The costs of the proceedings in circuit court shall be taxed in the manner as in the probate court. All the requirements relative to hearings in the probate court shall apply to appeals heard in the circuit court.

ALASKA

ALASKA STAT. § 12.47.020 (2010). MENTAL DISEASE OR DEFECT NEGATING CULPABLE MENTAL STATE

(a) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental disease or defect that tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering a plea, or at such later time as the court may for good cause permit, files a written notice of intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state that is an element of the crime, it shall enter a verdict of not guilty by reason of insanity. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered to have established the affirmative defense of insanity under AS 12.47.010. The defendant is then subject to the provisions of AS 12.47.090.

(c) If a verdict of not guilty by reason of insanity is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.47.030 and 12.47.050. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.47.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.47.090(c), the defendant is subject to the provisions of AS 12.47.090(d) -- (i) and (k).

ALASKA STAT. § 12.47.050 (2010). DISPOSITION OF DEFENDANT FOUND GUILTY BUT MENTALLY ILL

(a) If the trier of fact finds that a defendant is guilty but mentally ill, the court shall sentence the defendant as provided by law and shall enter the verdict of guilty but mentally ill as part of the judgment.

(b) The Department of Corrections shall provide mental health treatment to a defendant found guilty but mentally ill. The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes the defendant to be dangerous to the public peace or safety. Subject to (c) and (d) of this section, the Department of Corrections shall determine the course of treatment.

(c) When treatment terminates under (b) of this section, the defendant shall be required to serve the remainder of the sentence imposed.

(d) Notwithstanding any contrary provision of law, a defendant receiving treatment under (b) of this section may not be released

(1) on furlough under AS 33.30.101 -- 33.30.131, except for treatment in a secure setting; or

(2) on parole.

(e) Not less than 30 days before the expiration of the sentence of a defendant found guilty but mentally ill, the commissioner of corrections shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant if

(1) the defendant is still receiving treatment under (b) of this section; and

(2) the commissioner has good cause to believe that the defendant is suffering from a mental illness that causes the defendant to be dangerous to the public peace or safety; in this paragraph, "mental illness" has the meaning given in AS 47.30.915.

ALASKA STAT. § 12.47.055 (2010). TREATMENT FOR OTHER DEFENDANTS NOT LIMITED

Nothing in AS 12.47.050 limits the discretion of the court to recommend, or of the Department of Corrections to provide, psychiatrically indicated treatment for a defendant who is not adjudged guilty but mentally ill.

ALASKA STAT. § 12.47.070 (2010). PSYCHIATRIC EXAMINATION

(a) If a defendant has filed a notice of intention to rely on the affirmative defense of insanity under AS 12.47.010 or has filed notice under AS 12.47.020(a), or there is reason to doubt the defendant's fitness to proceed, or there is reason to believe that a mental disease or defect of the defendant will otherwise become an issue in the case, the court shall appoint at least two qualified psychiatrists or two forensic psychologists certified by the American Board of Forensic Psychology to examine and report upon the mental condition of the defendant. If the court appoints psychiatrists, the psychiatrists may select psychologists to provide assistance. If the defendant has filed notice under AS 12.47.090(a), the report shall consider whether the defendant can still be committed under AS 12.47.090(c). The court may order the defendant to be committed to a secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's defense;

(4) if a notice of intention to rely on the affirmative defense of insanity under AS 12.47.010(b) has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality of the defendant's conduct was impaired at the time of the crime charged; and

(5) if notice has been filed under AS 12.47.020(a), an opinion as to the capacity of the defendant to have a culpable mental state which is an element of the crime charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall

include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

ALASKA STAT. § 12.47.080 (2010). PROCEDURE UPON VERDICT OF NOT GUILTY

(a) If a defendant is found not guilty under AS 12.47.040(a)(2), the prosecuting attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation to determine the need for treatment if the prosecuting attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to self or others.

(b) In this section, "mental illness" has the meaning given in AS 47.30.915.

ALASKA STAT. § 12.47.090 (2010). PROCEDURE AFTER RAISING DEFENSE OF INSANITY

(a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.47.010 or files notice under AS 12.47.020(a), the defendant shall also file notice as to whether, if found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b), the defendant will assert that the defendant is not presently suffering from any mental illness that causes the defendant to be dangerous to the public peace or safety.

(b) If the defendant is found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b), and has not filed the notice required under (a) of this section, the court shall immediately commit the defendant to the custody of the commissioner of health and social services.

(c) If the defendant is found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b), and has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict of not guilty by reason of insanity to determine the necessity of commitment. The hearing shall be held before the same trier of fact as heard the underlying charge. At the hearing, the defendant has the burden of proving by clear and convincing evidence that the defendant is not presently suffering from any mental illness that causes the defendant to be dangerous to the public. If the court or jury determines that the defendant has failed to meet the burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. If the hearing is before a jury, the verdict must be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.47.010 or 12.47.020(b) or until the mental illness is cured or corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for continuing commitment under this section reviewed by the court sitting without a jury under a petition filed in the superior court at intervals beginning no sooner than a year from the defendant's initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection are the same as at a hearing under (c) of this section. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if the attorney of record is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.47.010 or 12.47.020(b) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (e) of this section. On the grounds that the defendant has been cured of any mental illness that would cause the defendant to be dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or the commissioner's authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) If the court finds that a defendant committed under (b) or (c) of this section can be adequately controlled and treated in the community with proper supervision, the court may order the defendant conditionally released from confinement under AS 12.47.092 for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.47.010 or 12.47.020(b) or until the mental illness is cured or corrected, whichever first occurs, as determined at a hearing under (c) of this section.

(k) In this section,

(1) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property;

(2) "mental illness" means any mental condition that increases the propensity of the

defendant to be dangerous to the public peace or safety; however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.47.010, or that the mental illness presently suffered by the defendant be the same one the defendant suffered at the time of the criminal conduct.

ALASKA STAT. § 12.47.092 (2010). PROCEDURE FOR CONDITIONAL RELEASE

(a) A defendant committed to the custody of the commissioner of health and social services under AS 12.47.090(b) or (c) may be conditionally released from confinement subject to the conditions and requirements for treatment that the court may impose, and placed under the supervision of the Department of Health and Social Services, a local government agency, a private agency, or an adult, who agrees to assume supervision of the defendant.

(b) The commissioner of health and social services or the commissioner's authorized representative shall submit, at a minimum, quarterly written reports to the court describing the defendant's progress in treatment, compliance with conditions of release, and other information required by the court for defendants conditionally released under this section.

(c) A person or agency responsible for supervision or treatment under an order for conditional release shall immediately notify the commissioner of health and social services upon the defendant's failure to appear for required medication or treatment, or for failure to comply with other conditions imposed by the court.

(d) If the court, after petition or on its own motion, reasonably believes that a conditionally released defendant is failing to adhere to the terms and conditions of the conditional release, the court may order that the conditionally released defendant be apprehended and held until a hearing can be scheduled with the court to determine the facts and whether or not the defendant's conditional release should be revoked or modified. Nothing in this subsection is intended to limit procedures available for emergency situations, including emergency detention under AS 47.30.705.

(e) The commissioner of health and social services or the conditionally released defendant may petition the court for modification of an order of conditional release. A petition by the defendant for modification of conditional release may not be filed more often than once every six months.

(f) A defendant conditionally released under AS 12.47.090(j) may petition the court for discharge in accordance with AS 12.47.090(e).

ALASKA STAT. § 12.47.100 (2010). INCOMPETENCY TO PROCEED

(a) A defendant who, as a result of mental disease or defect, is incompetent because the defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense may not be tried, convicted, or sentenced for the commission of a crime so long as the incompetency exists.

(b) If, before imposition of sentence, the prosecuting attorney or the attorney for the defendant has reasonable cause to believe that the defendant is presently suffering from a mental disease or defect that causes the defendant to be unable to understand the proceedings or to assist in the person's own defense, the attorney may file a motion for a judicial determination of the competency of the defendant. Upon that motion, or upon its own motion, the court shall have the defendant examined by at least one qualified psychiatrist or psychologist, who shall report to the court concerning the competency of the defendant. For the purpose of the examination, the court may order the defendant committed for a reasonable period to a suitable hospital or other facility designated by the court. If the report of the psychiatrist or psychologist indicates that the defendant is incompetent, the court shall hold a hearing, upon due notice, at which evidence as to the competency of the defendant may be submitted, including that of the reporting psychiatrist or psychologist, and make appropriate findings. Before the hearing, the court shall, upon request of the prosecuting attorney, order the defendant to submit to an additional evaluation by a psychiatrist or psychologist designated by the prosecuting attorney.

(c) A defendant is presumed to be competent. The party raising the issue of competency bears the burden of proving the defendant is incompetent by a preponderance of the evidence. When the court raises the issue of competency, the burden of proving the defendant is incompetent shall be on the party who elects to advocate for a finding of incompetency. The court shall then apply the preponderance of the evidence standard to determine whether the defendant is competent.

(d) A statement made by the defendant in the course of an examination into the person's competency under this section, whether the examination is with or without the consent of the defendant, may not be admitted in evidence against the defendant on the issue of guilt in a criminal proceeding unless the defendant later relies on a defense under AS 12.47.010 or 12.47.020. A finding by the judge that the defendant is competent to stand trial in no way prejudices the defendant in a defense based on insanity; the finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury.

(e) In determining whether a person has sufficient intellectual functioning to adapt or cope with the ordinary demands of life, the court shall consider whether the person has obtained a driver's license, is able to maintain employment, or is competent to testify as a witness under the Alaska Rules of Evidence.

(f) In determining if the defendant is unable to understand the proceedings against the defendant, the court shall consider, among other factors considered relevant by the court, whether the defendant understands that the defendant has been charged with a criminal offense and that penalties can be imposed; whether the defendant understands what criminal conduct is being alleged; whether the defendant understands the roles of the judge, jury, prosecutor, and defense counsel; whether the defendant understands that the defendant will be expected to tell defense counsel the circumstances, to the best of the

defendant's ability, surrounding the defendant's activities at the time of the alleged criminal conduct; and whether the defendant can distinguish between a guilty and not guilty plea.

(g) In determining if the defendant is unable to assist in the defendant's own defense, the court shall consider, among other factors considered relevant by the court, whether the defendant's mental disease or defect affects the defendant's ability to recall and relate facts pertaining to the defendant's actions at times relevant to the charges and whether the defendant can respond coherently to counsel's questions. A defendant is able to assist in the defense even though the defendant's memory may be impaired, the defendant refuses to accept a course of action that counsel or the court believes is in the defendant's best interest, or the defendant is unable to suggest a particular strategy or to choose among alternative defenses.

ALASKA STAT. § 12.47.110 (2010). COMMITMENT ON FINDING OF INCOMPETENCY

(a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.47.100, that a defendant is so incompetent that the defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense, the court shall order the proceedings stayed, except as provided in (d) of this section, and shall commit a defendant charged with a felony, and may commit a defendant charged with any other crime, to the custody of the commissioner of health and social services or the commissioner's authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against the defendant are disposed of according to law, but in no event longer than 90 days.

(b) On or before the expiration of the initial 90-day period of commitment, the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If, at the expiration of the second 90-day period, the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice, and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 -- 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice, and continued commitment proceedings shall be governed by the provisions relating to civil commitment under AS 47.30.700 -- 47.30.915. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an

offense arising out of the facts alleged in the original charges, except if the original charge is a class A felony or unclassified felony.

(c) The defendant is not responsible for the expenses of hospitalization or transportation incurred as a result of the defendant's commitment under this section. Liability for payment under AS 47.30.910 does not apply to commitments under this section.

(d) A defendant receiving medication for either a physical or a mental condition may not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings and to properly assist in the defendant's defense or does not disable the defendant from understanding the proceedings and assisting in the defendant's own defense.

(e) A defendant charged with a felony and found to be incompetent to proceed under this section is rebuttably presumed to be mentally ill and to present a likelihood of serious harm to self or others in proceedings under AS 47.30.700 -- 47.30.915. In evaluating whether a defendant is likely to cause serious harm, the court may consider as recent behavior the conduct with which the defendant was originally charged.

ALASKA STAT. § 12.47.120 (2010). DETERMINATION OF SANITY AFTER COMMITMENT

(a) When, in the medical judgment of the custodian of an accused person committed under AS 12.47.110, the accused is considered to be mentally competent to stand trial, the committing court shall hold a hearing, after due notice, as soon as conveniently possible. At the hearing, evidence as to the mental condition of the accused may be submitted including reports by the custodian to whom the accused was committed for care.

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against the accused and to assist in the accused's own defense, appropriate criminal proceedings may be commenced against the accused.

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused in accordance with AS 12.47.110.

(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise brought to the notice of the jury.

ARIZONA

ARIZ. REV. STAT. § 8-291.01 (2010). EFFECT OF INCOMPETENCY; REQUEST FOR EXAMINATION

A. A juvenile shall not participate in a delinquency, incorrigibility or criminal proceeding if the court determines that the juvenile is incompetent to proceed.

B. At any time after the filing of a petition for delinquency or incorrigibility or a petition that seeks to transfer a juvenile to adult court, a party may request in writing or the court on its own motion may order that the juvenile be examined to determine if the juvenile is competent. The request shall state the facts in support of the request for a competency examination. The presence of a mental illness, defect or disability alone is not grounds for finding a juvenile incompetent. The court shall not order a juvenile who is under the jurisdiction of the juvenile court to participate in a treatment program for the restoration of competency unless the court made a prior finding of probable cause pursuant to rule 3(f), rules of procedure for the juvenile court.

ARIZ. REV. STAT. § 8-291.04 (2010). EXAMINATION; COMPETENCY TO STAND TRIAL

A. The court shall set and may change the conditions under which the examination of competency to stand trial is conducted.

B. Within three working days after the motion is granted and the mental health experts are appointed, the parties shall provide all of the juvenile's available medical and criminal history records to the appointed mental health experts.

C. The defense attorney shall be available to the mental health expert who conducts the examination.

D. A proceeding to determine if a juvenile is competent to stand trial shall not delay a judicial determination of the juvenile's eligibility for preadjudication release. Unless the court determines that a juvenile's preadjudication detention is necessary for the evaluation process, a juvenile who is otherwise entitled to release shall not be involuntarily confined or detained solely because the issue of the juvenile's competence to stand trial has been raised and an examination has been ordered.

E. If a juvenile is granted preadjudication release, the court may order the juvenile to appear at a designated time and place for an outpatient examination. The court may make the juvenile's appearance a condition of the juvenile's preadjudication release from detention.

F. The court may order that the juvenile be involuntarily detained until the examination is completed if the court determines that any of the following applies:

1. The juvenile will not submit to an outpatient examination as a condition of release.

2. The juvenile refuses to appear for an examination.

3. An adequate examination is impossible without the detention of the juvenile.

G. If a juvenile is detained or committed for an inpatient examination, the length of the detention or commitment shall not exceed the period of time that is necessary for the examination. The detention or commitment for examination shall not exceed thirty days, except that the detention or commitment may be extended by fifteen days if the court finds that extraordinary circumstances exist. The county shall pay the costs of an inpatient examination, except that if a municipal court judge orders the inpatient examination, the political subdivision shall pay the costs of the examination.

ARIZ. REV. STAT. § 8-291.05 (2010). MISDEMEANOR CHARGES; DISMISSAL; NOTICE

A. If the court finds that a juvenile has been adjudicated incompetent to stand trial within the past year, the court may hold a hearing to dismiss any misdemeanor charge against the juvenile if the juvenile continues to be incompetent to stand trial. The court shall give ten days' notice of the hearing to the prosecutor and the juvenile. On receipt of this notice, the prosecutor shall notify the victim of the hearing.

B. If a misdemeanor charge is dismissed pursuant to this section, the court may order the initiation of civil commitment proceedings or may appoint a guardian ad litem to proceed with a dependency investigation.

ARIZ. REV. STAT. § 8-291.08 (2010). COMPETENCY HEARINGS; RESTORATION ORDERS

A. Within thirty days after a report is filed pursuant to section 8-291.07, the court shall hold a hearing to determine if a juvenile is competent to stand trial. The parties may introduce other evidence regarding the juvenile's mental condition or may submit the matter by written stipulation on the mental health expert's report or reports.

B. If the court finds that the juvenile is competent to stand trial, the proceedings shall continue without delay.

C. If the court initially finds that the juvenile is incompetent but may be restored to competency, the court shall order that the juvenile undergo an attempt at restoration to competency.

D. If the court initially finds that the juvenile is incompetent and there is not a substantial probability that the juvenile will be restored to competency within two hundred forty days, the court shall dismiss the matter with prejudice and shall initiate civil commitment proceedings, if appropriate. The court may appoint a guardian ad litem to proceed with a dependency investigation.

E. All restoration orders that are issued by the court shall specify the following:

1. The name of the restoration program provider and the location of the program.

2. Transportation to the program site.

3. The length of the restoration program.

4. Transportation after the program ends.

5. The frequency of reports.

ARIZ. REV. STAT. § 8-291.09 (2010). RESTORATION ORDER; COMMITMENT

A. The court may order a juvenile to participate in an outpatient or inpatient competency restoration program or may commit the juvenile for competency restoration to the state hospital or another facility. The juvenile court shall approve all competency restoration programs. In determining the type and location of the program, the court shall select the least restrictive alternative after making a finding of probable cause and considering the following:

1. If confinement is necessary for program participation.

2. If the juvenile meets the civil commitment criteria under Title 36, Chapter 5.

B. The court shall appoint a guardian ad litem for a juvenile who is ordered to participate in an inpatient or outpatient program pursuant to this section. The guardian ad litem shall both:

1. Coordinate the continuity of care following restoration.

2. In cooperation with the restoration program, advise the court on matters relating to the appropriateness of the form and location of the program and, on request of the court, shall submit a written report. The court shall distribute copies of any report to the prosecutor and the defense attorney. The privilege gainst self-incrimination applies to all reports and communications with the juvenile.

C. An order entered pursuant to this section shall state if the juvenile is incompetent to refuse treatment pursuant to section 13-4511, including medication.

D. The state shall pay the costs of an inpatient competency restoration program at the state hospital until either:

1. Ten days, excluding Saturdays, Sundays or other legal holidays, after the hospital submits a report to the court stating that the juvenile has regained competence or that there is no substantial probability that the juvenile will regain competency within six months after the date of the original finding of incompetency.

2. The restoration order expires.

3. Seven days, excluding Saturdays, Sundays or other legal holidays, after the charges

are dismissed.

E. The state shall pay the costs of a restoration program for a juvenile who is a ward of the court unless the court orders otherwise. If the court orders otherwise, the county shall pay the costs of the restoration program, or if the proceeding arises out of municipal court, the political subdivision shall pay the costs of the restoration program.

F. A restoration order that is issued pursuant to this section is valid for one hundred eighty days from the date of the initial finding of incompetency or until one of the following occurs, whichever occurs first:

1. The restoration program submits a report that the juvenile has regained competency or that there is no substantial probability that the juvenile will regain competency within the period of the order.

2. The charges are dismissed.

3. The juvenile reaches eighteen years of age.

ARIZ. REV. STAT. § 12-136 (2010). INDIAN TRIBAL COURTS; INVOLUNTARY COMMITMENT ORDERS; RECOGNITION

A. Notwithstanding any law to the contrary, an involuntary commitment order of an Arizona tribal court filed with the clerk of the superior court shall be recognized and is enforceable by any court of record in this state, subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the court. The Arizona supreme court may adopt rules regarding recognition of tribal court involuntary commitment orders. The state, through the attorney general, shall be given notice of the filing at the time the commitment order is filed and shall have five days from receipt of the written notice of the filing of the order to appear as a party and respond. A patient committed to a state mental health treatment facility under this section shall be subject to the jurisdiction of the state.

B. Decisions regarding discharge or release of a patient committed pursuant to subsection A shall be made by the facility providing involuntary treatment. Ten days prior to discharge or release, the state mental health treatment facility shall notify the tribal court which issued the involuntary commitment order of the facility's intention to discharge or release a patient. Any necessary outpatient follow-up and transportation of the patient to the jurisdiction of the tribal court, within the time set forth in the notice, shall be provided for in an intergovernmental agreement between the tribe and the department of health services.

ARIZ. REV. STAT. § 13-606 (2010). CIVIL COMMITMENT AFTER IMPOSITION OF SENTENCE

A. If, after imposition of sentence authorized by section 13-603 and on the basis of the report and recommendations submitted to the court under subsection B of section 13-605, the court believes that the defendant discloses symptoms of mental disorder, the court

may proceed as provided in chapter 5 of title 36.

B. After termination of the commitment in subsection A of this section, the defendant shall be returned to the court for release or to serve the unexpired term imposed as authorized by section 13-603. The period of confinement pursuant to the civil commitment shall be credited to the sentence imposed.

ARIZ. REV. STAT. § 13-3994 (2010). COMMITMENT; HEARING; JURISDICTION; DEFINITION

A. A person who is found guilty except insane pursuant to section 13-502 shall be committed to a secure state mental health facility under the department of health services for a period of treatment.

B. If the criminal act of the person committed pursuant to subsection A of this section did not cause the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall set a hearing date within seventy-five days after the person's commitment to determine if the person is entitled to release from confinement or if the person meets the standards for civil commitment pursuant to title 36, chapter 5. The court shall notify the medical director of the mental health facility, the attorney general, the county attorney, the victim and the attorney representing the person, if any, of the date of the hearing. Fourteen days before the hearing the director of the mental health facility shall submit to the court a report addressing the person's mental health and dangerousness.

C. At a hearing held pursuant to subsection B of this section:

1. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the court shall order the person's release and the person's commitment ordered pursuant to section 13-502, subsection D shall terminate. Before determining to release a person pursuant to this paragraph, the court shall consider the entire criminal history of the person and shall not order the person's release if the court determines that the person has a propensity to reoffend.

2. If the court finds that the person still suffers from a mental disease or defect, may present a threat of danger to self or others, is gravely disabled, is persistently or acutely disabled or has a propensity to reoffend, it shall order the county attorney to institute civil commitment proceedings pursuant to title 36 and the person's commitment ordered pursuant to section 13-502, subsection D shall terminate.

D. If the court finds that the criminal act of the person committed pursuant to subsection A of this section caused the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall place the person under the jurisdiction of the psychiatric security review board. The court shall state the beginning date, length and ending date of the board's jurisdiction over the person. The length of the board's jurisdiction over the person is equal to the sentence the person could have

received pursuant to section 13-707 or section 13-751, subsection A or the presumptive sentence the defendant could have received pursuant to section 13-702, subsection D, section 13-703, section 13-704, section 13-705, section 13-706, subsection A, section 13-710 or section 13-1406. In making this determination the court shall not consider the sentence enhancements for prior convictions under section 13-703 or 13-704. The court shall retain jurisdiction of all matters that are not specifically delegated to the psychiatric security review board for the duration of the presumptive sentence.

E. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not eligible for discharge from the board's jurisdiction until the board's jurisdiction over the person expires.

F. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not entitled to a hearing before the board earlier than one hundred twenty days after the person's initial commitment. A request for a subsequent release hearing may be made pursuant to subsection H of this section. After the hearing, the board may take one of the following actions:

1. If the psychiatric security review board finds that the person still suffers from a mental disease or defect and is dangerous, the board shall order that the person remain committed at the secure state mental health facility.

2. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the psychiatric security review board shall order the person's release. The person shall remain under the jurisdiction of the board. Before determining to release a person pursuant to this paragraph, the board shall consider the entire criminal history of the person and shall not order the person's release if the board determines that the person has a propensity to reoffend.

3. If the psychiatric security review board finds that the person still suffers from a mental disease or defect or that the mental disease or defect is in stable remission but the person is no longer dangerous, the board shall order the person's conditional release. The person shall remain under the board's jurisdiction. The board in conjunction with the state mental health facility and behavioral health community providers shall specify the conditions of the person's release. The board shall continue to monitor and supervise a person who is released conditionally. Before the conditional release of a person, a supervised treatment plan shall be in place, including the necessary funding to implement the plan.

4. If the person is sentenced pursuant to section 13-704, subsection A, B, C, D or E and the psychiatric security review board finds that the person no longer needs ongoing treatment for a mental disease and the person is dangerous or has a propensity to reoffend, the board shall order the person to be transferred to the state department of corrections for the remainder of the sentence imposed pursuant to section 13-502, subsection D. The board shall consider the safety and protection of the public.

G. Within twenty days after the psychiatric security review board orders a person to be transferred to the state department of corrections, the person may file a petition for a judicial determination. The person shall serve a copy of the request on the attorney general. If the person files a petition for a judicial determination, the person shall remain in a state mental health facility pending the result of the judicial determination. The person requesting the judicial determination has the burden of proving the issues by clear and convincing evidence. The judicial determination is limited to the following issues:

1. Whether the person no longer needs ongoing treatment for a mental disease.

2. Whether the person is dangerous or has a propensity to reoffend.

H. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section may not seek a new release hearing earlier than twenty months after a prior release hearing, except that the medical director of the state mental health facility may request a new release hearing for a person under the jurisdiction of the psychiatric security review board at any time. The person shall not be held in confinement for more than two years without a hearing before the board to determine if the person should be released or conditionally released.

I. At any hearing for release or conditional release pursuant to this section:

1. Public safety and protection are primary.

2. The applicant has the burden of proof by clear and convincing evidence.

J. At least fifteen days before a hearing is scheduled to consider a person's release, or before the expiration of the board's jurisdiction over the person, the state mental health facility or supervising agency shall submit to the psychiatric security review board a report on the person's mental health. The psychiatric security review board shall determine whether to release the person or to order the county attorney to institute civil commitment proceedings pursuant to title 36.

K. The procedures for civil commitment govern the continued commitment of the person after the expiration of the jurisdiction of the psychiatric security review board.

L. Before a person is released or conditionally released, at least three of the five psychiatric security review board members shall vote for the release or conditional release.

M. If at any time while the person remains under the jurisdiction of the psychiatric security review board it appears to the board, the chairman or vice-chairman of the board or the medical director of the state mental health facility that the person has failed to comply with the terms of the person's conditional release or that the mental health of the person has deteriorated, the board or the chairman or vice-chairman of the board for good

cause or the medical director of the state mental health facility may order that the person be returned to a secure state mental health facility for evaluation or treatment. A written order of the board, the chairman or vice-chairman of the board or the medical director is sufficient warrant for any law enforcement officer to take the person into custody and to transport the person accordingly. Any sheriff or other peace officer shall execute the order and shall immediately notify the board of the person's return to the facility. Within twenty days after the person's return to a secure state mental health facility the board shall conduct a hearing and shall give notice within five days before the hearing of the time and place of the hearing to the person, the victim, the attorney representing the person, the county attorney and the attorney general.

N. The director of a facility that is providing treatment to a person on conditional release or any other person who is responsible for the supervision of the person may take the person or request that the person be taken into custody if there is reasonable cause to believe that the person's mental health has deteriorated to the point that the person's conditional release should be revoked and that the person is in need of immediate care, custody or treatment or that deterioration is likely because of noncompliance with a treatment program. A person who is taken into custody pursuant to this subsection shall be transported immediately to a secure state mental health facility and shall have the same rights as any person appearing before the psychiatric security review board.

O. Before the initial hearing or any other hearing before the psychiatric security review board on the release or conditional release of the person, the person, the attorney who is representing the person and the attorney general or county attorney who is representing the state may choose a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1 to examine the person. All costs in connection with the examination shall be approved and paid by the county of the sentencing court. The written examination results shall be filed with the board and shall include an opinion as to:

1. The mental condition of the person.

2. Whether the person is dangerous.

P. Notwithstanding subsection O of this section, the board or the chairman of the board for good cause may order an independent mental health evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1. The written examination results shall be filed with the board pursuant to subsection O of this section.

Q. If a person is found guilty except insane pursuant to section 13-502, the department of health services shall assume custody of the person within ten days after receiving the order committing the person pursuant to subsection A of this section. The Arizona state hospital shall collect census data for guilty except insane treatment programs to establish maximum capacity and the allocation formula required pursuant to section 36-206, subsection D. If the Arizona state hospital reaches its funded capacity for forensic

programs, the department of health services may defer the admission of the person found guilty except insane for up to an additional twenty days. The department of health services shall reimburse the county for the actual costs of each day the admission is deferred. If the department of health services is not able to admit the person found guilty except insane at the conclusion of the twenty day deferral period, the department of health services shall notify the sentencing court, the prosecutor and the defense counsel of this fact. On receipt of this notification, the prosecutor or the person's defense counsel may request a hearing to determine the likely length of time admission will continue to be deferred and whether any other action should be taken. On receipt of the request for hearing, the court shall set a hearing within ten days.

R. For the purposes of this section, "state mental health facility" means a secure state mental health facility under the department of health services.

ARIZ. REV. STAT. § 13-4504 (2010). DISMISSAL OF MISDEMEANOR CHARGES; NOTICE

A. Notwithstanding any law to the contrary, if the court finds that a person has been previously adjudicated incompetent to stand trial pursuant to this chapter, the court may hold a hearing to dismiss any misdemeanor charge against the incompetent person. The court shall give ten days' notice to the prosecutor and the defendant of this hearing. On receipt of the notice, the prosecutor shall notify the victim of the hearing.

B. If a misdemeanor charge is dismissed pursuant to this section, the court may order the prosecutor to initiate civil commitment or guardianship proceedings.

ARIZ. REV. STAT. § 13-4517 (2010). INCOMPETENT DEFENDANTS; DISPOSITION

If the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, any party may request that the court:

1. Remand the defendant to the custody of the department of health services for the institution of civil commitment proceedings pursuant to title 36, chapter 5.

2. Appoint a guardian pursuant to title 14, chapter 5.

3. Release the defendant from custody and dismiss the charges against the defendant without prejudice.

ARIZ. REV. STAT. § 36-202.01 (2010). ADMISSION OF JUVENILES TO STATE HOSPITAL

The Arizona state hospital shall collect census data for juvenile treatment programs to establish maximum capacity and the allocation formula required pursuant to section 36-206, subsection D. The Arizona state hospital is not required to provide services to

juveniles that exceed the funded capacity. If the Arizona state hospital reaches its funded capacity for juveniles, the superintendent of the state hospital shall establish a waiting list for admission based on the date of the commitment or treatment order.

ARIZ. REV. STAT. § 36-206 (2010). DUTIES OF SUPERINTENDENT; DEPUTY DIRECTOR; CLINICAL ASSESSMENT

A. The deputy director has charge of the state hospital and the superintendent shall supervise and direct its activities, subject to the provisions of law and approval of the deputy director. The superintendent is directly responsible to the deputy director for carrying out the purposes for which the hospital is maintained. Subject to the approval of the deputy director, the superintendent may deputize any qualified officer of the state hospital to do or perform any act the superintendent is empowered to do or charged with the responsibility of doing by law.

B. The deputy director in December each year shall estimate the probable daily per capita cost of treatment and maintenance of each category of patients for the next ensuing year as determined in accordance with standard accounting practices. A statement of the estimate shall be provided to the director in January of the following year.

C. The superintendent, on request, shall provide to the deputy director a clinical assessment of the state hospital's programs.

D. On or before August 1 of each year, the deputy director shall establish maximum funded capacity and a percentage allocation formula for forensic and civil bed capacity at the Arizona state hospital based on census data collected pursuant to sections 13-3994, 13-4512, 36-202.01 and 36-503.03. By June 1 of each year, the deputy director shall solicit and consider the recommendations of representatives of the county board of supervisors, the Arizona prosecuting attorneys' advisory council and the superior court when establishing this formula. In addition to establishing the formula, the deputy director, the county board of supervisors, the Arizona prosecuting attorneys' advisory council and the superior court shall develop a contingency plan for the placement of patients subject to sections 13-3994, 13-4512, 36-202.01 and 36-503.03 in times of emergency and other unforeseen circumstances. The deputy director shall notify the governor, the president of the senate, the speaker of the house of representatives and the chairman of each county board of supervisors of the funded capacity and allocation formula for the current fiscal year. Thirty days before the notification of the forensic and civil bed funded capacity formula, the deputy director shall provide this information to the representatives of the county board of supervisors, the Arizona prosecuting attorneys' advisory council and the superior court for comment. The deputy director shall include these comments when issuing the formula.

ARIZ. REV. STAT. § 36-503.01 (2010). DUTY OF ATTORNEY GENERAL OR COUNTY ATTORNEY

Whenever a physician or other person files a petition for court-ordered evaluation or court-ordered treatment on behalf of a state or county screening, evaluation or mental health treatment agency, the attorney general or the county attorney for the county in

which the proceeding is initiated, as the case may be, shall represent the individual or agency in any judicial proceeding for involuntary detention or commitment and shall defend all challenges to such detention or commitment.

ARIZ. REV. STAT. § 36-503.03 (2010). CIVIL COMMITMENT TREATMENT POPULATION; CAP

The Arizona state hospital shall collect census data for adult civil commitment treatment programs to establish maximum capacity and the allocation formula required by section 36-206, subsection D. The Arizona state hospital or the department of health services is not required to provide civil commitment treatment that exceeds the funded capacity. If the Arizona state hospital reaches its funded capacity in civil commitment treatment programs, the superintendent of the state hospital shall establish a waiting list for admission based on the date of the court order issued pursuant to this section.

ARIZ. REV. STAT. § 36-3707 (2010). DETERMINING SEXUALLY VIOLENT PERSON STATUS; COMMITMENT PROCEDURES

A. The court or jury shall determine beyond a reasonable doubt if the person named in the petition is a sexually violent person. If the state alleges that the sexually violent offense on which the petition for commitment is based was sexually motivated, the state shall prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

B. If the court or jury determines that the person is a sexually violent person, the court shall either:

1. Commit the person to the custody of the department of health services for placement in a licensed facility under the supervision of the superintendent of the Arizona state hospital and shall receive care, supervision or treatment until the person's mental disorder has so changed that the person would not be a threat to public safety if the person was conditionally released to a less restrictive alternative or was unconditionally discharged.

2. Order that the person be released to a less restrictive alternative if the conditions under sections 36-3710 and 36-3711 are met.

C. If the court or jury does not determine beyond a reasonable doubt that the person is a sexually violent person, the court shall order the person's release.

D. If the person named in the petition was found incompetent to stand trial, the court first shall hear evidence and determine if the person committed the act or acts charged if the court did not enter a finding before the charges were dismissed. The court shall enter specific findings on whether the person committed the act or acts charged, the extent to which the person's incompetence to stand trial affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If the court finds beyond a reasonable doubt that the person committed the act or acts charged, the

court shall enter a final order to that effect and may then consider whether the person should be committed pursuant to this section.

ARIZ. REV. STAT. § 36-3709 (2010). PETITION FOR CHANGE OF STATUS; PROCEDURES

A. If the superintendent of the state hospital or the director of the department of health services determines that the person's mental disorder has so changed that the person is not likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative, the superintendent or director shall allow the person to petition the court for conditional release to a less restrictive alternative. The person shall serve the petition on the court and the attorney for the state. The court shall hold a hearing on the petition for conditional release to a less restrictive alternative within forty-five days after receiving the petition. The court may continue the hearing on the request of either party and a showing of good cause or on its own motion if the respondent will not be substantially prejudiced. The county attorney or the attorney general shall represent the state at the hearing and may request that the petitioner be examined by a competent professional selected by the county attorney or the attorney general. The attorney for the state has the burden of proving beyond a reasonable doubt that the petitioner's mental disorder has not changed and that the petitioner remains a danger to others and is likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged.

B. This section does not prohibit the committed person from annually petitioning the court for conditional release to a less restrictive alternative without the approval of the superintendent of the state hospital or the director of the department of health services. The director of the department of health services shall give annual written notice to the committed person of the person's right to petition the court for conditional release to a less restrictive alternative without the approval of the superintendent or director. The notice shall contain a waiver of rights. The director shall submit the notice and waiver to the court with the annual examination report.

C. The committed person may be present at the hearing. The county attorney or the attorney general may request that the person be examined by a competent professional selected by the attorney for the state. The committed person may retain and the court on request of an indigent person may appoint a competent professional. The attorney for the state has the burden of proving beyond a reasonable doubt that the person's mental disorder has not changed and that the person remains a danger to others and is likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative. If the state does not meet its burden of proof, the person shall be discharged from treatment.

D. If at the conclusion of a hearing the court finds that there is no legally sufficient evidentiary basis to conclude that the conditions prescribed in section 36-3711 have been met, the court shall grant the state's motion for a judgment on the issue of conditional release to a less restrictive alternative.

ARKANSAS

ARK. CODE ANN. § 5-2-310 (2010). LACK OF FITNESS TO PROCEED -- PROCEDURES SUBSEQUENT TO FINDING.

(a) (1) (A) If the court determines that a defendant lacks fitness to proceed, the proceeding against him or her shall be suspended and the court may commit the defendant to the custody of the Department of Human Services for detention, care, and treatment until restoration of fitness to proceed.

(B) However, if the court is satisfied that the defendant may be released without danger to himself or herself or to the person or property of another, the court may order the defendant's release and the release shall continue at the discretion of the court on conditions the court determines necessary.

(2) A copy of the report filed pursuant to § 5-2-305 shall be attached to the order of commitment or order of conditional release.

(b) (1) Within a reasonable period of time, but in any case within ten (10) months of a commitment pursuant to subsection (a) of this section, the department shall file with the committing court a written report indicating whether the defendant is fit to proceed, or if not, whether:

(A) The defendant's mental disease or defect is of a nature precluding restoration of fitness to proceed; and

(B) The defendant presents a danger to himself or herself or to the person or property of another.

(2) (A) The court shall make a determination within one (1) year of a commitment pursuant to subsection (a) of this section.

(B) Pursuant to the report of the department or as a result of a hearing on the report, if the court determines that the defendant is fit to proceed, prosecution in ordinary course may commence.

(C) If the defendant lacks fitness to proceed but does not present a danger to himself or herself or to the person or property of another, the court may release the defendant on conditions the court determines to be proper.

(D) If the defendant lacks fitness to proceed and presents a danger to himself or herself or the person or property of another, the court shall order the department to petition for an involuntary admission.

(E) Upon filing of an order finding that the defendant lacks fitness to proceed issued

under subdivision (b)(2)(A) of this section with a circuit clerk or a probate clerk, the circuit clerk or the probate clerk shall submit a copy of the order to the Arkansas Crime Information Center.

(c) (1) On the court's own motion or upon application of the department, the prosecuting attorney, or the defendant, and after a hearing if a hearing is requested, if the court determines that the defendant has regained fitness to proceed, the criminal proceeding shall be resumed.

(2) However, if the court is of the view that so much time has elapsed since the alleged commission of the offense in question that it would be unjust to resume the criminal proceeding, the court may dismiss the charge.

ARK. CODE ANN. § 5-2-314 (2010). ACQUITTAL -- EXAMINATION OF DEFENDANT -- HEARING.

(a) When a defendant is acquitted on the ground of mental disease or defect, a circuit court is required to determine and to include the determination in the order of acquittal one (1) of the following:

(1) The offense involved bodily injury to another person or serious damage to the property of another person or involved a substantial risk of bodily injury to another person or serious damage to the property of another person, and that the defendant remains affected by mental disease or defect;

(2) The offense involved bodily injury to another person or serious damage to the property of another person or involved a substantial risk of bodily injury to another person or serious damage to the property of another person, and that the defendant is no longer affected by mental disease or defect;

(3) The offense did not involve bodily injury to another person or serious damage to the property of another person nor did it involve substantial risk of bodily injury to another person or serious damage to the property of another person, and that the defendant remains affected by mental disease or defect; or

(4) The offense did not involve bodily injury to another person or serious damage to the property of another person nor did it involve a substantial risk of bodily injury to another person or serious damage to the property of another person, and that the defendant is no longer affected by mental disease or defect.

(b) (1) If the circuit court enters a determination based on subdivision (a)(1) or (3) of this section, the circuit court shall order the defendant committed to the custody of the Department of Human Services for an examination by a psychiatrist or a licensed psychologist.

(2) Upon filing of an order of commitment under subdivision (b)(1) of this section with a circuit clerk, the circuit clerk shall submit a copy of the order to the Arkansas Crime

Information Center.

(c) If the circuit court enters a determination based on subdivision (a)(2) or (4) of this section, the circuit court shall immediately discharge the defendant.

(d) (1) (A) The department shall file the psychiatric or psychological report with the probate clerk of the circuit court having venue within thirty (30) days following receipt of an order of acquittal.

(B) If before thirty (30) days the department makes application to the circuit court for an extension of time to file the psychiatric or psychological report and the circuit court finds there is good cause for the delay, the circuit court may order that additional time be allowed for the department to file the psychiatric or psychological report.

(C) A hearing shall be conducted by the circuit court and shall take place not later than ten (10) days following the filing of the psychiatric or psychological report with the circuit court.

(2) If the psychiatric or psychological report is not filed within thirty (30) days following the department's receipt of an order of acquittal or within such additional time as authorized by the circuit court, the circuit court may grant a petition for a writ of habeas corpus ordering the release of the defendant under terms and conditions that are reasonable and just for the defendant and societal concerns about the safety of persons and property of others.

(e) (1) A person found not guilty on the ground of mental disease or defect of an offense involving bodily injury to another person or serious damage to the property of another person or involving a substantial risk of bodily injury to another person or serious damage to the property of another person has the burden of proving by clear and convincing evidence that his or her release would not create a substantial risk of bodily injury to another person or serious damage to property of another person due to a present mental disease or defect.

(2) With respect to any other offense, the person has the burden of proof by a preponderance of the evidence.

(f) (1) A person acquitted whose mental condition is the subject of a hearing has a right to counsel.

(2) (A) If it appears to the circuit court that the person acquitted is in need of counsel, an attorney shall be appointed immediately upon filing of the original petition.

(B) (i) When an attorney is appointed by the circuit court, the circuit court shall determine the amount of the fee to be paid the attorney appointed by the circuit court and issue an order of payment.

(ii) The amount of the fee allowed shall be based upon the time and effort of the attorney in the investigation, preparation, and representation of the client at the court hearings.

(g) (1) The quorum court of each county shall appropriate funds for the purpose of payment of the attorney's fees provided for by subsection (f) of this section.

(2) Upon presentment of a claim accompanied by an order of the circuit court fixing the fee, the claim shall be approved by the county court and paid in the same manner as other claims against the county are paid.

(h) A hearing conducted pursuant to subsection (d) of this section may be held at the Arkansas State Hospital or a designated receiving facility or program where the person acquitted is detained.

(i) When conducting any hearing set out in this section, the circuit judge may conduct the hearing within any county of his or her judicial district.

(j) (1) (A) It is the duty of the prosecuting attorney's office in the county where the petition is filed to represent the State of Arkansas at any hearing held pursuant to this section except a hearing pending at the Arkansas State Hospital in Pulaski County.

(B) A prosecuting attorney may contract with another attorney to provide services under subdivision (j)(1) of this section.

(2) The office of the Prosecutor Coordinator shall appear for and on behalf of the State of Arkansas at the Arkansas State Hospital in Little Rock.

(3) Representation under this subsection is a part of the official duties of a prosecuting attorney or the office of the Prosecutor Coordinator and the prosecuting attorney or the office of the Prosecutor Coordinator is immune from civil liability in the performance of this official duty.

ARK. CODE ANN. § 5-2-315 (2010). DISCHARGE OR CONDITIONAL RELEASE.

(a) (1) (A) When the Director of the Department of Human Services or his or her designee determines that a person acquitted has recovered from his or her mental disease or defect to such an extent that his or her release or his or her conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to the property of another person, the director shall promptly file an application for discharge or conditional release of the person acquitted with the circuit court that ordered the commitment.

(B) In addition, if the person acquitted has an impairment due to alcohol or substance abuse, the director may petition the circuit court for involuntary commitment under § 20-64-815.

(2) The director shall send a copy of the application to the counsel for the person acquitted and to the attorney for the state.

(b) (1) Within twenty (20) days after receiving the application for discharge or conditional release of the person acquitted, the attorney for the state may petition the circuit court for a hearing to determine whether the person acquitted should be released.

(2) If the attorney for the state does not request a hearing, the circuit court may conduct a hearing on its own motion or discharge the person acquitted.

(c) If the circuit court finds after a hearing under subsection (b) of this section by the standard specified in § 5-2-314(e) that the person acquitted has recovered from his or her mental disease or defect to such an extent that:

(1) The discharge of the person acquitted would no longer create a substantial risk of bodily injury to another person or serious damage to property of another person, then the circuit court shall order that the person acquitted be immediately discharged; or

(2) The conditional release of the person acquitted under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another person,

then the circuit court shall order:

(A) That the person acquitted be conditionally released under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been:

(i) Prepared for the person acquitted;

(ii) Certified to the circuit court as appropriate by the director of the facility in which the person acquitted is committed; and

(iii) Found by the circuit court to be appropriate; and

(B) As explicit conditions of release that:

(i) The person acquitted comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment;

(ii) The person acquitted be subject to regularly scheduled personal contact with a compliance monitor for the purpose of verifying compliance with the conditions of release; and

(iii) That compliance with the conditions of release be documented with the circuit

court by the compliance monitor at ninety-day intervals or at such intervals as the circuit court may order.

(d) If the circuit court determines that the person acquitted has not met his or her burden of proof under subsection (c) of this section, the person acquitted shall continue to be committed to the custody of the Department of Human Services.

(e) A person ordered to be in charge of a prescribed regimen of medical, psychiatric, or psychological care or treatment of a person acquitted shall provide:

(1) The prescribed regimen of medical, psychiatric, or psychological care or treatment;

(2) Periodic written documentation to a compliance monitor of compliance with the conditions of release, including, but not limited to, documentation of compliance with the prescribed:

(A) Medication;

(B) Treatment and therapy;

(C) Substance abuse treatment; and

(D) Drug testing; and

(3) (A) Written notice of any failure of the person acquitted to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment to the:

(i) Compliance monitor;

(ii) Attorney for the person acquitted;

(iii) Attorney for the state; and

(iv) Circuit court having jurisdiction.

(B) The written notice under subdivision (e)(3)(A) of this section shall be provided immediately upon the failure of the person acquitted to comply with a condition of release.

(C) (i) Upon the written notice under subdivision (e)(3)(A) of this section or upon other probable cause to believe that the person acquitted has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person acquitted may be detained and shall be taken without unnecessary delay before the circuit court having jurisdiction over him or her.

(ii) After a hearing, the circuit court shall determine whether the person acquitted

should be remanded to an appropriate facility on the ground that, in light of his or her failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his or her continued release would create a substantial risk of bodily injury to another person or serious damage to property of another person.

(D) At any time after a hearing employing the same criteria, the circuit court may modify or eliminate the prescribed regimen of medical, psychiatric, or psychological care or treatment.

(f) (1) Regardless of whether the director or his or her designee has filed an application pursuant to a provision of subsection (a) of this section, and at any time during the commitment of the person acquitted, a person acquitted, his or her counsel, or his or her legal guardian may file with the circuit court that ordered the commitment a motion for a hearing to determine whether the person acquitted should be discharged from the facility in which the person acquitted is committed.

(2) However, no motion under subdivision (f)(1) of this section may be filed more than one (1) time every one hundred eighty (180) days.

(3) A copy of the motion under subdivision (f)(1) of this section shall be sent to the:

(A) Director of the facility in which the person acquitted is committed; and

(B) Attorney for the state.

CALIFORNIA

CAL. PENAL CODE § 1026 (2010). PLEA OF INSANITY JOINED WITH OTHER PLEAS; PROCEDURE; TREATMENT

(a) When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court. In that trial, the jury shall return a verdict either that the defendant was sane at the time the offense was committed or was insane at the time the offense was committed. If the verdict or finding is that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed, the court, unless it shall appear to the court that the sanity of the defendant has been recovered fully, shall direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private

treatment facility approved by the community program director, or the court may order the defendant placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2.

(b) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be placed on outpatient status or confined in a state hospital or other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. If, however, it appears to the court that the sanity of the defendant has been recovered fully, the defendant shall be remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law. A defendant committed to a state hospital or other treatment facility or placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2 shall not be released from confinement, parole, or outpatient status unless and until the court which committed the person shall, after notice and hearing, find and determine that the person's sanity has been restored. Nothing in this section shall prevent the transfer of the patient from one state hospital to any other state hospital by proper authority. Nothing in this section shall prevent the transfer of the patient to a hospital in another state in the manner provided in Section 4119 of the Welfare and Institutions Code.

(c) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, order the defendant transferred to a state hospital or to another public or private treatment facility approved by the community program director. Where either the defendant or the prosecuting attorney chooses to contest either kind of order of transfer, a petition may be filed in the court requesting a hearing which shall be held if the court determines that sufficient grounds exist. At that hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same procedures and standards of proof as used in conducting probation revocation hearings pursuant to Section 1203.2.

(d) Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(e) When the court, after considering the placement recommendation of the community program director required in subdivision (b), orders that the defendant be confined in a

state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(1) The commitment order, including a specification of the charges.

(2) A computation or statement setting forth the maximum term of commitment in accordance with Section 1026.5.

(3) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(4) State Summary Criminal History information.

(5) Any arrest reports prepared by the police department or other law enforcement agency.

(6) Any court-ordered psychiatric examination or evaluation reports.

(7) The community program director's placement recommendation report.

(f) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall, at six-month intervals, submit a report in writing to the court and the community program director of the county of commitment, or a designee, setting forth the status and progress of the defendant. The court shall transmit copies of these reports to the prosecutor and defense counsel.

(g) When directing that the defendant be confined in a state hospital pursuant to subdivision (a), the court shall select the state hospital in accordance with the policies established by the State Department of Mental Health.

(h) For purposes of this section and Sections 1026.1 to 1026.6, inclusive, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 5709.8 of the Welfare and Institutions Code.

CAL. PENAL CODE § 1026.1 (2010). RELEASE FROM STATE HOSPITAL OR TREATMENT FACILITY; CONDITIONS

A person committed to a state hospital or other treatment facility under the provisions of Section 1026 shall be released from the state hospital or other treatment facility only under one or more of the following circumstances:

(a) Pursuant to the provisions of Section 1026.2.

(b) Upon expiration of the maximum term of commitment as provided in subdivision (a) of Section 1026.5, except as such term may be extended under the provisions of

subdivision (b) of Section 1026.5.

(c) As otherwise expressly provided in Title 15 (commencing with Section 1600) of Part 2.

CAL. PENAL CODE § 1026.2 (2010). APPLICATION FOR RELEASE; SUMMARY OF TREATMENT; HEARING; TRANSFER OF CUSTODY TO DEPARTMENT OF CORRECTIONS

(a) An application for the release of a person who has been committed to a state hospital or other treatment facility, as provided in Section 1026, upon the ground that sanity has been restored, may be made to the superior court of the county from which the commitment was made, either by the person, or by the medical director of the state hospital or other treatment facility to which the person is committed or by the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600). The court shall give notice of the hearing date to the prosecuting attorney, the community program director or a designee, and the medical director or person in charge of the facility providing treatment to the committed person at least 15 judicial days in advance of the hearing date.

(b) Pending the hearing, the medical director or person in charge of the facility in which the person is confined shall prepare a summary of the person's programs of treatment and shall forward the summary to the community program director or a designee and to the court. The community program director or a designee shall review the summary and shall designate a facility within a reasonable distance from the court in which the person may be detained pending the hearing on the application for release. The facility so designated shall continue the program of treatment, shall provide adequate security, and shall, to the greatest extent possible, minimize interference with the person's program of treatment.

(c) A designated facility need not be approved for 72-hour treatment and evaluation pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). However, a county jail may not be designated unless the services specified in subdivision (b) are provided and accommodations are provided which ensure both the safety of the person and the safety of the general population of the jail. If there is evidence that the treatment program is not being complied with or accommodations have not been provided which ensure both the safety of the committed person and the safety of the general population of the jail, the court shall order the person transferred to an appropriate facility or make any other appropriate order, including continuance of the proceedings.

(d) No hearing upon the application shall be allowed until the person committed has been confined or placed on outpatient status for a period of not less than 180 days from the date of the order of commitment.

(e) The court shall hold a hearing to determine whether the person applying for restoration of sanity would be a danger to the health and safety of others, due to mental defect, disease, or disorder, if under supervision and treatment in the community. If the

court at the hearing determines the applicant will not be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community, the court shall order the applicant placed with an appropriate forensic conditional release program for one year. All or a substantial portion of the program shall include outpatient supervision and treatment. The court shall retain jurisdiction. The court at the end of the one year, shall have a trial to determine if sanity has been restored, which means the applicant is no longer a danger to the health and safety of others, due to mental defect, disease, or disorder. The court shall not determine whether the applicant has been restored to sanity until the applicant has completed the one year in the appropriate forensic conditional release program, unless the community program director sooner makes a recommendation for restoration of sanity and unconditional release as described in subdivision (h). The court shall notify the persons required to be notified in subdivision (a) of the hearing date.

(f) If the applicant is on parole or outpatient status and has been on it for one year or longer, then it is deemed that the applicant has completed the required one year in an appropriate forensic conditional release program and the court shall, if all other applicable provisions of law have been met, hold the trial on restoration of sanity as provided for in this section.

(g) Before placing an applicant in an appropriate forensic conditional release program, the community program director shall submit to the court a written recommendation as to what forensic conditional release program is the most appropriate for supervising and treating the applicant. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the court record. Sections 1605 to 1610, inclusive, shall be applicable to the person placed in the forensic conditional release program unless otherwise ordered by the court.

(h) If the court determines that the person should be transferred to an appropriate forensic conditional release program, the community program director or a designee shall make the necessary placement arrangements, and, within 21 days after receiving notice of the court finding, the person shall be placed in the community in accordance with the treatment and supervision plan, unless good cause for not doing so is made known to the court.

During the one year of supervision and treatment, if the community program director is of the opinion that the person is no longer a danger to the health and safety of others due to a mental defect, disease, or disorder, the community program director shall submit a report of his or her opinion and recommendations to the committing court, the prosecuting attorney, and the attorney for the person. The court shall then set and hold a trial to determine whether restoration of sanity and unconditional release should be granted. The trial shall be conducted in the same manner as is required at the end of one full year of supervision and treatment.

(i) If at the trial for restoration of sanity the court rules adversely to the applicant, the court may place the applicant on outpatient status, pursuant to Title 15 (commencing with

Section 1600) of Part 2, unless the applicant does not meet all of the requirements of Section 1603.

(j) If the court denies the application to place the person in an appropriate forensic conditional release program or if restoration of sanity is denied, no new application may be filed by the person until one year has elapsed from the date of the denial.

(k) In any hearing authorized by this section, the applicant shall have the burden of proof by a preponderance of the evidence.

(l) If the application for the release is not made by the medical director of the state hospital or other treatment facility to which the person is committed or by the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600), no action on the application shall be taken by the court without first obtaining the written recommendation of the medical director of the state hospital or other treatment facility or of the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600).

(m) This subdivision shall apply only to persons who, at the time of the petition or recommendation for restoration of sanity, are subject to a term of imprisonment with prison time remaining to serve or are subject to the imposition of a previously stayed sentence to a term of imprisonment. Any person to whom this subdivision applies who petitions or is recommended for restoration of sanity may not be placed in a forensic conditional release program for one year, and a finding of restoration of sanity may be made without the person being in a forensic conditional release program for one year. If a finding of restoration of sanity is made, the person shall be transferred to the custody of the California Department of Corrections to serve the term of imprisonment remaining or shall be transferred to the appropriate court for imposition of the sentence that is pending, whichever is applicable.

CAL. PENAL CODE § 1026.4 (2010). ESCAPE FROM MENTAL HEALTH FACILITY

(a) Every person committed to a state hospital or other public or private mental health facility pursuant to the provisions of Section 1026, who escapes from or who escapes while being conveyed to or from the state hospital or facility, is punishable by imprisonment in the county jail not to exceed one year or in a state prison for a determinate term of one year and one day. The term of imprisonment imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed pursuant to the provisions of Section 1026 shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall within 48 hours of the

escape of the person orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

CAL. PENAL CODE § 1026.5 (2009). STATEMENT OF MAXIMUM TERM OF COMMITMENT; FIXING TERM; EXTENDED COMMITMENT; HEARING

(a)

(1) In the case of any person committed to a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604, who committed a felony on or after July 1, 1977, the court shall state in the commitment order the maximum term of commitment, and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in this section. For the purposes of this section, "maximum term of commitment" shall mean the longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted, including the upper term of the base offense and any additional terms for enhancements and consecutive sentences which could have been imposed less any applicable credits as defined by Section 2900.5, and disregarding any credits which could have been earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3.

(2) In the case of a person confined in a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604, who committed a felony prior to July 1, 1977, and who could have been sentenced under Section 1168 or 1170 if the offense was committed after July 1, 1977, the Board of Prison Terms shall determine the maximum term of commitment which could have been imposed under paragraph (1), and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in subdivision (b). The time limits of this section are not jurisdictional.

In fixing a term under this section, the board shall utilize the upper term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted, increased by any additional terms which could have been imposed based on matters which were found to be true in the committing court. However, if at least two of the members of the board after reviewing the person's file determine that a longer term should be imposed for the reasons specified in Section 1170.2, a longer term may be imposed following the procedures and guidelines set forth in Section 1170.2, except that any hearings deemed necessary by the board shall be held within 90 days of September 28, 1979. Within 90 days of the date the person is received by the state hospital or other treatment facility, or of September 28, 1979, whichever is later, the Board of Prison Terms shall provide each person with the determination of the person's maximum term of commitment or shall notify the person that a hearing will be scheduled to determine the term.

Within 20 days following the determination of the maximum term of commitment the board shall provide the person, the prosecuting attorney, the committing court, and the state hospital or other treatment facility with a written statement setting forth the

maximum term of commitment, the calculations, and any materials considered in determining the maximum term.

(3) In the case of a person committed to a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604 who committed a misdemeanor, the maximum term of commitment shall be the longest term of county jail confinement which could have been imposed for the offense or offenses which the person was found to have committed, and the person may not be kept in actual custody longer than this maximum term.

(4) Nothing in this subdivision limits the power of any state hospital or other treatment facility or of the committing court to release the person, conditionally or otherwise, for any period of time allowed by any other provision of law.

(b)

(1) A person may be committed beyond the term prescribed by subdivision (a) only under the procedure set forth in this subdivision and only if the person has been committed under Section 1026 for a felony and by reason of a mental disease, defect, or disorder represents a substantial danger of physical harm to others.

(2) Not later than 180 days prior to the termination of the maximum term of commitment prescribed in subdivision (a), the medical director of a state hospital in which the person is being treated, or the medical director of the person's treatment facility or the local program director, if the person is being treated outside a state hospital setting, shall submit to the prosecuting attorney his or her opinion as to whether or not the patient is a person described in paragraph (1). If requested by the prosecuting attorney, the opinion shall be accompanied by supporting evaluations and relevant hospital records. The prosecuting attorney may then file a petition for extended commitment in the superior court which issued the original commitment. The petition shall be filed no later than 90 days before the expiration of the original commitment unless good cause is shown. The petition shall state the reasons for the extended commitment, with accompanying affidavits specifying the factual basis for believing that the person meets each of the requirements set forth in paragraph (1).

(3) When the petition is filed, the court shall advise the person named in the petition of the right to be represented by an attorney and of the right to a jury trial. The rules of discovery in criminal cases shall apply. If the person is being treated in a state hospital when the petition is filed, the court shall notify the community program director of the petition and the hearing date.

(4) The court shall conduct a hearing on the petition for extended commitment. The trial shall be by jury unless waived by both the person and the prosecuting attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless that time is waived by the person or unless good cause is shown.

(5) Pending the hearing, the medical director or person in charge of the facility in which the person is confined shall prepare a summary of the person's programs of treatment and shall forward the summary to the community program director or a designee, and to the court. The community program director or a designee shall review the summary and shall designate a facility within a reasonable distance from the court in which the person may be detained pending the hearing on the petition for extended commitment. The facility so designated shall continue the program of treatment, shall provide adequate security, and shall, to the greatest extent possible, minimize interference with the person's program of treatment.

(6) A designated facility need not be approved for 72-hour treatment and evaluation pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). However, a county jail may not be designated unless the services specified in paragraph (5) are provided and accommodations are provided which ensure both the safety of the person and the safety of the general population of the jail. If there is evidence that the treatment program is not being complied with or accommodations have not been provided which ensure both the safety of the committed person and the safety of the general population of the jail, the court shall order the person transferred to an appropriate facility or make any other appropriate order, including continuance of the proceedings.

(7) The person shall be entitled to the rights guaranteed under the federal and State Constitutions for criminal proceedings. All proceedings shall be in accordance with applicable constitutional guarantees. The state shall be represented by the district attorney who shall notify the Attorney General in writing that a case has been referred under this section. If the person is indigent, the county public defender or State Public Defender shall be appointed. The State Public Defender may provide for representation of the person in any manner authorized by Section 15402 of the Government Code. Appointment of necessary psychologists or psychiatrists shall be made in accordance with this article and Penal Code and Evidence Code provisions applicable to criminal defendants who have entered pleas of not guilty by reason of insanity.

(8) If the court or jury finds that the patient is a person described in paragraph (1), the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed. This commitment shall be for an additional period of two years from the date of termination of the previous commitment, and the person may not be kept in actual custody longer than two years unless another extension of commitment is obtained in accordance with the provisions of this subdivision. Time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be credited toward the person's maximum term of commitment or toward the person's term of extended commitment.

(9) A person committed under this subdivision shall be eligible for release to outpatient status pursuant to the provisions of Title 15 (commencing with Section 1600) of Part 2.

(10) Prior to termination of a commitment under this subdivision, a petition for recommitment may be filed to determine whether the patient remains a person described in paragraph (1). The recommitment proceeding shall be conducted in accordance with the provisions of this subdivision.

(11) Any commitment under this subdivision places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

CAL. PENAL CODE § 1370 (2010). VERDICT AS TO MENTAL COMPETENCE; COMMITMENT UPON FINDING OF INCOMPETENCE; SUBSEQUENT PROCEEDINGS

(a)

(1)

(A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a

substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court must serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed and the district attorney for the county in which the violent felony charges are pending against the defendant.

(2) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a state hospital or to any other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee.

(B) The court shall hear and determine whether the defendant, with advice of his or her counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic

medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).

(iv) In all cases, the treating hospital, facility or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) Any report made pursuant to paragraph (1) of subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the Patients' Rights Advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a state hospital pursuant to this subdivision, the court shall select the hospital in accordance with the policies established by the State Department of Mental Health.

(6)

(A) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to a state hospital or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). Where either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the

defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b)

(1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the community program director or a designee.

(2) Any defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing

court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the community program director or a designee.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. The court shall transmit a copy of its order to the community program director or a designee.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c)

(1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(3) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which criminal charges are pending.

(4) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental

competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

CAL. PENAL CODE § 1370.01 (2010). FINDINGS OF MENTAL COMPETENCE OR INCOMPETENCE OF DEFENDANT CHARGED WITH MISDEMEANOR

(a)

(1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent, and the court shall order that (A) in the meantime, the defendant be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in this section, and (B) upon the filing of a certificate of restoration to competence, the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the county mental health director or his or her designee.

(2) Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the county mental health director or his or her designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to

a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or his or her designee. No person shall be admitted to a state hospital under this section unless the county mental health director finds that there is no less restrictive appropriate placement available and the county mental health director has a contract with the State Department of Mental Health for these placements.

(B) The court shall hear and determine whether the defendant, with advice of his or her counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person

or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).

(iv) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) Any report made pursuant to subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the Patients' Rights Advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide copies of the report to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary

antipsychotic medication should be ordered in the manner described in subparagraph (B).

(3) When the court, after considering the placement recommendation of the county mental health director required in paragraph (2), orders that the defendant be confined in a public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court-ordered psychiatric examination or evaluation reports.

(G) The county mental health director's placement recommendation report.

(4) A person subject to commitment under this section may be placed on outpatient status under the supervision of the county mental health director or his or her designee by order of the court in accordance with the procedures contained in Title 15 (commencing with Section 1600) except that where the term "community program director" appears the term "county mental health director" shall be substituted.

(5) If the defendant is committed or transferred to a public or private treatment facility approved by the county mental health director, the court may, upon receiving the written recommendation of the county mental health director, transfer the defendant to another public or private treatment facility approved by the county mental health director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code. Where either the defendant or the prosecutor chooses to contest the order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the

county mental health director or his or her designee.

(b) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the treatment facility to which the defendant is confined shall make a written report to the court and the county mental health director or his or her designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the county mental health director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the county mental health director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the county mental health director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the county mental health director on the defendant's progress toward recovery, and the county mental health director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the county mental health director or his or her designee.

(c)

(1) If, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. The court shall notify the county mental health director or his or her designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or his or her designee

and shall notify the county mental health director or his or her designee of the outcome of the proceedings.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director or his or her designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings which may be appropriate under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

CAL. PENAL CODE § 1370.1 (2010). VERDICT AS TO MENTAL COMPETENCE; FINDING OF DEVELOPMENTAL DISABILITY

(a)

(1)

(A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee. In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital or developmental center for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600) of Part 2.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that

an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.

(D) The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(E) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(F) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(G) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(H) As used in this section, "developmental disability" means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public

Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing the defendant be confined in a state hospital, developmental center, or other residential facility or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be committed to a state hospital or developmental center or to any other available residential facility approved by the regional center director. No person shall be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

(3) When the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

(B) Any arrest reports prepared by the police department or other law enforcement agency.

(C) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5)

(A) If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is

committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or developmental center or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the regional center director or designee.

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b)

(1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or designee of the state hospital, developmental center, or other facility to which the defendant is committed or the outpatient supervisor where the defendant is placed on outpatient status shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant shall remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a) or if the defendant becomes mentally competent, the executive director or designee of the hospital or developmental center or person in charge of the facility or the outpatient supervisor shall report to the court and the regional center director or his or her designee regarding the defendant's progress toward becoming mentally competent. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If

the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the executive director of the developmental center.

(2) Any defendant who has been committed or has been on outpatient status for 18 months, and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the regional center director or designee and the executive director of the developmental center.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the executive director of the developmental center.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c)

(1)

(A) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, any defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) In the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(d) Notwithstanding any other provision of this section, the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

(e) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

CAL. PENAL CODE § 1370.4 (2010). COMMITTED PERSON PLACED ON OUTPATIENT STATUS

A person committed to a state hospital or other treatment facility under the provisions of this chapter may be placed on outpatient status from such commitment as provided in Title 15 (commencing with Section 1600) of Part 2.

CAL. PENAL CODE § 1370.5 (2010). ESCAPE FROM MENTAL HEALTH FACILITY

(a) Every person committed to a state hospital or other public or private mental health facility pursuant to the provisions of Section 1370, 1370.01, or 1370.1, who escapes from or who escapes while being conveyed to or from a state hospital or facility, is punishable by imprisonment in the county jail not to exceed one year or in the state prison for a determinate term of one year and one day. The term of imprisonment imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed pursuant to the provisions of Section 1370, 1370.01, or 1370.1 shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall within 48 hours of the escape of the person orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

CAL. PENAL CODE § 1371 (2010). EXONERATION OF BAIL ON COMMITMENT

The commitment of the defendant, as described in Section 1370 or 1370.01, exonerates his or her bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he or she may have deposited instead of bail, or gives, to the person or persons found by the court to have deposited any money instead of bail on behalf of the defendant, a right to the return of that money.

CAL. PENAL CODE § 1372 (2010). CERTIFICATION OF RECOVERY OF MENTAL COMPETENCE; SUBSEQUENT PROCEEDINGS

(a)

(1) If the medical director of the state hospital or other facility to which the defendant is committed, or the community program director, county mental health director, or regional center director providing outpatient services, determines that the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested. For purposes of this section, the date of filing shall be the date on the return receipt.

(2) The court's order committing an individual to a state hospital or other treatment facility pursuant to Section 1370 shall include direction that the sheriff shall redeliver the patient to the court without any further order from the court upon receiving from the state hospital or treatment facility a copy of the certificate of restoration.

(3) The defendant shall be returned to the committing court in the following manner:

(A) A patient who remains confined in a state hospital or other treatment facility shall be redelivered to the sheriff of the county from which the patient was committed. The sheriff shall immediately return the person from the state hospital or other treatment facility to the court for further proceedings.

(B) The patient who is on outpatient status shall be returned by the sheriff to court through arrangements made by the outpatient treatment supervisor.

(C) In all cases, the patient shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration. The state shall only pay for 10 hospital days for patients following the filing of a certificate of restoration of competency. The State Department of Mental Health shall report to the fiscal and appropriate policy committees of the Legislature on an annual basis in February, on the number of days that exceed the 10-day limit prescribed in this subparagraph. This report shall include, but not be limited to, a data sheet that itemizes by county the number of days that exceed this 10-day limit during the preceding year.

(b) If the defendant becomes mentally competent after a conservatorship has been established pursuant to the applicable provisions of the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and Section 1370, the conservator shall certify that fact to the sheriff and district attorney of the county in which the defendant's case is pending, defendant's attorney of record, and the committing court.

(c) When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the community program director, the county mental health director, or the regional center director and the Director of Developmental

Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence.

(d) If the committing court approves the certificate of restoration to competence as to a person in custody, the court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings. If the superior court approves the certificate of restoration to competence regarding a person on outpatient status, unless it appears that the person has refused to come to court, that person shall remain released either on own recognizance status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in court for further proceedings. If the person has refused to come to court, the court shall set bail and may place the person in custody until bail is posted.

(e) A defendant subject to either subdivision (a) or (b) who is not admitted to bail or released under subdivision (d) may, at the discretion of the court, upon recommendation of the director of the facility where the defendant is receiving treatment, be returned to the hospital or facility of his or her original commitment or other appropriate secure facility approved by the community program director, the county mental health director, or the regional center director. The recommendation submitted to the court shall be based on the opinion that the person will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial or that placing the person in a jail environment would create a substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed.

(f) Notwithstanding subdivision (e), if a defendant is returned by the court to a hospital or other facility for the purpose of maintaining competency to stand trial and that defendant is already under civil commitment to that hospital or facility from another county pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or as a developmentally disabled person committed pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, the costs of housing and treating the defendant in that facility following return pursuant to subdivision (e) shall be the responsibility of the original county of civil commitment.

CAL. PENAL CODE § 2960 (2010). LEGISLATIVE FINDINGS

The Legislature finds that there are prisoners who have a treatable, severe mental disorder that was one of the causes of, or was an aggravating factor in the commission of the crime for which they were incarcerated. Secondly, the Legislature finds that if the severe mental disorders of those prisoners are not in remission or cannot be kept in remission at the time of their parole or upon termination of parole, there is a danger to society, and the state has a compelling interest in protecting the public. Thirdly, the Legislature finds that in order to protect the public from those persons it is necessary to provide mental health treatment until the severe mental disorder which was one of the causes of or was an aggravating factor in the person's prior criminal behavior is in remission and can be kept in remission.

The Legislature further finds and declares the Department of Corrections should evaluate each prisoner for severe mental disorders during the first year of the prisoner's sentence, and that severely mentally disordered prisoners should be provided with an appropriate level of mental health treatment while in prison and when returned to the community.

CAL. PENAL CODE § 2962 (2010). TREATMENT AS CONDITION OF PAROLE; CRITERIA; PROOF OF SUBSTANTIAL DANGER OF PHYSICAL HARM

As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment.

The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d)

(1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief

psychiatrist of the Department of Corrections has certified to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is not in remission or cannot be kept in remission without treatment, or (C) that the severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) If at least one of the independent professionals who evaluate the prisoner pursuant to paragraph (2) concurs with the chief psychiatrist's certification of the issues described in paragraph (2), this subdivision shall be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

(e) The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

(D) Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of the carjacking.

(F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(G) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(H) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(I) Lewd acts on a child under the age of 14 years in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 where the act was accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(L) Arson in violation of subdivision (a) of Section 451, or arson in violation of any other provision of Section 451 or in violation of Section 455 where the act posed a substantial danger of physical harm to others.

(M) Any felony in which the defendant used a firearm which use was charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

(N) A violation of Section 12308.

(O) Attempted murder.

(P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243.

(Q) A crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used. For purposes of this subparagraph, substantial physical harm shall not require proof that the threatened act was likely to cause great or serious bodily injury.

(f) As used in this chapter, "substantial danger of physical harm" does not require proof of a recent overt act.

CAL. PENAL CODE § 2963 (2010). RETENTION IN CUSTODY FOR FULL EVALUATION; SHOWING OF GOOD CAUSE REQUIRED

(a) Upon a showing of good cause, the Board of Parole Hearings may order that a person remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to paragraph (1) of subdivision (d) of Section 2962 and any additional evaluations pursuant to paragraph (2) of subdivision (d) of Section 2962.

(b) For purposes of this section, good cause means circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the evaluations described in subdivision (d) of Section 2962.

CAL. PENAL CODE § 2964 (2010). OUTPATIENT TREATMENT; REVOCATION OF PAROLE; HEARING

(a) The treatment required by Section 2962 shall be inpatient unless the State Department of Mental Health certifies to the Board of Prison Terms that there is reasonable cause to believe the parolee can be safely and effectively treated on an outpatient basis, in which case the Board of Prison Terms shall permit the State Department of Mental Health to place the parolee in an outpatient treatment program specified by the State Department of Mental Health. Any prisoner who is to be required to accept treatment pursuant to Section 2962 shall be informed in writing of his or her right to request a hearing pursuant to Section 2966. Prior to placing a parolee in a local outpatient program, the State Department of Mental Health shall consult with the local outpatient program as to the appropriate treatment plan. Notwithstanding any other law, a parolee ordered to have outpatient treatment pursuant to this section may be placed in an outpatient treatment program used to provide outpatient treatment under Title 15 (commencing with Section 1600) of Part 2, but the procedural provisions of Title 15 shall not apply. The community program director or a designee of an outpatient program used to provide treatment under Title 15 in which a parolee is placed, may place the parolee, or cause the parolee to be placed, in a secure mental health facility if the parolee can no longer be safely or effectively treated in the outpatient program, and until the parolee can be safely and effectively treated in the program. Upon the request of the community program director or a designee, a peace officer shall take the parolee into custody and transport the parolee, or cause the parolee to be taken into custody and transported, to a facility designated by the community program director, or a designee, for confinement under this section. Within 15 days after placement in a secure facility the State Department of Mental Health shall conduct a hearing on whether the parolee can be safely and effectively treated in the program unless the patient or the patient's attorney agrees to a continuance, or unless good cause exists that prevents the State Department of Mental Health from conducting the hearing within that period of time. If good cause exists, the hearing shall be held within 21 days after placement in a secure facility. For purposes of this section, "good cause" means the inability to secure counsel, an interpreter, or witnesses for the hearing within the 15-day time period. Before deciding to seek revocation of the parole of a parolee receiving mental health treatment pursuant to Section 2962, and return him or her to prison, the parole officer shall consult with the director of the parolee's outpatient

program. Nothing in this section shall prevent hospitalization pursuant to Section 5150, 5250, or 5353 of the Welfare and Institutions Code.

(b) If the State Department of Mental Health has not placed a parolee on outpatient treatment within 60 days after receiving custody of the parolee or after parole is continued pursuant to Section 3001, the parolee may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing to determine whether the prisoner shall be treated as an inpatient or an outpatient. At the hearing, the burden shall be on the State Department of Mental Health to establish that the prisoner requires inpatient treatment as described in this subdivision. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978.

CAL. PENAL CODE § 2966 (2010). ADMINISTRATIVE HEARING REGARDING ELIGIBILITY FOR TREATMENT; SUPERIOR COURT HEARING; CONTINUATION OF TREATMENT

(a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. Evidence offered for the purpose of proving the prisoner's behavior or mental status subsequent to the Board of Prison Terms hearing shall not be considered. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The court may, upon stipulation of both parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process. The court may allow the

affidavit or declaration to be read and the contents thereof considered in the rendering of a decision or verdict in any proceeding held pursuant to subdivision (b) or (c), or subdivision (a) of Section 2972. If the court or jury reverses the determination of the Board of Prison Terms, the court shall stay the execution of the decision for five working days to allow for an orderly release of the prisoner.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when it continues the parolee's parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental disorder, whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the parolee represents a substantial danger of physical harm to others.

CAL. PENAL CODE § 2968 (2010). TERMINATION OF TREATMENT; PAROLEE WHOSE DISORDER IS PUT INTO REMISSION

If the prisoner's severe mental disorder is put into remission during the parole period, and can be kept in remission, the Director of Mental Health shall notify the Board of Prison Terms and the State Department of Mental Health shall discontinue treating the parolee.

CAL. PENAL CODE § 2970 (2010). PETITION FOR CONTINUED INVOLUNTARY TREATMENT

Not later than 180 days prior to the termination of parole, or release from prison if the prisoner refused to agree to treatment as a condition of parole as required by Section 2962, unless good cause is shown for the reduction of that 180-day period, if the prisoner's severe mental disorder is not in remission or cannot be kept in remission without treatment, the medical director of the state hospital which is treating the parolee, or the community program director in charge of the parolee's outpatient program, or the Director of Corrections, shall submit to the district attorney of the county in which the parolee is receiving outpatient treatment, or for those in prison or in a state mental hospital, the district attorney of the county of commitment, his or her written evaluation on remission. If requested by the district attorney, the written evaluation shall be accompanied by supporting affidavits.

The district attorney may then file a petition with the superior court for continued involuntary treatment for one year. The petition shall be accompanied by affidavits specifying that treatment, while the prisoner was released from prison on parole, has been continuously provided by the State Department of Mental Health either in a state hospital or in an outpatient program. The petition shall also specify that the prisoner has a severe mental disorder, that the severe mental disorder is not in remission or cannot be kept in remission if the person's treatment is not continued, and that, by reason of his or her severe mental disorder, the prisoner represents a substantial danger of physical harm to others.

CAL. PENAL CODE § 2972 (2010). HEARING ON PETITION FOR CONTINUED TREATMENT; PETITION FOR RECOMMITMENT; RIGHTS OF PERSON COMMITTED

(a) The court shall conduct a hearing on the petition under Section 2970 for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable.

The standard of proof under this section shall be proof beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown.

(b) The people shall be represented by the district attorney. If the person is indigent, the county public defender shall be appointed.

(c) If the court or jury finds that the patient has a severe mental disorder, that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others, the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the State Department of Mental Health if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in Section 2970. Time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be credited toward the person's maximum term of commitment or toward the person's term of extended commitment.

(d) A person shall be released on outpatient status if the committing court finds that there is reasonable cause to believe that the committed person can be safely and effectively treated on an outpatient basis. Except as provided in this subdivision, the provisions of Title 15 (commencing with Section 1600) of Part 2, shall apply to persons placed on outpatient status pursuant to this paragraph. The standard for revocation under Section 1609 shall be that the person cannot be safely and effectively treated on an outpatient basis.

(e) Prior to the termination of a commitment under this section, a petition for recommitment may be filed to determine whether the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others. The recommitment proceeding shall be conducted in accordance

with the provisions of this section.

(f) Any commitment under this article places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(g) Except as provided in this subdivision, the person committed shall be considered to be an involuntary mental health patient and he or she shall be entitled to those rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held. This subdivision and the regulations adopted pursuant thereto shall become operative on January 1, 1987, except that regulations may be adopted prior to that date.

CAL. PENAL CODE § 2972.1 (2010). LIMIT ON OUTPATIENT STATUS

(a) Outpatient status for persons committed pursuant to Section 2972 shall be for a period not to exceed one year. Pursuant to Section 1606, at the end of a period of outpatient status approved by the court, the court shall, after actual notice to the prosecutor, the defense attorney, the community program director or a designee, the medical director of the facility that is treating the person, and the person on outpatient status, and after a hearing in court, either discharge the person from commitment under appropriate provisions of law, order the person confined to a treatment facility, or renew its approval of outpatient status.

(b) Prior to the hearing described in subdivision (a), the community program director or a designee shall furnish a report and recommendation to the court, the prosecution, the defense attorney, the medical director of the facility that is treating the person, and the person on outpatient status. If the recommendation is that the person continue on outpatient status or be confined to a treatment facility, the report shall also contain a statement that conforms with requirements of subdivision (c).

(c)

(1) Upon receipt of a report prepared pursuant to Section 1606 that recommends confinement or continued outpatient treatment, the court shall direct prior defense counsel, or, if necessary, appoint new defense counsel, to meet and confer with the person who is on outpatient status and explain the recommendation contained therein. Following this meeting, both defense counsel and the person on outpatient status shall sign and return to the court a form which shall read as follows:

"Check One:

"_____ I do not believe that I need further treatment and I demand a jury trial to decide this question.

"_____ I accept the recommendation that I continue treatment."

(2) The signed form shall be returned to the court at least 10 days prior to the hearing described in subdivision (a). If the person on outpatient status refuses or is unable to sign the form, his or her counsel shall indicate, in writing, that the form and the report prepared pursuant to Section 1606 were explained to the person and the person refused or was unable to sign the form.

(d) If the person on outpatient status either requests a jury trial or fails to waive his or her right to a jury trial, a jury trial meeting all of the requirements of Section 2972 shall be set within 60 days of the initial hearing.

(e) The trier of fact, or the court if trial is waived, shall determine whether or not the requirements of subdivisions (c) and (d) of Section 2972 have been met. The court shall then make an appropriate disposition under subdivision (a) of this section.

(f) The court shall notify the community program director or a designee, the person on outpatient status, and the medical director or person in charge of the facility providing treatment of the person whether or not the person was found suitable for release.

CAL. PENAL CODE § 2974 (2010). PLACEMENT OF SPECIFIED PERSONS IN STATE HOSPITAL

Before releasing any inmate or terminating supervision of any parolee who is a danger to self or others, or gravely disabled as a result of mental disorder, and who does not come within the provisions of Section 2962, the Director of Corrections may, upon probable cause, place, or cause to be placed, the person in a state hospital pursuant to the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

CAL. PENAL CODE § 4011.6 (2010). MENTALLY DISORDERED PRISONERS; TREATMENT AND EVALUATION; NOTIFICATION OF TRANSFER; REPORT ON CONDITION; CREDIT ON SENTENCE; TIME FOR ARRAIGNMENT OR TRIAL

In any case in which it appears to the person in charge of a county jail, city jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is located, that a person in custody in that jail or juvenile detention facility may be mentally disordered, he or she may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and he or she shall inform the facility in writing, which shall be confidential, of the reasons that the person is being taken to the facility. The local mental health director or his or her designee may examine the prisoner prior to transfer to a facility for treatment and evaluation. Upon transfer to a facility, Article 1 (commencing with Section 5150), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), and Article 7 (commencing with Section 5325) of Chapter 2 and Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code shall apply to the prisoner.

Where the court causes the prisoner to be transferred to a 72-hour facility, the court shall forthwith notify the local mental health director or his or her designee, the prosecuting attorney, and counsel for the prisoner in the criminal or juvenile proceedings about that transfer. Where the person in charge of the jail or juvenile detention facility causes the transfer of the prisoner to a 72-hour facility the person shall immediately notify the local mental health director or his or her designee and each court within the county where the prisoner has a pending proceeding about the transfer. Upon notification by the person in charge of the jail or juvenile detention facility the court shall forthwith notify counsel for the prisoner and the prosecuting attorney in the criminal or juvenile proceedings about that transfer.

If a prisoner is detained in, or remanded to, a facility pursuant to those articles of the Welfare and Institutions Code, the facility shall transmit a report, which shall be confidential, to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility and to the local mental health director or his or her designee, concerning the condition of the prisoner. A new report shall be transmitted at the end of each period of confinement provided for in those articles, upon conversion to voluntary status, and upon filing of temporary letters of conservatorship.

A prisoner who has been transferred to an inpatient facility pursuant to this section may convert to voluntary inpatient status without obtaining the consent of the court, the person in charge of the jail or juvenile detention facility, or the local mental health director. At the beginning of that conversion to voluntary status, the person in charge of the facility shall transmit a report to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility, counsel for the prisoner, prosecuting attorney, and local mental health director or his or her designee.

If the prisoner is detained in, or remanded to, a facility pursuant to those articles of the Welfare and Institutions Code, the time passed in the facility shall count as part of the prisoner's sentence. When the prisoner is detained in, or remanded to, the facility, the person in charge of the jail or juvenile detention facility shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released from the facility before the expiration date, the professional person in charge shall notify the local mental health director or his or her designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail or juvenile detention facility, who shall send for, take, and receive the prisoner back into the jail or juvenile detention facility.

A defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court, may be concurrently subject to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

If a prisoner is detained in a facility pursuant to those articles of the Welfare and Institutions Code and if the person in charge of the facility determines that arraignment or

trial would be detrimental to the well-being of the prisoner, the time spent in the facility shall not be computed in any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings. Otherwise, this section shall not affect any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings.

For purposes of this section, the term "juvenile detention facility" includes any state, county, or private home or institution in which wards or dependent children of the juvenile court or persons awaiting a hearing before the juvenile court are detained.

CAL. WELF. & INST. CODE § 3050 (2010). ADJOURNMENT OF CRIMINAL PROCEEDINGS; CERTIFICATION OF DEFENDANT AS ADDICT; SUPERIOR COURT PROCEEDINGS

Upon conviction of a defendant of a misdemeanor or infraction or following revocation of probation previously granted for a misdemeanor or infraction, whether or not sentence has been imposed, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics, such judge shall adjourn the proceedings or suspend the imposition or execution of the sentence, certify the defendant to the superior court and order the district attorney to file a petition for a commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility.

Upon the filing of such a petition, the superior court shall order the defendant to be examined by one physician. At the request of the defendant, the court shall order the defendant to be examined by a second physician. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the defendant. A written report of the examination by the physician or physicians shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall so certify and return the defendant to the court which certified such defendant to the superior court for such further proceedings as the judge of such court deems warranted. If the report is to the effect that the defendant is addicted or is by reason of the repeated use of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted thereto, and is not ineligible for the program under the application of Section 3052, he or she shall make an order committing such defendant to the custody of the Director of Corrections for confinement in the facility until such time as he or she is discharged pursuant to Article 5 (commencing with Section 3200), except as this chapter permits earlier discharge. If, upon the hearing, the judge shall find that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, the judge shall so certify and return the defendant to the court which certified the defendant to the superior court for such further proceedings as the judge of the court which certified the defendant to the

superior court deems warranted.

If a person committed pursuant to this section is dissatisfied with the order of commitment, he or she may within 10 days after the making of such order, file a written demand for a jury trial in compliance with Section 3108.

CAL. WELF. & INST. CODE § 3051 (2010). DEFENDANT WHO HAS BEEN CONVICTED OF FELONY OR WHOSE PROBATION FOR FELONY HAS BEEN REVOKED

Upon conviction of a defendant for a felony, or following revocation of probation previously granted for a felony, and upon imposition of sentence, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics the judge shall suspend the execution of the sentence and order the district attorney to file a petition for commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment, and rehabilitation facility unless, in the opinion of the judge, the defendant's record and probation report indicate such a pattern of criminality that he or she does not constitute a fit subject for commitment under this section.

Upon the filing of the petition, the court shall order the defendant to be examined by one physician. However, the examination may be waived by a defendant if the defendant has been examined in accordance with Section 1203.03 of the Penal Code and that examination encompassed whether defendant is addicted or is in imminent danger of addiction, and if the defendant is represented by counsel and competent to understand the effect of the waiver. In cases where a physician's report is waived by the defendant, the Department of Corrections may perform an evaluation and provide a report as to the defendant's addiction or imminent danger of addiction. If the Department of Corrections determines that the defendant is not addicted or in imminent danger of addiction, the defendant shall be returned to the sentencing court for resentencing. The examination may also be waived upon stipulation by the defendant, his or her attorney, the prosecutor, and the court that the defendant is addicted or is in imminent danger of addiction. If a physician's report is prepared, at the request of the defendant, the court shall order the defendant to be examined by a second physician. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the defendant. A written report of the examination by the physician or physicians shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall so certify and return the defendant to the department of the superior court that directed the filing of the petition for the ordering of the execution of the sentence. The court may, unless otherwise prohibited by law, modify the sentence or suspend the imposition of the sentence. If the report is to the effect that the defendant is addicted or is by reason of the repeated use of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted to narcotics,

the judge shall make an order committing the person to the custody of the Director of Corrections for confinement in the facility until a time that he or she is discharged pursuant to Article 5 (commencing with Section 3200), except as this chapter permits earlier discharge. If, upon the hearing, the judge finds that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, the judge shall so certify and return the defendant to the department of the superior court that directed the filing of the petition for the ordering of execution of sentence. The court may, unless otherwise prohibited by law, modify the sentence or suspend the imposition of the sentence.

If a person committed pursuant to this section is dissatisfied with the order of commitment, he or she may, within 10 days after the making of the order, file a written demand for a jury trial in compliance with Section 3108.

A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code may perform the examination specified in this section and Section 3050. This section does not expand the scope of practice of psychologists as set forth in Section 2903 of the Business and Professions Code nor does this section allow a psychologist to perform any activity that would otherwise require a physician's and surgeon's license.

CAL. WELF. & INST. CODE § 3052 (2010). INAPPLICABILITY OF SECTIONS TO PERSONS CONVICTED OF SPECIFIED CRIMES

(a) Sections 3050 and 3051 shall not apply to any of the following:

(1) Persons convicted of any offense for which the provisions of Section 667.6 of the Penal Code apply, or any offense described in Chapter 1 (commencing with Section 450) of Title 13 of Part 1 of the Penal Code; or any person convicted of committing or attempting to commit any violent felony as defined in subdivision (c) of Section 667.5 of the Penal Code.

(2) Persons whose sentence is enhanced pursuant to subdivision (b) of Section 12022 of the Penal Code, or Section 12022.3, 12022.5, 12022.53, 12022.6, 12022.7, or 12022.8 of the Penal Code; or persons whose sentence is subject to the provisions of Section 3046 of the Penal Code; or persons whose conviction results in a sentence which, in the aggregate, exclusive of any credit that may be earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code, exceeds six years' imprisonment in state prison; or persons found to come under the provisions of Section 1203.06 of the Penal Code.

(b) Notwithstanding the provisions of subdivision (a) of this section or Section 3053, the fact that a person comes within Section 1203.07 of the Penal Code does not mean that he or she may not be committed and treated.

CAL. WELF. & INST. CODE § 3053 (2010). RETURN FROM FACILITY OF PERSON NOT DEEMED FIT SUBJECT FOR CONFINEMENT OR TREATMENT

(a) If at any time following receipt at the facility of a person committed pursuant to this article, the Director of Corrections concludes that the person, because of excessive criminality or for other relevant reason, including the person's eligibility for treatment pursuant to Section 1210.1 of the Penal Code, is not a fit subject for confinement or treatment in the narcotic detention, treatment, and rehabilitation facility, he or she shall return the person to the court in which the case originated for further proceedings on the criminal charges that the court may deem warranted.

(b) A person committed pursuant to this article who is subsequently committed to the Director of Corrections pursuant to Section 1168 or 1170 of the Penal Code shall not be a fit subject for treatment pursuant to this article. The court committing the person to the Director of Corrections pursuant to Section 1168 or 1170 of the Penal Code shall immediately notify the court that originally committed the person pursuant to this article. Upon receipt of the person committed pursuant to Section 1168 or 1170 of the Penal Code or upon notification of such commitment, whichever is sooner, the Director of Corrections shall notify the court that committed the person pursuant to this article of the subsequent commitment. Upon receipt of notification of the subsequent commitment the court that had committed the person pursuant to this article shall automatically terminate the commitment and shall promptly set for hearing the matter of further proceedings on the criminal charges.

(c) If the defendant was originally committed pursuant to Section 3050 or 3051, the committing court, if the criminal proceedings were conducted in another court, shall notify that court that adjourned its criminal proceedings or suspended sentence in the case pending the civil commitment. In that event, that criminal court shall then promptly set for hearing the matter of the sentencing of the defendant upon the conviction that subsequently resulted in the original civil commitment.

CAL. WELF. & INST. CODE § 3201 (2010). TIMELY DISCHARGE OF COMMITTED PERSONS; RELEASE ON PAROLE

(a) Except as otherwise provided in subdivisions (b) and (c) of this section, if a person committed pursuant to this chapter has not been discharged from the program prior to expiration of 16 months, the Director of Corrections shall, on the expiration of such period, return him or her to the court from which he or she was committed, which court shall discharge him or her from the program and order him or her returned to the court in which criminal proceedings were adjourned, or the imposition of sentence suspended, prior to his or her commitment or certification to the superior court.

(b) Any other provision of this chapter notwithstanding, in any case in which a person was committed pursuant to Article 3 (commencing with Section 3100), such person shall be discharged no later than 12 months after his or her commitment.

(c) Any person committed pursuant to Article 2 (commencing with Section 3050), whose execution of sentence in accordance with the provisions of Section 1170 of the Penal

Code was suspended pending a commitment pursuant to Section 3051, who has spent, pursuant to this chapter, a period of time in confinement or in custody, excluding any time spent on outpatient status, equal to that which he or she would have otherwise spent in state prison had sentence been executed, including application of good behavior and participation credit provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code, shall, upon reaching such accumulation of time, be released on parole under the jurisdiction of the Narcotic Addict Evaluation Authority subject to all of the conditions imposed by the authority and subject to the provisions of Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. A person on parole who violates the rules, regulations or conditions imposed by the authority shall be subject to being retaken and returned to the California Rehabilitation Center as prescribed in such rules, regulations, or conditions and in accordance with the provisions of Sections 3151 and 3152. At the termination of this period of parole supervision or of custody in the California Rehabilitation Center, the person shall be returned by the Director of Corrections to the court from which such person was committed, which court shall discharge him or her from the program and order him or her returned to the court which suspended execution of such person's sentence to state prison. Such court, notwithstanding any other provision of law, shall suspend or terminate further proceedings in the interest of justice, modify the sentence in the same manner as if the commitment had been recalled pursuant to subdivision (d) of Section 1170 of the Penal Code, or order execution of the suspended sentence. Upon the ordering of the execution of such sentence, the term imposed shall be deemed to have been served in full.

Except as otherwise provided in the preceding paragraph, or as otherwise provided in Section 3200, the period of commitment, including outpatient status, for persons committed pursuant to Section 3051, which commitment is subsequent to a criminal conviction for which execution of sentence to state prison is suspended, shall equal the term imposed under Section 1170 of the Penal Code, notwithstanding good time and participation credit provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of such code. Upon reaching such period of time, such person shall be released on parole under the jurisdiction of the Narcotic Addict Evaluation Authority subject to all of the conditions imposed by the authority and subject to the provisions of Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. A person on parole who violates the rules, regulations, or conditions imposed by the authority shall be subject to being retaken and returned to the California Rehabilitation Center as prescribed in such rules, regulations, or conditions and in accordance with the provisions of Sections 3151 and 3152. At the termination of this period of parole supervision or of custody in the California Rehabilitation Center the person shall be returned by the Director of Corrections to the court from which he or she was committed, which court shall discharge such person from the program and order him or her returned to the court which suspended execution of the person's sentence to state prison. Such court, notwithstanding any other provision of law, shall suspend or terminate further proceedings in the interest of justice, modify the sentence in the same manner as if the commitment had been recalled pursuant to subdivision (d) of Section 1170 of the Penal Code, or order execution of the suspended sentence. Upon the ordering

of the execution of such sentence, the term imposed shall be deemed to have been served in full.

Nothing in this section shall preclude a person who has been discharged from the program from being recommitted under the program, irrespective of the periods of time of any previous commitments.

CAL. WELF. & INST. CODE § 5002 (2010). COMMITMENT OF DISORDERED PERSONS; SERVICES AVAILABLE

Mentally disordered persons and persons impaired by chronic alcoholism may no longer be judicially committed.

Mentally disordered persons shall receive services pursuant to this part. Persons impaired by chronic alcoholism may receive services pursuant to this part if they elect to do so pursuant to Article 3 (commencing with Section 5225) of Chapter 2 of this part.

Epileptics may no longer be judicially committed.

This part shall not be construed to repeal or modify laws relating to the commitment of mentally disordered sex offenders, mentally retarded persons, and mentally disordered criminal offenders, except as specifically provided in Penal Code Section 4011.6, or as specifically provided in other statutes.

CAL. WELF. & INST. CODE § 5007 (2010). APPLICATION OF PROVISIONS TO PREVIOUS COURT COMMITMENTS

Unless otherwise indicated, the provisions of this part shall not be construed to apply retroactively to terminate court commitments of mentally ill persons or inebriates under preexisting law.

CAL. WELF. & INST. CODE § 5008.1 (2010). "JUDICIALLY COMMITTED"

As used in this division and in Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 6 (commencing with Section 6000), Division 7 (commencing with Section 7100), and Division 8 (commencing with Section 8000), the term "judicially committed" means all of the following:

(a) Persons who are mentally disordered sex offenders placed in a state hospital or institutional unit for observation or committed to the State Department of Mental Health pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6.

(b) Developmentally disabled persons who are admitted to a state hospital upon application or who are committed to the State Department of Developmental Services by court order pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6.

(c) Persons committed to the State Department of Mental Health or a state hospital pursuant to the Penal Code.

CAL. WELF. & INST. CODE § 5225 (2010). EVALUATION OF CRIMINAL DEFENDANT

Whenever a criminal defendant who appears, as a result of chronic alcoholism or the use of narcotics or restricted dangerous drugs, to be a danger to others, to himself, or to be gravely disabled, is brought before any judge, the judge may order the defendant's evaluation under conditions set forth in this article, provided evaluation services designated in the county plan pursuant to Section 5654 are available.

CAL. WELF. & INST. CODE § 5226.1 (2010). DISMISSAL OR SUSPENSION OF CRIMINAL CHARGES UNTIL EVALUATION AND DETENTION COMPLETED; SUBSEQUENT RESUMPTION OR DISMISSAL

If a judge issues an order for evaluation under conditions set forth in this article, proceedings on the criminal charge then pending in the court from which the order for evaluation issued shall be dismissed or suspended until such time as the evaluation of the defendant and the subsequent detention of the defendant for involuntary treatment, if any, are completed. Upon completion of such evaluation and detention, if any, the defendant shall, if such criminal charge has not been dismissed, be returned by the sheriff of the county in which the order of evaluation was made, from the evaluation or intensive treatment facility to the custody of the sheriff who shall return the defendant to the court where the order for evaluation was made, and proceedings on the criminal charge shall be resumed or dismissed. If, during evaluation or detention for involuntary treatment, the defendant is recommended for conservatorship, and if the criminal charge has not previously been dismissed, the defendant shall be returned by the sheriff to the court in which such charge is pending for the disposition of the criminal charge prior to the initiation of the conservatorship proceedings. The judge of such court may order such defendant to be detained in the evaluation or treatment facility until the day set for the resumption of the proceedings on the criminal charge.

CAL. WELF. & INST. CODE § 5230 (2010). DETENTION FOR TREATMENT

If, upon evaluation, the person is found to be in need of treatment because he is, as a result of impairment by chronic alcoholism or the use of narcotics or restricted dangerous drugs, a danger to others, or to himself, or is gravely disabled, he may be detained for treatment in a facility for 72-hour treatment and evaluation. Except as provided in this section, he shall in no event be detained longer than 72 hours from the time of evaluation or detention for evaluation, excluding Saturdays, Sundays and holidays if treatment services are not available on those days.

Persons who have been detained for evaluation and treatment shall be released if the criminal charge has been dismissed; released to the custody of the sheriff or continue to be detained pursuant to court order under Section 5226.1; referred for further care and treatment on a voluntary basis, subject to the disposition of the criminal action; certified

for intensive treatment; or recommended for conservatorship pursuant to this part, subject to the disposition of the criminal charge; as required.

CAL. WELF. & INST. CODE § 5250 (2010). CONDITIONS FOR CERTIFICATION

If a person is detained for 72 hours under the provisions of Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225) and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism, under the following conditions:

(a) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and has found the person is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.

(b) The facility providing intensive treatment is designated by the county to provide intensive treatment, and agrees to admit the person. No facility shall be designated to provide intensive treatment unless it complies with the certification review hearing required by this article. The procedures shall be described in the county Short-Doyle plan as required by Section 5651.3.

(c) The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.

(d)

(1) Notwithstanding paragraph (1) of subdivision (h) of Section 5008, a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

(2) However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.

(3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the certification review officer to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing, or shelter.

CAL. WELF. & INST. CODE § 5256 (2010). TIME TO HOLD CERTIFICATION REVIEW HEARING

When a person is certified for intensive treatment pursuant to Sections 5250 and 5270.15, a certification review hearing shall be held unless judicial review has been requested as provided in Sections 5275 and 5276. The certification review hearing shall be within four

days of the date on which the person is certified for a period of intensive treatment unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed for 48 hours or, in counties with a population of 100,000 or less, until the next regularly scheduled hearing date.

CAL. WELF. & INST. CODE § 5256.5 (2010). CONCLUSION OF HEARING; BASIS FOR TERMINATION OF INVOLUNTARY DETENTION

If at the conclusion of the certification review hearing the person conducting the hearing finds that there is not probable cause to believe that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person certified may no longer be involuntarily detained. Nothing herein shall prohibit the person from remaining at the facility on a voluntary basis or the facility from providing the person with appropriate referral information concerning mental health services.

CAL. WELF. & INST. CODE § 5256.6 (2010). INVOLUNTARY DETENTION UPON CONCLUSION OF HEARING

If at the conclusion of the certification review hearing the person conducting the hearing finds that there is probable cause that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person may be detained for involuntary care, protection, and treatment related to the mental disorder or impairment by chronic alcoholism pursuant to Sections 5250 and 5270.15.

CAL. WELF. & INST. CODE § 5257 (2010). TERMINATION OF CERTIFICATION AND RELEASE OF CERTIFIED PERSON; EXCEPTIONS

(a) During the period of intensive treatment pursuant to Section 5250 or 5270.15, the person's involuntary detention shall be terminated and the person shall be released only if the psychiatrist directly responsible for the person's treatment believes, as a result of the psychiatrist's personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled. However, in those situations in which both a psychiatrist and psychologist have personally evaluated or examined a person who is undergoing intensive treatment and there is a collaborative treatment relationship between the psychiatrist and the psychologist, either the psychiatrist or psychologist may authorize the release of the person, but only after they have consulted with one another. In the event of a clinical or professional disagreement regarding the early release of a person who is undergoing intensive treatment, the person may not be released unless the facility's medical director overrules the decision of the psychiatrist or psychologist opposing the release. Both the psychiatrist and psychologist shall enter their findings, concerns, or objections into the person's medical record. If any other professional person who is authorized to release the person believes the person should be released during the designated period of intensive treatment, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or

she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released during the period of intensive treatment only if the psychiatrist making the final decision believes, as a result of the psychiatrist's personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled. Nothing herein shall prohibit the person from remaining at the facility on a voluntary basis or prevent the facility from providing the person with appropriate referral information concerning mental health services.

(b) A person who has been certified for a period of intensive treatment pursuant to Section 5250 shall be released at the end of 14 days unless the patient either:

(1) Agrees to receive further treatment on a voluntary basis.

(2) Is certified for an additional 14 days of intensive treatment pursuant to Article 4.5 (commencing with Section 5260).

(3) Is certified for an additional 30 days of intensive treatment pursuant to Article 4.7 (commencing with Section 5270.10).

(4) Is the subject of a conservatorship petition filed pursuant to Chapter 3 (commencing with Section 5350).

(5) Is the subject of a petition for postcertification treatment of a dangerous person filed pursuant to Article 6 (commencing with Section 5300).

(c) The amendments to this section made by Assembly Bill 348 of the 2003-04 Regular Session shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

CAL. WELF. & INST. CODE § 5258 (2010). MAXIMUM PERIOD OF DETENTION

After the involuntary detention has begun, the total period of detention, including intervening periods of voluntary treatment, shall not exceed the total maximum period during which the person could have been detained, if the person had been detained continuously on an involuntary basis, from the time of initial involuntary detention.

CAL. WELF. & INST. CODE § 5300 (2010). CONFINEMENT FOR FURTHER TREATMENT; DURATION

At the expiration of the 14-day period of intensive treatment, a person may be confined for further treatment pursuant to the provisions of this article for an additional period, not to exceed 180 days if one of the following exists:

(a) The person has attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in

custody, for evaluation and treatment, and who, as a result of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others.

(b) The person had attempted, or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody and who presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others.

(c) The person had made a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and the person presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others.

Any commitment to a licensed health facility under this article places an affirmative obligation on the facility to provide treatment for the underlying causes of the person's mental disorder.

Amenability to treatment is not required for a finding that any person is a person as described in subdivisions (a), (b), or (c). Treatment programs need only be made available to these persons. Treatment does not mean that the treatment be successful or potentially successful, and it does not mean that the person must recognize his or her problem and willingly participate in the treatment program.

CAL. WELF. & INST. CODE § 5300.5 (2010). "CUSTODY"; NECESSITY OF CONVICTION; ASSESSMENT OF DEMONSTRATED DANGER

For purposes of this article:

(a) "Custody" shall be construed to mean involuntary detainment under the provisions of this part uninterrupted by any period of unconditioned release from a licensed health facility providing involuntary care and treatment.

(b) Conviction of a crime is not necessary for commitment under this article.

(c) Demonstrated danger may be based on assessment of present mental condition, which is based upon a consideration of past behavior of the person within six years prior to the time the person attempted, inflicted, or threatened physical harm upon another, and other relevant evidence.

CAL. WELF. & INST. CODE § 5301 (2010). PETITION BY PERSON IN CHARGE OF FACILITY

At any time during the 14-day intensive treatment period the professional person in charge of the licensed health facility, or his or her designee, may ask the public officer required by Section 5114 to present evidence at proceedings under this article to petition the superior court in the county in which the licensed health facility providing treatment

is located for an order requiring such person to undergo an additional period of treatment on the grounds set forth in Section 5300. Such petition shall summarize the facts which support the contention that the person falls within the standard set forth in Section 5300. The petition shall be supported by affidavits describing in detail the behavior which indicates that the person falls within the standard set forth in Section 5300.

Copies of the petition for postcertification treatment and the affidavits in support thereof shall be served upon the person named in the petition on the same day as they are filed with the clerk of the superior court.

The courts may receive the affidavits in evidence and may allow the affidavits to be read to the jury and the contents thereof considered in rendering a verdict, unless counsel for the person named in the petition subpoenas the treating professional person. If such treating professional person is subpoenaed to testify, the public officer, pursuant to Section 5114, shall be entitled to a continuance of the hearing or trial.

CAL. WELF. & INST. CODE § 5303 (2010). COURT PROCEEDINGS

The court shall conduct the proceedings on the petition for postcertification treatment within four judicial days of the filing of the petition and in accordance with constitutional guarantees of due process of law and the procedures required under Section 13 of Article 1 of the Constitution of the State of California.

If at the time of the hearing the person named in the petition requests a jury trial, such trial shall commence within 10 judicial days of the filing of the petition for postcertification treatment unless the person's attorney requests a continuance, which may be for a maximum of 10 additional judicial days. The decision of the jury must be unanimous in order to support the finding of facts required by Section 5304.

Until a final decision on the merits by the trial court the person named in the petition shall continue to be treated in the intensive treatment facility until released by order of the superior court having jurisdiction over the action, or unless the petition for postcertification treatment is withdrawn. If no decision has been made within 30 days after the filing of the petition, not including extensions of time requested by the person's attorney, the person shall be released.

CAL. WELF. & INST. CODE § 5304 (2010). REMAND TO CUSTODY

(a) The court shall remand a person named in the petition for postcertification treatment to the custody of the State Department of Mental Health or to a licensed health facility designated by the county of residence of that person for a further period of intensive treatment not to exceed 180 days from the date of court judgment, if the court or jury finds that the person named in the petition for postcertification treatment has done any of the following:

(1) Attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation and treatment, and who, as a result of mental disorder or mental defect,

presents a demonstrated danger of inflicting substantial physical harm upon others.

(2) Attempted or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody, and who, as a result of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others.

(3) Expressed a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and who presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others.

(b) The person shall be released from involuntary treatment at the expiration of 180 days unless the public officer, pursuant to Section 5114, files a new petition for postcertification treatment on the grounds that he or she has attempted, inflicted, or made a serious threat of substantial physical harm upon another during his or her period of postcertification treatment, and he or she is a person who by reason of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others. The new petition for postcertification treatment shall be filed in the superior court in which the original petition for postcertification was filed.

(c) The county from which the person was remanded shall bear any transportation costs incurred pursuant to this section.

CAL. WELF. & INST. CODE § 5309 (2010). UNCONDITIONAL RELEASE PRIOR TO EXPIRATION OF COMMITMENT PERIOD

(a) Nothing in this article shall prohibit the superintendent or professional person in charge of the hospital in which the person is being involuntarily treated from releasing him or her from treatment prior to the expiration of the commitment period when, the psychiatrist directly responsible for the person's treatment believes, as a result of his or her personal observations, that the person being involuntarily treated no longer constitutes a demonstrated danger of substantial physical harm to others. If any other professional person who is authorized to release the person, believes the person should be released prior to the expiration of the commitment period, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released prior to the expiration of the commitment period only if the psychiatrist making the final decision believes, as a result of his or her personal observations, that the person being involuntarily treated no longer constitutes a demonstrated danger of substantial physical harm to others.

(b) After actual notice to the public officer, pursuant to Section 5114, and to counsel of the person named in the petition, to the court, and to the county mental health director, the plan for unconditional release shall become effective within five judicial days unless a court hearing on that action is requested by any of the aforementioned parties, in which

case the unconditional release shall not take effect until approved by the court after a hearing. This hearing shall be held within five judicial days of the actual notice required by this subdivision.

CAL. WELF. & INST. CODE § 6601 (2010). (FIRST OF TWO; OPERATIVE TERM CONTINGENT) EVALUATION PRIOR TO RELEASE FROM PRISON; HIRING OF QUALIFIED EVALUATORS; PETITION FOR COMMITMENT; LEGISLATIVE REPORTS

First of 2 versions of this section

(a)

(1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include

criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health, one or both of whom may be independent professionals as defined in subdivision (g). If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was

convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall toll the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m)

(1) The department shall provide the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, with a semiannual update on the progress made to hire qualified state employees to conduct the evaluation required pursuant to subdivision (d). The first update shall be provided no later than July 10, 2009.

(2) On or before January 2, 2010, the department shall report to the Legislature on all of the following:

(A) The costs to the department for the sexual offender commitment program attributable to the provisions in Proposition 83 of the November 2006 general election, otherwise known as Jessica's Law.

(B) The number and proportion of inmates evaluated by the department for commitment to the program as a result of the expanded evaluation and commitment criteria in Jessica's Law.

(C) The number and proportion of those inmates who have actually been committed for treatment in the program.

(3) This section shall remain in effect and be repealed on the date that the director executes a declaration, which shall be provided to the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to subdivision (d), or January 1, 2012, whichever occurs first.

CAL. WELF. & INST. CODE § 6601 (2010). (SECOND OF TWO; OPERATIVE TERM CONTINGENT) EVALUATION PRIOR TO RELEASE FROM PRISON; HIRING OF QUALIFIED EVALUATORS; PETITION FOR COMMITMENT; LEGISLATIVE REPORTS

Second of 2 versions of this section

(a)

(1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing

psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall toll the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m) This section shall become operative on the date that the director executes a declaration, which shall be provided to the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to subdivision (d), or January 1, 2012, whichever occurs first.

CAL. WELF. & INST. CODE § 6601.3 (2010). RETENTION IN CUSTODY FOR FULL EVALUATION; DEFINITION OF GOOD CAUSE

(a) Upon a showing of good cause, the Board of Prison Terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601.

(b) For purposes of this section, good cause means circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the full evaluation described in subdivisions (c) to (i), inclusive, of Section 6601.

CAL. WELF. & INST. CODE § 6601.5 (2010). URGENCY REVIEW ON ISSUE OF DETENTION AFTER EXPIRATION OF PAROLE UNTIL PROBABLE CAUSE HEARING CAN BE HELD

Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be completed pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.

CAL. WELF. & INST. CODE § 6602 (2010). JUDICIAL REVIEW; PROBABLE CAUSE HEARING; TRIAL

(a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

(b) The probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance.

(c) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

CAL. WELF. & INST. CODE § 6602.5 (2010). PROBABLE CAUSE DETERMINATION AS PREREQUISITE TO HOSPITALIZATION

(a) No person may be placed in a state hospital pursuant to the provisions of this article until there has been a determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.

(b) The State Department of Mental Health shall identify each person for whom a petition pursuant to this article has been filed who is in a state hospital on or after January 1, 1998, and who has not had a probable cause hearing pursuant to Section 6602. The State Department of Mental Health shall notify the court in which the petition was filed that the person has not had a probable cause hearing. Copies of the notice shall be provided by the court to the attorneys of record in the case. Within 30 days of notice by the State Department of Mental Health, the court shall either order the person removed from the state hospital and returned to local custody or hold a probable cause hearing pursuant to Section 6602.

(c) In no event shall the number of persons referred pursuant to subdivision (b) to the superior court of any county exceed 10 in any 30-day period, except upon agreement of the presiding judge of the superior court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

(d) This section shall be implemented in Los Angeles County pursuant to a letter of

agreement between the Department of Mental Health, the Los Angeles County district attorney, the Los Angeles County public defender, the Los Angeles County sheriff, and the Los Angeles County superior court. The number of persons referred to the superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

CAL. WELF. & INST. CODE § 6604 (2010). DETERMINATION OF COURT OR JURY

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

CAL. WELF. & INST. CODE § 6604.1 (2010). COMMENCEMENT OF TERM OF COMMITMENT

(a) The indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to all commitment proceedings.

CAL. WELF. & INST. CODE § 6605 (2010). ANNUAL EXAMINATION OF COMMITTED PERSON; RIGHT TO PETITION FOR CONDITIONAL RELEASE; HEARING; FAILURE TO PARTICIPATE; JUDICIAL REVIEW OF COMMITMENT

(a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The State Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved

in the initial commitment and upon the committed person. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) If the State Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney, or the committed person.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged. Where the person's failure to participate in or complete treatment is relied upon as proof that the person's condition has not changed, and there is evidence to support that reliance, the jury shall be instructed substantially as follows:

"The committed person's failure to participate in or complete the State Department of Mental Health Sex Offender Commitment Program (SOCP) are facts that, if proved, may be considered as evidence that the committed person's condition has not changed. The weight to be given that evidence is a matter for the jury to determine."

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for an indeterminate period from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally

discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

CAL. WELF. & INST. CODE § 6607 (2010). REPORT AND RECOMMENDATION FOR CONDITIONAL RELEASE BY DIRECTOR

(a) If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

CAL. WELF. & INST. CODE § 6608 (2010). PETITION FOR CONDITIONAL RELEASE; HEARING; CONDITIONAL RELEASE PROGRAM; OUTPATIENT STATUS

(a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person' s condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel. The person petitioning for conditional release or unconditional discharge shall serve a copy of the petition on the State Department of Mental Health at the time the petition is filed with the court.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed

person, and the Director of Mental Health at least 30 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 30 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic

conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

CAL. WELF. & INST. CODE § 6609.1 (2010). COMMUNITY OUTPATIENT TREATMENT FOR PERSON COMMITTED AS SEXUALLY VIOLENT PREDATOR, NOTICE

(a)

(1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when a person who is committed as a sexually violent predator pursuant to this article has petitioned a court pursuant to Section 6608 for conditional release under supervision and treatment in the community pursuant to a conditional release program, or has petitioned a court pursuant to Section 6608 for subsequent unconditional discharge, and the department is notified, or is aware, of the filing of the petition, and when a community placement location is recommended or proposed, the department shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(A) The community in which the person may be released for community outpatient treatment.

(B) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The department shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The department shall also notify the Department of Justice.

(3) The notice shall be given when the department or its designee makes a recommendation under subdivision (e) of Section 6608 or proposes a placement location without making a recommendation, or when any other person proposes a placement location to the court and the department or its designee is made aware of the proposal.

(4) The notice shall be given at least 30 days prior to the department's submission of its recommendation to the court in those cases in which the department recommended community outpatient treatment under Section 6607, or in which the department or its designee is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than the department or its designee, within 48 hours after becoming aware of the petition or placement proposal.

(5) The notice shall state that it is being made under this section and include all of the following information concerning each person committed as a sexually violent predator who is proposed or is petitioning to receive outpatient care in a conditional release program in that city or county:

(A) The name, proposed placement address, date of commitment, county from which committed, proposed date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 31/8 by 31/8 inches in size, or clear copies of the fingerprints and photograph.

(B) The date, place, and time of the court hearing at which the location of placement is to be considered and a proof of service attesting to the notice's mailing in accordance with this subdivision.

(C) A list of agencies that are being provided this notice and the addresses to which the notices are being sent.

(b) Those agencies receiving the notice referred to in paragraphs (1) and (2) of subdivision (a) may provide written comment to the department and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. The written comment shall be filed with the court at the time that the comment is provided to the department. The written comment shall identify differences between the comment filed with the court and that provided to the department, if any. In addition, a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement within that community. A copy of the suggested alternative placement location shall be filed with the court at the time that the suggested placement location is provided to the department. The State Department of Mental Health shall issue a written statement to the commenting agencies and to the court within 10 days of receiving the written comments with a determination as to whether to adjust the release location or general terms and conditions, and explaining the basis for its decision. In lieu of responding to the individual community agencies or individuals, the department's statement responding to the community comment shall be in the form of a public statement.

(c) The agencies' comments and department's statements shall be considered by the court which shall, based on those comments and statements, approve, modify, or reject the department's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that the department's recommendation or proposal is not appropriate.

(d)

(1) When the State Department of Mental Health makes a recommendation to pursue recommitment, makes a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(B) The community in which the person will probably be released, if recommending not to pursue recommitment.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The State Department of Mental Health shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The State Department of Mental Health shall also notify the Department of Justice. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

(3) Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. At the time that the written comment is made to the department, a copy of the written comment shall be filed with the court by the agency or agencies making the comment. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(e)

(1) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation. The Department of Corrections and Rehabilitation shall notify the Department of Justice, the State Department of Mental Health, the sheriff or chief of

police or both, and the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person is to be released.

(B) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

(2) The Department of Corrections and Rehabilitation shall make the notifications required by this subdivision regardless of whether the person released will be serving a term of parole after release by the court.

(f) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections and Rehabilitation to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, whichever is sooner. To facilitate timely parole arrangements, notification to the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(g) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(h) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable.

(i) In the case of any subsequent community placement or change of community placement of a conditionally released sexually violent predator, notice required by this section shall be given under the same terms and standards as apply to the initial placement, except in the case of an emergency where the sexually violent predator must be moved to protect the public safety or the safety of the sexually violent predator. In the case of an emergency, the notice shall be given as soon as practicable, and the affected communities may comment on the placement as described in subdivision (b).

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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COLO. REV. STAT. § 13-5-142 (2010). NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM - REPORTING

(1) Beginning July 1, 2002, the clerk of the court of every judicial district in the state shall periodically report the following information to the national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act" (Pub.L. 103-159), the relevant portion of which is codified at 18 U.S.C. sec. 922 (t):

(a) The name of each person who has been found to be incapacitated by order of the court pursuant to part 3 of article 14 of title 15, C.R.S.;

(b) The name of each person who has been committed by order of the court to the custody of the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, pursuant to section 27-81-112 or 27-82-108, C.R.S.; and

(c) The name of each person with respect to whom the court has entered an order for involuntary certification for short-term treatment of mental illness pursuant to section 27-65-107, C.R.S., for extended certification for treatment of mental illness pursuant to section 27-65-108, C.R.S., or for long-term care and treatment of mental illness pursuant to section 27-65-109, C.R.S.

(2) Any report made by the clerk of the court of every judicial district in the state pursuant to this section shall describe the reason for the report and indicate that the report is made in accordance with 18 U.S.C. sec. 922 (g) (4).

(3) The clerk of the court of every judicial district in the state shall take all necessary steps to cancel a record made by that clerk in the national instant criminal background check system if:

(a) The person to whom the record pertains makes a written request to the clerk; and

(b) No less than three years before the date of the written request:

(I) The court entered an order pursuant to section 15-14-318, C.R.S., terminating a guardianship on a finding that the person is no longer an incapacitated person, if the record in the national instant criminal background check system is based on a finding of incapacity;

(II) The period of commitment of the most recent order of commitment or recommitment expired, or the court entered an order terminating the person's incapacity or discharging the person from commitment in the nature of habeas corpus, if the record in the national instant criminal background check system is based on an order of commitment to the

custody of the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse; except that the clerk shall not cancel any record pertaining to a person with respect to whom two recommitment orders have been entered under section 27-81-112 (7) and (8), C.R.S., or who was discharged from treatment under section 27-81-112 (11), C.R.S., on the grounds that further treatment will not be likely to bring about significant improvement in the person's condition; or

(III) The record in the case was sealed pursuant to section 27-65-107 (7), C.R.S., or the court entered an order discharging the person from commitment in the nature of habeas corpus pursuant to section 27-65-113, C.R.S., if the record in the national instant criminal background check system is based on a court order for involuntary certification for short-term treatment of mental illness.

COLO. REV. STAT. § 13-9-123 (2010). NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM - REPORTING

(1) Beginning July 1, 2002, the clerk of the probate court shall periodically report the following information to the national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act", Pub.L. 103-159, the relevant portion of which is codified at 18 U.S.C. sec. 922 (t):

(a) The name of each person who has been found to be incapacitated by order of the court pursuant to part 3 of article 14 of title 15, C.R.S.;

(b) The name of each person who has been committed by order of the court to the custody of the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, pursuant to section 27-81-112 or 27-82-108, C.R.S.; and

(c) The name of each person with respect to whom the court has entered an order for involuntary certification for short-term treatment of mental illness pursuant to section 27-65-107, C.R.S., for extended certification for treatment of mental illness pursuant to section 27-65-108, C.R.S., or for long-term care and treatment of mental illness pursuant to section 27-65-109, C.R.S.

(2) Any report made by the clerk of the probate court pursuant to this section shall describe the reason for the report and indicate that the report is made in accordance with 18 U.S.C. sec. 922 (g) (4).

(3) The clerk of the probate court shall take all necessary steps to cancel a record made by that clerk in the national instant criminal background check system if:

(a) The person to whom the record pertains makes a written request to the clerk; and

(b) No less than three years before the date of the written request:

(I) The court entered an order pursuant to section 15-14-318, C.R.S., terminating a guardianship on a finding that the person is no longer an incapacitated person, if the record in the national instant criminal background check system is based on a finding of incapacity;

(II) The period of commitment of the most recent order of commitment or recommitment expired, or the court entered an order terminating the person's incapacity or discharging the person from commitment in the nature of habeas corpus, if the record in the national instant criminal background check system is based on an order of commitment to the custody of the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse; except that the clerk shall not cancel any record pertaining to a person with respect to whom two recommitment orders have been entered under section 27-81-112 (7) and (8), C.R.S., or who was discharged from treatment under section 27-81-112 (11), C.R.S., on the grounds that further treatment will not be likely to bring about significant improvement in the person's condition; or

(III) The record in the case was sealed pursuant to section 27-65-107 (7), C.R.S., or the court entered an order discharging the person from commitment in the nature of habeas corpus pursuant to section 27-65-113, C.R.S., if the record in the national instant criminal background check system is based on a court order for involuntary certification for short-term treatment of mental illness.

COLO. REV. STAT. § 16-8-115 (2010). RELEASE FROM COMMITMENT AFTER VERDICT OF NOT GUILTY BY REASON OF INSANITY OR NOT GUILTY BY REASON OF IMPAIRED MENTAL CONDITION

(1) The court may order a release hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant. The court shall order a release hearing upon receipt of the report of the chief officer of the institution in which the defendant is committed that the defendant no longer requires hospitalization, as provided in section 16-8-116, or upon motion of the defendant made after one hundred eighty days following the date of the initial commitment order. Except for the first hearing following the initial commitment order, unless the court for good cause shown permits, the defendant is not entitled to a hearing within one year subsequent to a previous hearing.

(1.5) (a) Any victim of any crime or any member of such victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity or not guilty by reason of impaired mental condition, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if such victim or family member can reasonably be located. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) Any victim of any crime or any member of such victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if such victim

or family member can reasonably be located. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

(2) (a) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different institution or by different experts. The court may order any additional or supplemental examination, investigation, or study which it deems necessary to a proper consideration and determination of the question of eligibility for release. The court shall set the matter for release hearing after it has received all of the reports which it has ordered under this section. When none of said reports indicates that the defendant is eligible for release, the defendant's request for release hearing shall be denied by the court if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that the defendant is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed under the provisions of article 36 of title 12, C.R.S., a psychologist licensed under the provisions of article 43 of title 12, C.R.S., a psychiatric technician licensed under the provisions of article 42 of title 12, C.R.S., a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker licensed under the provisions of part 4 of article 43 of title 12, C.R.S.The release hearing shall be to the court or, on demand by the defendant, to a jury of not to exceed six persons. At the release hearing, if any evidence of insanity is introduced, the defendant has the burden of proving restoration of sanity by a preponderance of the evidence; if any evidence of ineligibility for release by reason of impaired mental condition is introduced, the defendant has the burden of proving, by a preponderance of the evidence, that the defendant is eligible for release by no longer having an impaired mental condition. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different institution or by different experts. The court may order any additional or supplemental examination, investigation, or study that it deems necessary to a proper consideration and determination of the question of eligibility for release. The court shall set the matter for release hearing after it has received all of the reports that it has ordered under this section. When none of the reports indicates that the defendant is eligible for release, the defendant's request for release hearing shall be denied by the court if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that the defendant is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed under the provisions of article 36 of title 12, C.R.S., a psychologist licensed under the provisions of article 43 of title 12, C.R.S., a psychiatric technician licensed under the provisions of article 42 of title 12, C.R.S., a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker licensed

under the provisions of part 4 of article 43 of title 12, C.R.S. The release hearing shall be to the court or, on demand by the defendant, to a jury composed of not more than six persons. At the release hearing, if any evidence that the defendant does not meet the release criteria is introduced, the defendant has the burden of proving by a preponderance of the evidence that the defendant has no abnormal mental condition which would be likely to cause him or her to be dangerous either to himself or herself or to others or to the community in the reasonably foreseeable future.This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

(3) (a) If the court or jury finds the defendant eligible for release, the court may impose such terms and conditions as the court determines are in the best interests of the defendant and the community, and the jury shall be so instructed. If the court or jury finds the defendant ineligible for release, the court shall recommit the defendant. The court's order placing the defendant on conditional release shall include notice that the defendant's conditional release may be revoked pursuant to the provisions of section 16-8-115.5.

(b) When a defendant is conditionally released, the chief officer of the institution in which the defendant is committed shall forthwith give written notice of the terms and conditions of such release to the executive director of the department of human services and to the director of any community mental health center which may be charged with continued treatment of the defendant. The director of such mental health center shall make written reports every three months to the executive director of the department of human services and to the district attorney for the judicial district where the defendant was committed and to the district attorney for any judicial district where the defendant may be required to receive treatment concerning the treatment and status of the defendant. Such reports shall include all known violations of the terms and conditions of the defendant's release and any changes in the defendant's mental status which would indicate that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5).

(c) A defendant who has been conditionally released remains under the supervision of the department of human services until the committing court enters a final order of unconditional release.When a defendant fails to comply with any conditions of his release requiring him to establish, maintain, and reside at a specific residence and his whereabouts have therefore become unknown to the authorities charged with his supervision or when the defendant leaves the state of Colorado without the consent of the committing court, the defendant's absence from supervision shall constitute escape, as defined in section 18-8-208, C.R.S. Such offense occurs in the county in which the defendant is authorized to reside.

(d) Any terms and conditions imposed by the court on the defendant's release and the defendant's mental status shall be reviewed at least every twelve months unless the court sooner holds a release hearing as provided in this section.

(e) As long as the defendant is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all information, including clinical information

regarding the defendant, among the department of human services, the appropriate community mental health centers, and appropriate district attorneys, law enforcement, and court personnel.

(4) (a) In addition to any terms and conditions of release imposed pursuant to subsection (3) of this section, a court shall order a defendant, as a condition of release, to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that:

(I) The defendant was found not guilty by reason of insanity on a charge of an offense involving unlawful sexual behavior; or

(II) The defendant was found not guilty by reason of insanity on a charge of any other offense, the underlying factual basis of which includes an offense involving unlawful sexual behavior.

(a.5) In addition to any terms and conditions of release imposed pursuant to subsection (3) of this section, a court may order a defendant, as a condition of release, to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that the chief officer of the institution in which the defendant has been committed recommends registration based on information obtained from the defendant during the course of treatment that indicates the defendant has committed an offense involving unlawful sexual behavior.

(b) The court's order placing the defendant on conditional release shall include notice of the requirement to register.The court's order, at a minimum, shall specify:

(I) The time period following release within which the defendant shall register with the local law enforcement agency;

(II) The time period following a change of residence within which the defendant shall reregister with the local law enforcement agency of the jurisdiction in which the defendant resides;

(III) The frequency with which the defendant must reregister with the local law enforcement agency of the jurisdiction in which the defendant resides to provide a periodic verification of the defendant's location;

(IV) Any other circumstances under which the defendant must reregister with the local law enforcement agency of the jurisdiction in which the defendant resides.

(c) Prior to release of any defendant who is required to register as a condition of release pursuant to this subsection (4), the department of human services shall obtain from the defendant the address at which the defendant plans to reside upon release. At least two days prior to release of the defendant, the department of human services shall notify the local law enforcement agency of the jurisdiction in which the defendant plans to reside

upon release and the Colorado bureau of investigation of the anticipated release of the defendant and shall provide to the local law enforcement agency and the Colorado bureau of investigation the address at which the defendant plans to reside, a copy of the court order establishing the condition to register pursuant to this section, and any other pertinent information concerning the defendant.

(d) If the defendant plans to reside within the corporate limits of any city, town, or city and county, the defendant shall register at the office of the chief law enforcement officer of the city, town, or city and county.If the defendant plans to reside outside of such corporate limits, the defendant shall register at the office of the county sheriff of the county in which the defendant plans to reside.

(e) A defendant who registers with a local law enforcement agency as a condition of release pursuant to this subsection (4) shall register using forms provided by the local law enforcement agency and shall provide the information requested by the local law enforcement agency, including at a minimum a photograph and a complete set of fingerprints.

(f) The local law enforcement agency shall transmit any registrations received pursuant to paragraph (e) of this subsection (4) to the Colorado bureau of investigation within three business days following receipt. The Colorado bureau of investigation shall include any registration information received pursuant to this section in the central registry established pursuant to section 16-22-110, and shall specify that the information applies to a defendant required to register as a condition of release pursuant to this section. The forms completed by defendants required to register as a condition of release pursuant to this subsection (4) shall be confidential and shall not be open to inspection except as provided in paragraph (e) of subsection (3) of this section and except as provided for release of information to the public pursuant to sections 16-22-110 (6) and 16-22-112.

(g) As used in this subsection (4), "an offense involving unlawful sexual behavior" means any of the following offenses:

(I) (A) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(B) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(II) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(III) (A) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(B) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(IV) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(V) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(VI) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(VII) Enticement of a child, in violation of section 18-3-305, C.R.S.;

(VIII) Incest, in violation of section 18-6-301, C.R.S.;

(IX) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(X) Trafficking in children, in violation of section 18-3-502, C.R.S.;

(XI) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(XII) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.;

(XIII) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(XIV) Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.;

(XV) Pandering of a child, in violation of section 18-7-403, C.R.S.;

(XVI) Procurement of a child, in violation of section 18-7-403.5, C.R.S.;

(XVII) Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.;

(XVIII) Pimping of a child, in violation of section 18-7-405, C.R.S.;

(XIX) Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.;

(XX) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.; or

(XXI) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in this paragraph (g).

(h) Any condition imposed pursuant to this subsection (4) shall be in addition to any conditions that may be imposed pursuant to subsection (3) of this section and shall be subject to monitoring, review, and enforcement in the same manner as any condition imposed pursuant to subsection (3) of this section.

(i) (I) Any defendant required to register as a condition of release pursuant to this subsection (4), upon completion of a period of not less than twenty years from the date

the defendant is placed on conditional release, may petition the district court for an order that discontinues the requirement for such registration and removes the defendant's name from the central registry established pursuant to section 16-22-110. The court may issue such order only if the court makes written findings of fact that the defendant has neither been convicted nor found not guilty by reason of insanity of an offense involving unlawful sexual behavior subsequent to his or her conditional release and that the defendant would not pose an undue threat to the community if allowed to live in the community without registration.

(II) Upon the filing of a petition pursuant to this paragraph (i), the court shall set a date for a hearing on the petition. The defendant shall notify the local law enforcement agency with which the defendant is required to register and the prosecuting attorney for the jurisdiction in which the local law enforcement agency is located of the filing of the petition and the hearing date. Upon the victim's request, the court shall notify the victim of the filing of the petition and the hearing date. At the hearing, the court shall give opportunity to the victim to provide written or oral testimony. If the court enters an order discontinuing the defendant's duty to register, the defendant shall send a copy of the order to the local law enforcement agency and the Colorado bureau of investigation.

COLO. REV. STAT. § 16-8-115.5 (2010). ENFORCEMENT AND REVOCATION OF CONDITIONAL RELEASE FROM COMMITMENT

(1) The terms and conditions imposed upon a defendant's release pursuant to section 16-8-115 (3) or (4) may be enforced as are any other orders of court.

(2) (Deleted by amendment, L. 94, p. 1423, § 2, effective July 1, 1994.)

(3) Whenever the superintendent of the Colorado mental health institute at Pueblo has probable cause to believe that such defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), said superintendent shall notify the district attorney for the judicial district where the defendant was committed. The superintendent or the district attorney shall apply for a warrant to be directed to the sheriff or a peace officer in the jurisdiction in which the defendant resides or may be found commanding such sheriff or peace officer to take custody of the defendant. The application shall include the order conditionally releasing the defendant pursuant to section 16-8-115 (3) and supporting documentation showing that defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5). The committing court and the district court for the tenth judicial district are authorized to issue such a warrant pursuant to the provisions of section 16-1-106. The superintendent shall mail a copy of the application to the committing court and the district attorney in the committing jurisdiction.

(4) The sheriff or peace officer to whom the warrant is directed pursuant to subsection (3) of this section shall take all necessary legal action to take custody of the defendant. A sheriff shall deliver the defendant immediately to the Colorado mental health institute at Pueblo which shall provide care and security for the defendant. If any other peace officer takes custody of the defendant, such peace officer shall deliver the defendant to the

custody of the sheriff of the jurisdiction in which the defendant was found, and such sheriff shall comply with the provisions of this subsection (4).

(5) The Colorado mental health institute at Pueblo shall examine the defendant to evaluate the defendant's ability to remain on conditional release. The examination shall be consistent with the procedure provided in section 16-8-106. If the defendant refuses to submit to and cooperate with the examination, the committing court shall revoke the conditional release. The examination shall be completed within twenty days after the defendant has been delivered to the institute as a result of the defendant's arrest. The institute shall mail or deliver a written report of the examination to the committing court and the district attorney in the committing jurisdiction promptly after the examination is completed. The defendant may request an examination as provided in section 16-8-108.

(6) (a) The district attorney for the judicial district where the defendant was committed may file in the committing court a petition for the revocation of the defendant's conditional release. The petition shall set forth the name of the defendant, an allegation that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), and the substance of the evidence sustaining the allegation.

(b) If the district attorney for the committing judicial district does not file a petition for revocation, as provided in paragraph (a) of this subsection (6), within ten days after the defendant is delivered to the Colorado mental health institute at Pueblo, the defendant shall be immediately released from custody; except that, upon a showing of good cause by the district attorney, the court may grant a reasonable extension of time to file the petition for revocation.

(c) The court may dismiss revocation proceedings at any time upon receipt of a written request for dismissal from the district attorney who filed the petition for revocation.

(d) The district attorney for the committing judicial district shall ensure that the defendant receives a copy of the petition for revocation prior to any appearance by the defendant before the court.

(7) (Deleted by amendment, L. 97, p. 1554, § 9, effective July 1, 1997.)

(8) Within thirty days after the defendant is delivered to the Colorado mental health institute in Pueblo pursuant to subsection (4) of this section, and if the defendant is not released from custody pursuant to paragraph (b) of subsection (6) of this section, the committing court shall hold a hearing on the petition for revocation of conditional release.At such hearing, any evidence having probative value shall be admissible, but the defendant shall be permitted to offer testimony and to call, confront, and cross-examine witnesses. If the court finds by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), it shall enter an order revoking the defendant's conditional release and recommitting the defendant. At any time thereafter, the defendant may be afforded a release hearing as provided in section 16-8-115. If the court does not find by a preponderance of the

evidence that the defendant has become ineligible to remain on conditional release as defined in section 16-8-102 (4.5), it shall dismiss the petition and reinstate or modify the original order of conditional release.

COLO. REV. STAT. § 16-8-116 (2010). RELEASE BY HOSPITAL AUTHORITY

(1) When the chief officer of the institution in which a defendant has been committed after a finding of not guilty by reason of insanity determines that the defendant no longer requires hospitalization because he no longer suffers from a mental disease or defect which is likely to cause him to be dangerous to himself, to others, or to the community in the reasonably foreseeable future, such chief officer shall report this determination to the court that committed the defendant and the prosecuting attorney, including in the report a report of examination equivalent to a release examination.The clerk of the court shall forthwith furnish a copy of the report to counsel for the defendant.

(2) Within thirty days after receiving the report of the chief officer of the institution having custody of the defendant, the court shall set a hearing on the discharge of the defendant in accordance with section 16-8-115, whether or not such report is contested.

(3) Repealed.

COLO. REV. STAT. § 16-8-117 (2010). ADVISEMENT ON MATTERS TO BE DETERMINED

When a determination is to be made as to a defendant's eligibility for release, the court shall explain to the defendant the nature and consequences of the proceeding and the rights of the defendant under this section, including his or her right to a jury trial upon the question of eligibility for release. The defendant, if he or she wishes to contest the question, may request a hearing which shall then be granted as a matter of right.At the hearing, the defendant and the prosecuting attorney are entitled to be present in person, to examine any reports of examination or other matter to be considered by the court as bearing upon the determination, to introduce evidence, summon witnesses, cross-examine witnesses for the other side or the court, and to make opening and closing statements and argument. The court may examine or cross-examine any witness called by the defendant or prosecuting attorney and may summon and examine witnesses on its own motion.

COLO. REV. STAT. § 16-8.5-111 (2010). PROCEDURE AFTER DETERMINATION OF COMPETENCY OR INCOMPETENCY

(1) If the final determination made pursuant to section 16-8.5-103 is that the defendant is competent to proceed, the judge shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.

(2) If the final determination made pursuant to section 16-8.5-103 is that the defendant is incompetent to proceed, the court has the following options:

(a) If the defendant is in custody, the court may release the defendant on bond upon compliance with the standards and procedures for such release prescribed by statute and by the Colorado rules of criminal procedure. As a condition of bond, the court may

require the defendant to obtain any treatment or habilitation services that are available to the defendant, such as inpatient or outpatient treatment at a community mental health center or in any other appropriate treatment setting, as determined by the court. Nothing in this section authorizes the court to order community mental health centers or other providers to provide treatment for persons not otherwise eligible for these services.At any hearing to determine eligibility for release on bond, the court shall consider any effect the defendant's incompetency may have on the court's ability to ensure the defendant's presence for hearing or trial.There shall be a presumption that the incompetency of the defendant will inhibit the ability of the defendant to ensure his or her presence for trial.

(b) If the court finds that the defendant is not eligible for release from custody, the court may commit the defendant to the custody of the department, in which case the executive director has the same powers with respect to commitment as the executive director has following a commitment under section 16-8-105.5 (4). At such time as the department recommends to the court that the defendant is restored to competency, the defendant may be returned to custody of the county jail or to previous bond status.

COLO. REV. STAT. § 16-8.5-113 (2010). RESTORATION TO COMPETENCY

(1) The court may order a restoration hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant.

(2) Within ten days after receipt of a report from the department or other court-approved provider of restoration services certifying that the defendant is competent to proceed, either party may request a hearing or a second evaluation. The court shall determine whether to allow the second evaluation or proceed to a hearing on competency. If the second evaluation is requested by the court or by an indigent defendant, it shall be paid for by the court.

(3) If a second evaluation is allowed, any pending requests for a hearing shall be continued until receipt of the second evaluation report. The report of the expert conducting the second evaluation report shall be completed and filed with the court within sixty days after the court order allowing the second evaluation, unless the time period is extended by the court after a finding of good cause.

(4) If neither party requests a hearing or second evaluation within the time frame set forth in subsection (2) of this section, the court shall enter a final determination, based on the information then available to the court, whether the defendant is or is not competent to proceed.

(5) If a party makes a timely request for a hearing, the hearing shall be held within thirty days after the request for a hearing or, if applicable, within thirty days after the filing of the second evaluation report, unless the time is extended by the court after a finding of good cause.

(6) At the hearing, the burden of submitting evidence and the burden of proof by a preponderance of the evidence shall be upon the party asserting that the defendant is

competent. At the hearing, the court shall determine whether the defendant is restored to competency.

COLO. REV. STAT. § 16-8.5-114 (2010). PROCEDURE AFTER HEARING CONCERNING RESTORATION TO COMPETENCY

(1) If a defendant is found to be restored to competency after the hearing held pursuant to section 16-8.5-113, the court shall resume the criminal proceedings or order the sentence carried out. The court shall credit any time the defendant spent in confinement while committed pursuant to section 16-8.5-111 against any term of imprisonment imposed after restoration to competency.

(2) If, after the hearing held pursuant to section 16-8.5-113, the court determines that the defendant remains incompetent to proceed, the court may continue or modify any orders entered at the time of the original determination of incompetency and may commit or recommit the defendant or enter any new order necessary to facilitate the defendant's restoration to mental competency.

(3) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by a plea of not guilty, not guilty by reason of insanity, or, for offenses that occurred before July 1, 1995, the affirmative defense of impaired mental condition.

COLO. REV. STAT. § 16-8.5-116 (2010). COMMITMENT - TERMINATION OF PROCEEDINGS

(1) A defendant committed to the department or otherwise confined as a result of a determination of incompetency to proceed shall not remain confined for a period in excess of the maximum term of confinement that could be imposed for the offenses with which the defendant is charged, less any earned time to which the defendant would be entitled under article 22.5 of title 17, C.R.S.

(2) The court shall review the case of a defendant committed or confined as incompetent to proceed at least every three months with regard to the probability that the defendant will eventually be restored to competency and with regard to the justification for continued commitment or confinement. The review may be held in conjunction with a restoration hearing under section 16-8.5-113. Prior to each review, the institution treating the defendant shall provide the court with a report regarding the competency of the defendant. If, on the basis of the available evidence, not including evidence resulting from a refusal by the defendant to accept treatment, there is a substantial probability that the defendant will not be restored to competency within the foreseeable future, the court may order the release of the defendant from commitment under this article through one or more of the following means:

(a) Upon motion of the district attorney or the defendant, the court may terminate the criminal proceeding and terminate the commitment or treatment order;

(b) The court may order the release of the defendant on bond, with such conditions as the

court deems advisable;

(c) The court or a party may commence civil proceedings under the provisions of article 65 of title 27, C.R.S., if the defendant meets the requirements for commitment pursuant to said article 65; or

(d) In the case of a defendant who has been found eligible for services under article 10.5 of title 27, C.R.S., due to a developmental disability, the court or a party may initiate an action to restrict the rights of the defendant under article 10.5 of title 27, C.R.S.

(3) In each case, the court shall enter a written decision outlining why the court terminated the criminal proceeding or did not terminate the criminal proceeding.

COLO. REV. STAT. § 17-23-101 (2010). TRANSFER OF INMATES WHO HAVE A MENTAL ILLNESS OR A DEVELOPMENTAL DISABILITY

(1) The executive director, in coordination with the executive director of the department of human services, is empowered to transfer an inmate who has a mental illness or developmental disability and cannot be safely confined in a correctional facility to an appropriate facility operated by the department of human services for observation and stabilization.The costs associated with care provided in the facility operated by the department of human services shall continue to be charged to the department of human services.

(2) (Deleted by amendment, L. 2000, p. 846, § 43, effective May 24, 2000.)

(3) Except when a person is serving a sentence to the department concurrently with a commitment to the department of human services, a person who is adjudged to have a mental illness by a court of competent jurisdiction shall not be transferred to any correctional facility, except upon a finding that the person is so dangerous that he or she cannot be safely confined in the Colorado mental health institute at Pueblo or Fort Logan. A hearing on the dangerousness of the patient shall be conducted pursuant to the provisions of section 17-23-103.

(4) (Deleted by amendment, L. 2000, p. 846, § 43, effective May 24, 2000.)

COLO. REV. STAT. § 17-23-102 (2010). TRANSFER OF RECOVERED INMATE

When the superintendent of any institution or facility in which any person has been placed by transfer from a correctional facility, as provided in section 17-23-101, is of the opinion that said person is stabilized, it is the duty of said superintendent to give written notice of such recovery to the executive director who shall transfer said person to the place of former commitment for the purpose of serving out said person's sentence, if the same has not expired.

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CONN. GEN. STAT. § 17A-499 (2010). (FORMERLY SEC. 17-179). COURT RECORDS. COMMITMENT; UNIFORM FORMS; SERVICE OF PROCESS.

All proceedings of the Court of Probate, upon application made under the provisions of sections 17a-75 to 17a-83, inclusive, 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, and 17a-615 to 17a-618, inclusive, shall be in writing and filed in such court, and, whenever a court passes an order for the admission of any person to any state hospital for psychiatric disabilities, it shall record the same and give a certified copy of such order and of the reports of the physicians to the person by whom such person is to be taken to the hospital, as the warrant for such taking and commitment, and shall also forthwith transmit a like copy to the Commissioner of Mental Health and Addiction Services, and, in the case of a person in the custody of the Commissioner of Correction, to the Commissioner of Correction. Whenever a court passes an order for the commitment of any person to any hospital for psychiatric disabilities, it shall, within three business days, provide a copy of the order of commitment to the Commissioner of Mental Health and Addiction Services who shall maintain identifying information including, but not limited to, name, address, sex, date of birth and date of commitment on all commitments ordered on and after June 1, 1998. All commitment applications, orders of commitment and commitment papers issued by any court in committing persons with psychiatric disabilities to public or private hospitals for psychiatric disabilities shall be in accordance with a form prescribed by the Attorney General, which form shall be uniform throughout the state. For all such commitment applications and orders, the Commissioner of Mental Health and Addiction Services shall cause suitable blanks, in accordance with said form, to be printed and furnished at the expense of the state. State hospitals and other hospitals for persons with psychiatric disabilities shall, so far as they are able, upon reasonable request of any officer of a court having the power of commitment, send one or more trained attendants or nurses to attend any hearing concerning the commitment of any person with psychiatric disabilities and any such attendant or nurse, when present, shall be designated by the court as the authority to serve commitment process issued under the provisions of sections 17a-75 to 17a-83, inclusive, 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, and 17a-615 to 17a-618, inclusive.

CONN. GEN. STAT. § 17A-508 (2010). (FORMERLY SEC. 17-188). COMMITMENT AFTER EXPIRATION OF SPECIFIED PERIOD.

If any person who has been confined in any state hospital for psychiatric disabilities for a specified period of time pursuant to the order of any court has psychiatric disabilities at the expiration of such period, the person in charge of such hospital shall cause proceedings for the commitment of such person to be instituted in the probate court having jurisdiction in the town in which such hospital is located.

CONN. GEN. STAT.§ 17A-514 (2010). (FORMERLY SEC. 17-194D). EMERGENCY CONFINEMENT IN HOSPITAL FOR PSYCHIATRIC DISABILITIES

OF INMATES OF CORRECTIONAL INSTITUTIONS.
Any person who is in the custody of the Commissioner of Correction who has suddenly become in need of care and treatment in a hospital for a psychiatric disorder, other than drug dependence, whom a physician designated by the Commissioner of Correction finds is a danger to himself or others or to the security or order of the institution wherein he is confined may be confined in a hospital under an emergency certificate as hereinafter provided, for not more than fifteen days without order of any court. If a written complaint for commitment of such person has been filed in the court of probate for the district wherein such person is hospitalized prior to the expiration of such fifteen days such confinement shall be continued under such emergency certificate for an additional thirty days, without further order, not more than forty-five days in all, until the completion of the probate proceedings. At any time such person is found not to be a person with psychiatric disabilities, the superintendent of such hospital shall immediately return him to any institution administered by the Department of Correction as the Commissioner of Correction shall designate, unless his custody in the Commissioner of Correction has terminated, in which case he shall be discharged. The emergency certificate provided for in this section shall be left with the person in charge of such hospital at the time of delivery of the person to such hospital and such certificate shall be dated not more than three days prior to its delivery, signed by a physician licensed to practice medicine and surgery under the provisions of chapter 370, who is designated by the Commissioner of Correction. Such certificate shall state the date of the personal examination of the person to be confined, which shall be not more than three days prior to the date of signature of the certificate, shall state the findings of the physician relative to the physical and mental condition of the person and the history of the case, if known, and shall state that it is the opinion of the physician that the person examined by him is in need of immediate care in a hospital. Prior to hospitalization under the provisions of this section, any person shall have the right to be examined by a physician of his own choosing, and if such physician concludes from his examination that such person does not have psychiatric disabilities, such person shall not be admitted to or detained in a hospital under the provisions of this section. If a person with psychiatric disabilities has been admitted to any hospital under the provisions of this section, the person in charge thereof shall cause proceedings to be instituted for the commitment, pursuant to the provisions of section 17a-498, of such person in the court of probate having jurisdiction in the town where such hospital is located. Any irregularity in the temporary confinement of such person shall be deemed cured by the judge of probate ordering his commitment, and no such commitment shall be invalid because of such irregularity.

CONN. GEN. STAT. § 17A-515 (2010). (FORMERLY SEC. 17-194E). COMMITMENT PROCEEDINGS FOR INMATES OF CORRECTIONAL INSTITUTIONS TO HOSPITALS FOR PSYCHIATRIC DISABILITIES.

The provisions of section 17a-498 shall apply to any person regarding whom proceedings for commitment are being instituted under section 17a-513 or 17a-514, and to any other person in the custody of the Commissioner of Correction, except that if the court revokes the order of commitment, the person shall be returned to any institution administered by the Department of Correction as the Commissioner of Correction shall designate, unless

his custody in the Commissioner of Correction has terminated, in which case he shall be discharged.

CONN. GEN. STAT. § 17A-517 (2010). (FORMERLY SEC. 17-194G). HOSPITALIZATION OF DESPERATE OR DANGEROUS INDIVIDUAL IN WHITING FORENSIC DIVISION. EXCEPTION. LIMITATION ON PLACEMENT OF INMATE REQUIRING MAXIMUM SECURITY CONDITIONS.

If any person in the custody of the Commissioner of Correction who is brought to a hospital pursuant to the provisions of sections 17a-499, 17a-509, 17a-512 to 17a-517, inclusive, 17a-520, 17a-521 and 54-56d is a desperate or dangerous individual, such person shall be hospitalized in the Whiting Forensic Division. If the Whiting Forensic Division is unable to accommodate such transfer, then such person shall remain in the custody of the commissioner at a correctional institution, there confined under appropriate care and supervision. Under no circumstances shall an inmate with psychiatric disabilities requiring maximum security conditions be placed in a state hospital for persons with psychiatric disabilities which does not have the facilities and trained personnel to provide appropriate care and supervision for such individuals.

CONN. GEN. STAT. § 17A-520 (2010). (FORMERLY SEC. 17-197). COMMITMENT AT EXPIRATION OF TERM OF IMPRISONMENT.

When any person has been transferred from any correctional institution to a state hospital for persons with psychiatric disabilities and is confined in such hospital at the time of the expiration of the term of imprisonment for which he was committed and then has psychiatric disabilities, the superintendent of such hospital shall cause proceedings for the commitment of such person to be instituted in the court of probate having jurisdiction in the town where such hospital is located, unless such person is already under an order of commitment of a court of probate. The court of probate shall appoint two physicians of recognized standing, and such physicians shall fully investigate the facts of the case and report to the court. If such physicians report that such person has psychiatric disabilities and the court so finds, it may order such person detained in such hospital until he has recovered his sanity. Any person committed under the provisions of this section may be paroled under the provisions of section 17a-521 or placed in a licensed boarding home under the provisions of section 17a-509. During the pendency of any application for commitment under the provisions of this section, any person may be detained at any state hospital for persons with psychiatric disabilities for a period not exceeding thirty days beyond the expiration of his sentence. Any person aggrieved by any order of a probate court under the provisions hereof may within thirty days appeal to the superior court for the judicial district having jurisdiction.

CONN. GEN. STAT. § 17A-522 (2010). (FORMERLY SEC. 17-199). RECOMMITMENT OF ESCAPED PERSONS.

The name of any person who has escaped from any institution for persons with psychiatric disabilities and has not been returned to such institution within one year thereafter shall be stricken from the records of such institution and such person shall not thereafter be returned to such institution except (1) upon further commitment by some

court of competent jurisdiction, or (2) in the case of an acquittee committed to the jurisdiction of the Psychiatric Security Review Board pursuant to section 17a-582, by order of the Psychiatric Security Review Board. Upon such further commitment, the state or local police department shall, on the request of the authorities of any such institution, assist in the rehospitalization of such patient if, in the opinion of such authorities, the patient's condition warrants such assistance. The expense, if any, of such return shall be paid by the patient or the patient's legally liable relatives or, if none, by the state, but the expense provision herein contained shall not be construed to apply against a rehospitalized patient when criminal proceedings are pending against the patient.

CONN. GEN. STAT. § 17A-523 (2010). (FORMERLY SEC. 17-200). COMMISSION TO INQUIRE WHETHER PERSON IS WRONGLY CONFINED.

Any judge of the Superior Court, on information to him that any person is unjustly deprived of his liberty by being detained or confined in any hospital for psychiatric disabilities, or in any place for the detention or confinement of persons with psychiatric disabilities, or in custody and control of any individual under an order of a court of probate, may appoint a commission of not fewer than two persons, who, at a time and place appointed by them, shall hear any evidence offered regarding the case. Such commission need not summon the party claimed to be unjustly confined before it, but shall have one or more private interviews with him and shall also make inquiries of the physicians and other persons having charge of such place of detention or confinement, and within a reasonable time thereafter report to such judge the facts and its opinion thereon. If, in its opinion, such person is not legally detained or confined in such place, or is cured, or his confinement is no longer beneficial or advisable, such judge shall order his discharge; but no commission shall be appointed with reference to the same person more often than once in six months. The judge before whom any of the proceedings provided for in this section are had may tax reasonable costs at his discretion.

CONN. GEN. STAT. § 17A-524 (2010). (FORMERLY SEC. 17-201). WRIT OF HABEAS CORPUS.

Each person confined in a hospital for psychiatric disabilities in this state shall be entitled to the benefit of the writ of habeas corpus, and the question of the legality of such confinement in a hospital for psychiatric disabilities shall be determined by the court or judge issuing such writ. Such writ shall be directed to the superintendent or director of the hospital and, if illegality or invalidity of the commitment is alleged in such writ, a copy shall also be directed to the judge of the committing court as to such claim, and such judge shall be represented by the state's attorney for the judicial district wherein such committing court is located. If the court or judge before whom such case is brought decides that the confinement is not illegal, such decision shall be no bar to the issuing of such writ a second time, if it is claimed that such person is no longer subject to the condition for which he was confined. Such writ may be applied for by such confined person or on his behalf by any relative, friend or person interested in his welfare. No court fees shall be charged against the superintendent or director of the hospital or the judge.

CONN. GEN. STAT. § 17A-525 (2010). (FORMERLY SEC. 17-202). APPEAL.

Any person aggrieved by an order, denial or decree of the Court of Probate under sections 17a-75 to 17a-83, inclusive, 17a-450 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, and 17a-615 to 17a-618, inclusive, including any relative or friend, on behalf of any person found to have psychiatric disabilities, shall have the right of appeal as in other cases. The Court of Probate, on an appeal, shall make all necessary orders of notice to the parties to the proceedings and to such other persons as it deems advisable and may require the appellant to give bond, with sufficient surety, to the state to prosecute such appeal to effect and to pay all the legal costs and expenses thereof if unsuccessful, and may refuse to allow such appeal unless such bond is given or, at its discretion, allow such appeal without such bond. On the trial of an appeal, the Superior Court may require the state's attorney or, in his absence, some other practicing attorney of the court to be present for the protection of the interests of the state and of the public.

CONN. GEN. STAT. § 17A-526 (2010). (FORMERLY SEC. 17-203). COMMITMENT SUSPENDED ON BOND FOR CONFINEMENT.

The Court of Probate, before or pending or in the absence of an appeal, and the Superior Court, after finding on an appeal that such person has psychiatric disabilities, may, in its discretion, suspend the commitment of such person to a hospital for psychiatric disabilities and continue such suspension for such time as it deems advisable, if any suitable person gives a bond to the satisfaction of such court, conditioned for the confinement of such person in a suitable place of detention other than a hospital for psychiatric disabilities and for answering all damages which any person suffers in consequence of such suspension; but, in such case, the court may make the order of commitment whenever reasonable cause therefor is shown. After a person has been committed to a hospital for psychiatric disabilities, the court may suspend his confinement in such hospital upon the giving of bond as above set forth, such suspension to continue until terminated by the court.

CONN. GEN. STAT. § 17A-582 (2010). (FORMERLY SEC. 17-257C). CONFINEMENT OF ACQUITTEE FOR EXAMINATION. COURT ORDER OF COMMITMENT TO BOARD OR DISCHARGE.

(a) When any person charged with an offense is found not guilty by reason of mental disease or defect pursuant to section 53a-13, the court shall order such acquittee committed to the custody of the Commissioner of Mental Health and Addiction Services who shall cause such acquittee to be confined, pending an order of the court pursuant to subsection (e) of this section, in any of the state hospitals for psychiatric disabilities or to the custody of the Commissioner of Developmental Services, for an examination to determine his mental condition.

(b) Not later than sixty days after the order of commitment pursuant to subsection (a) of this section, the superintendent of such hospital or the Commissioner of Developmental Services shall cause the acquittee to be examined and file a report of the examination with the court, and shall send a copy thereof to the state's attorney and counsel for the

acquittee, setting forth the superintendent's or said commissioner's findings and conclusions as to whether the acquittee is a person who should be discharged.

(c) Not later than ten days after receipt of such superintendent's or said commissioner's report, either the state's attorney or counsel for the acquittee may file notice of intent to perform a separate examination of the acquittee. An examination conducted on behalf of the acquittee may be performed by a psychiatrist or psychologist chosen by the acquittee and shall be performed at the acquittee's expense unless the acquittee is indigent. If the acquittee is indigent, the court shall provide the acquittee with the services of a psychiatrist or psychologist to perform the examination at the expense of the state. The superintendent or said commissioner who conducted the initial examination shall, not later than five days after a request of any party conducting a separate examination pursuant to this subsection, release to such party all records and reports compiled in the initial examination of the acquittee. Any separate examination report shall be filed with the court not later than thirty days after the filing with the court of the initial examination report by the superintendent or said commissioner.

(d) The court shall commence a hearing not later than fifteen days after its receipt of any separate examination report or if no notice of intent to perform a separate examination has been filed under subsection (c) of this section, not later than twenty-five days after the filing of such initial examination report.

(e) At the hearing, the court shall make a finding as to the mental condition of the acquittee and, considering that its primary concern is the protection of society, make one of the following orders:

(1) If the court finds that the acquittee is a person who should be confined or conditionally released, the court shall order the acquittee committed to the jurisdiction of the board and either confined in a hospital for psychiatric disabilities or placed with the Commissioner of Developmental Services, for custody, care and treatment pending a hearing before the board pursuant to section 17a-583; provided (A) the court shall fix a maximum term of commitment, not to exceed the maximum sentence that could have been imposed if the acquittee had been convicted of the offense, and (B) if there is reason to believe that the acquittee is a person who should be conditionally released, the court shall include in the order a recommendation to the board that the acquittee be considered for conditional release pursuant to subdivision (2) of section 17a-584; or

(2) If the court finds that the acquittee is a person who should be discharged, the court shall order the acquittee discharged from custody.

(f) At the hearing before the court, the acquittee shall have the burden of proving by a preponderance of the evidence that the acquittee is a person who should be discharged.

(g) An order of the court pursuant to subsection (e) of this section may be appealed by the acquittee or the state's attorney to the Appellate Court. The court shall so notify the acquittee.

(h) During any term of commitment to the board, the acquittee shall remain under the jurisdiction of the board until discharged by the court pursuant to section 17a-593. Except as provided in subsection (c) of said section, the acquittee shall be immediately discharged at the expiration of the maximum term of commitment.

(i) On committing an acquittee to the jurisdiction of the board, the court shall advise the acquittee of the right to a hearing before the board in accordance with section 17a-583.

CONN. GEN. STAT. § 17A-583 (2010). (FORMERLY SEC. 17-257D). INITIAL HEARING BY BOARD AFTER COMMITMENT.

(a) The board shall conduct a hearing to review the status of the acquittee within ninety days of an order committing the acquittee to the jurisdiction of the board, provided, if the court has recommended consideration of conditional release, the board shall, absent good cause shown, conduct a hearing to review the status of the acquittee at its next regularly scheduled meeting.

(b) At any hearing held pursuant to this section, the board shall make a finding and act pursuant to section 17a-584.

CONN. GEN. STAT. § 17A-584 (2010). (FORMERLY SEC. 17-257E). FINDING AND ACTION BY BOARD. RECOMMENDATION OF DISCHARGE. ORDER OF CONDITIONAL RELEASE OR CONFINEMENT.

At any hearing before the board considering the discharge, conditional release or confinement of the acquittee, except a hearing pursuant to section 17a-592 or subsection (d) of section 17a-593, the board shall make a finding as to the mental condition of the acquittee and, considering that its primary concern is the protection of society, shall do one of the following:

(1) If the board finds that the acquittee is a person who should be discharged, it shall recommend such discharge to the court pursuant to section 17a-593.

(2) If the board finds that the acquittee is a person who should be conditionally released, the board shall order the acquittee conditionally released subject to such conditions as are necessary to prevent the acquittee from constituting a danger to himself or others.

(3) If the board finds that the acquittee is a person who should be confined, the board shall order the person confined in a hospital for psychiatric disabilities or placed with the Commissioner of Developmental Services for custody, care and treatment.

CONN. GEN. STAT. § 17A-585 (2010). (FORMERLY SEC. 17-257F). PERIODIC REVIEW BY BOARD.

The board shall conduct a hearing and review the status of the acquittee not less than once every two years. At such hearing the board shall make a finding and act pursuant to section 17a-584.

CONN. GEN. STAT. § 17A-586 (2010). (FORMERLY SEC. 17-257G). PERIODIC REPORT RE MENTAL CONDITION OF ACQUITTEE.

The superintendent of any hospital for psychiatric disabilities in which an acquittee has been confined or the Commissioner of Developmental Services with whom an acquittee has been placed pursuant to order of the board, or the person or agency responsible for the supervision or treatment of a conditionally released acquittee, shall submit to the board at least every six months a written report with respect to the mental condition of the acquittee. The board shall furnish copies of the report to the counsel for the acquittee and the state's attorney.

CONN. GEN. STAT. § 17A-588 (2010). (FORMERLY SEC. 17-257I). CONDITIONAL RELEASE.

(a) If at any time after the confinement of an acquittee in a hospital for psychiatric disabilities or the placement of an acquittee with the Commissioner of Developmental Services, the superintendent of such hospital or said commissioner is of the opinion that such acquittee is a person who should be conditionally released, the superintendent or said commissioner shall apply to the board for an order of conditional release. The application shall be accompanied by a report setting forth the facts supporting the opinion of the superintendent or said commissioner, and by a conditional release plan. The board shall hold a hearing on the application within sixty, but not less than thirty, days of its receipt.

(b) At any time after the confinement of an acquittee in a hospital for psychiatric disabilities or the placement of an acquittee with the Commissioner of Developmental Services, the acquittee or another person acting on his behalf may apply to the board for an order of conditional release. On receipt of the application, the board shall request the superintendent of the hospital or said commissioner to report whether he is of the opinion that the acquittee is a person who should be conditionally released. The report shall set forth facts supporting the opinion. An application for conditional release under this subsection shall not be filed more often than once every six months from the date of the initial board hearing held pursuant to section 17a-583. The board is not required to hold a hearing on a first application under this subsection any sooner than ninety days after the initial hearing. Hearings resulting from any subsequent requests shall be held within sixty days of the filing of the application.

(c) Not less than thirty days prior to any such hearing, the board shall send copies of the superintendent's or said commissioner's report to the state's attorney and counsel for the acquittee. At any hearing held pursuant to this section, the board shall make a finding and act pursuant to section 17a-584.

CONN. GEN. STAT. § 17A-590 (2010). (FORMERLY SEC. 17-257K). EXAMINATION AND TREATMENT OF ACQUITTEE ON CONDITIONAL RELEASE.

As one of the conditions of release, the board may require the acquittee to report to any public or private mental health facility for examination. Whenever medical, psychiatric or

psychological treatment is recommended, the board may order the acquittee, as a condition of release, to cooperate with and accept treatment from the facility. The facility to which the acquittee has been referred for examination shall perform the examination and submit a written report of its findings to the board. If the facility finds that treatment of the person is appropriate, it shall include its recommendations for treatment in the report to the board. Whenever treatment is provided by the facility, it shall furnish reports to the board on a regular basis concerning the status of the acquittee and the degree to which he is a danger to himself or others. The board shall furnish copies of all such reports to the acquittee, counsel for the acquittee and the state's attorney. The confidentiality of these reports shall be determined pursuant to sections 52-146c to 52-146j, inclusive. The facility shall comply with any other conditions of release prescribed by order of the board.

CONN. GEN. STAT. § 17A-591 (2010). (FORMERLY SEC. 17-257L). MODIFICATION OF CONDITIONAL RELEASE.

(a) Any conditionally released acquittee or any person or agency responsible for the supervision or treatment of a conditionally released acquittee may apply to the board for the modification of the order of the conditional release of the acquittee. Any application for modification filed by a person or agency responsible for the supervision or treatment of a conditionally released acquittee shall be accompanied by a report setting forth the facts supporting the application. The board shall commence a hearing within sixty days of its receipt of the application. Not less than thirty days prior to such hearing, the board shall send copies of such application and report, if any, to the state's attorney and counsel for the acquittee. At the hearing, the board shall make a finding and act pursuant to section 17a-584.

(b) Unless the conditional release order has been summarily modified by the board or its chairman pursuant to subsection (a) of section 17a-594, an application by an acquittee for modification of a conditional release order shall not be filed more often than once every six months from the date of the filing of the next preceding application for modification.

CONN. GEN. STAT. § 17A-592 (2010). (FORMERLY SEC. 17-257M). BOARD RECOMMENDATION TO DISCHARGE ACQUITTEE FROM CUSTODY.

(a) The superintendent of any hospital for psychiatric disabilities in which an acquittee has been confined or the Commissioner of Developmental Services with whom an acquittee has been placed pursuant to an order of the board or any person or agency responsible for the supervision or treatment of a conditionally released acquittee may request the board to recommend to the court discharge of the acquittee from custody. Any such request shall be accompanied by a report setting forth the facts supporting the request. Within sixty days of receipt of the request, the board shall commence a hearing on the request to recommend discharge. Not less than thirty days prior to such hearing, the board shall send copies of the request and report to the state's attorney and counsel for the acquittee.

(b) The board may, on its own motion, consider whether to recommend discharge of the acquittee from custody. The board shall immediately give notice to the state's attorney

and counsel for the acquittee of its decision to consider whether to recommend discharge of the acquittee. The board may order a hearing on whether to recommend discharge of the acquittee and shall order such a hearing if the state's attorney files with the board a request therefor within ten days of his receipt from the board of the notice of its decision to consider whether to make such a recommendation. Any such hearing shall be held within sixty days of the board's decision to consider whether to recommend discharge of the acquittee.

(c) If the board decides to recommend discharge of the acquittee, the board shall make such recommendation pursuant to section 17a-593.

CONN. GEN. STAT. §17A-593 (2010). (FORMERLY SEC. 17-257N). COURT ORDER TO DISCHARGE ACQUITTEE FROM CUSTODY.

(a) The board, pursuant to section 17a-584 or 17a-592, may recommend to the court the discharge of the acquittee from custody or the acquittee may apply directly to the court for discharge from custody. The court shall send copies of the recommendation or application to the state's attorney and to counsel for the acquittee. An acquittee may apply for discharge not more than once every six months and no sooner than six months after the initial board hearing held pursuant to section 17a-583.

(b) The recommendation or application shall contain the dates on which any prior recommendations or applications for discharge had been filed with the court, the dates on which decisions thereon were rendered, and a statement of facts, including any change in circumstances since the determination on the most recent recommendation or application, sufficient to qualify the acquittee as a person who should be discharged. A recommendation by the board shall contain findings and conclusions to support the recommendation.

(c) If reasonable cause exists to believe that the acquittee remains a person with psychiatric disabilities or mentally retarded to the extent that his discharge at the expiration of his maximum term of commitment would constitute a danger to himself or others, the state's attorney, at least one hundred thirty-five days prior to such expiration, may petition the court for an order of continued commitment of the acquittee.

(d) The court shall forward any application for discharge received from the acquittee and any petition for continued commitment of the acquittee to the board. The board shall, within ninety days of its receipt of the application or petition, file a report with the court, and send a copy thereof to the state's attorney and counsel for the acquittee, setting forth its findings and conclusions as to whether the acquittee is a person who should be discharged. The board may hold a hearing or take other action appropriate to assist it in preparing its report.

(e) Within ten days of receipt of a recommendation for discharge filed by the board under subsection (a) of this section or receipt of the board's report filed under subsection (d) of this section, either the state's attorney or counsel for the acquittee may file notice of intent to perform a separate examination of the acquittee. An examination conducted on behalf

of the acquittee may be performed by a psychiatrist or psychologist of the acquittee's own choice and shall be performed at the expense of the acquittee unless he is indigent. If the acquittee is indigent, the court shall provide him with the services of a psychiatrist or psychologist to perform the examination at the expense of the state. Any such separate examination report shall be filed with the court within thirty days of the notice of intent to perform the examination. To facilitate examinations of the acquittee, the court may order him placed in the temporary custody of any hospital for psychiatric disabilities or other suitable facility or placed with the Commissioner of Developmental Services.

(f) After receipt of the board's report and any separate examination reports, the court shall promptly commence a hearing on the recommendation or application for discharge or petition for continued commitment. At the hearing, the acquittee shall have the burden of proving by a preponderance of the evidence that the acquittee is a person who should be discharged.

(g) The court shall make a finding as to the mental condition of the acquittee and, considering that its primary concern is the protection of society, make one of the following orders: (1) If the court finds that the acquittee is not a person who should be discharged, the court shall order the recommendation or application for discharge be dismissed; or (2) if the court finds that the acquittee is a person who should be discharged, the court shall order the acquittee discharged from custody. The court shall send a copy of such finding and order to the board.

CONN. GEN. STAT. § 17A-594 (2010). (FORMERLY SEC. 17-257O). SUMMARY MODIFICATION OR TERMINATION OF CONDITIONAL RELEASE UPON VIOLATION OF TERMS OR CHANGE IN MENTAL HEALTH.

(a) If at any time while an acquittee is under the jurisdiction of the board, it appears to the board or its chairman that a conditionally released acquittee has violated the terms of a conditional release or that the mental health of the acquittee has changed, the board or its chairman may order the modification of the conditional release of the acquittee or may order the termination of the conditional release of the acquittee and his return to a hospital for psychiatric disabilities or to the Commissioner of Developmental Services for examination or treatment. The state's attorney may, at any time, notify the board or its chairman of facts that the state's attorney believes indicate that the conditionally released acquittee has violated the terms of a conditional release, that the mental health of the acquittee has changed or that the conditions of release should be modified. A written order of the board, or its chairman on behalf of the board, is sufficient warrant for any peace officer to take the acquittee into custody and transport him to a hospital for psychiatric disabilities or to the Commissioner of Developmental Services.

(b) Any peace officer or any person or agency providing treatment or responsible for the supervision of a conditionally released acquittee may take the acquittee into custody or request that the acquittee be taken into custody if there is reasonable cause to believe that the acquittee is a person with psychiatric disabilities or mentally retarded to the extent that his continued release would constitute a danger to himself or others and that the acquittee is in need of immediate care, custody or treatment. The acquittee shall be

immediately transported to a hospital for psychiatric disabilities or to the Commissioner of Developmental Services.

(c) Within thirty days of the acquittee being taken into custody pursuant to subsection (a) or (b) of this section, the board shall commence a hearing to determine the mental condition of the acquittee and shall make a finding and act pursuant to section 17a-584.

CONN. GEN. STAT. § 17A-595 (2010). (FORMERLY SEC. 17-257P). TESTIMONY OF WITNESSES BEFORE BOARD. SUBPOENA.

(a) Upon request of any party to a hearing before the board, the board or its designated representative shall issue, or the board on its own motion may issue, subpoenas requiring the attendance and testimony of witnesses.

(b) Upon request of any party to a hearing before the board and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the board or its designated representative shall issue, or the board on its own motion may issue, subpoenas duces tecum.

(c) Witnesses appearing under subpoenas, other than the parties or state officers or employees, shall receive fees and mileage as prescribed by law for witnesses in civil actions. If the board or its designated representative certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to such witness shall be reimbursed by the board.

(d) If any person, agency or facility fails to comply with a subpoena issued under subsections (a) or (b) of this section or any party or witness refuses to testify regarding any matter on which he may be lawfully interrogated, any judge of the Superior Court, on the application of the board or its designated representative or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued by the court.

CONN. GEN. STAT. § 17A-596 (2010). (FORMERLY SEC. 17-257Q). BOARD HEARING PROCEDURES.

(a) Prior to any hearing by the board concerning the discharge, conditional release or confinement of the acquittee, the board, acquittee and state's attorney may each choose a psychiatrist or psychologist to examine the acquittee. The results of the examination shall be in writing and filed with the board, and shall include, but need not be limited to, an opinion as to whether the acquittee is a person with psychiatric disabilities or mentally retarded to the extent that his release would constitute a danger to himself or others and whether the acquittee could be adequately controlled with treatment as a condition of release. To facilitate examination of the acquittee, the board may order him placed in the temporary custody of any hospital for psychiatric disabilities or other suitable facility or placed with the Commissioner of Developmental Services.

(b) The board shall consider all evidence available to it that is material, relevant and reliable regarding the issues before the board. Such evidence may include but is not

limited to the record of trial, the information supplied by the state's attorney or by any other interested party, including the acquittee, and information concerning the acquittee's mental condition and the entire psychiatric and criminal history of the acquittee.

(c) Testimony shall be taken upon oath or affirmation of the witness from whom received.

(d) Any hearing by the board, including the taking of any testimony at such hearing, shall be open to the public. At any hearing before the board, the acquittee shall have all the rights given a party to a contested case under chapter 54. In addition to the rights enumerated thereunder, the acquittee shall have the right to appear at all proceedings before the board, except board deliberations and to be represented by counsel, to consult with counsel prior to the hearing and, if indigent, to have counsel provided, pursuant to the provisions of chapter 887, without cost. At any hearing before the board, copies of documents and reports considered by the board shall be available for examination by the acquittee, counsel for the acquittee and the state's attorney. The confidentiality of these reports shall be determined pursuant to sections 52-146c to 52-146j, inclusive.

(e) Upon request of any party before the board, or on its own motion, the board may continue a hearing for a reasonable time not to exceed sixty days to obtain additional information or testimony or for other good cause shown.

(f) At any hearing before the board, the acquittee, or any applicant seeking an order less restrictive than the existing order, shall have the burden of proving by a preponderance of the evidence the existence of conditions warranting a less restrictive order.

(g) A record shall be kept of all hearings before the board, except board deliberations.

(h) Within twenty-five days of the conclusion of the hearing, the board shall provide the acquittee, his counsel, the state's attorney and any victim as defined in section 17a-601 with written notice of the board's decision. If there is no victim or the victim is unidentified or cannot be located, the board shall be relieved of the requirement of providing notice to the victim.

CONN. GEN. STAT. § 17A-597 (2010). (FORMERLY SEC. 17-257R). APPEAL OF BOARD ORDERS AND DECISIONS.

(a) Any order of the board entered pursuant to subdivision (2) or (3) of section 17a-584 or pursuant to section 17a-587 may be appealed to the Superior Court pursuant to section 4-183. The board shall give notice of the right to judicial review to the acquittee, counsel for the acquittee and the state's attorney.

(b) A decision by the board that the acquittee is a person who should be discharged made pursuant to subdivision (1) of section 17a-584, section 17a-592 or subsection (d) of section 17a-593 shall not be subject to judicial review pursuant to section 4-183.

CONN. GEN. STAT. § 17A-598 (2010). (FORMERLY SEC. 17-257S). COURT HEARING PROCEDURES.

(a) At any hearing before the court under section 17a-582 or 17a-593, the acquittee shall have the right to appear and shall be represented by counsel. If the acquittee fails or refuses to obtain counsel, the court shall appoint counsel to represent him. If the acquittee is indigent, counsel shall be provided, pursuant to the provisions of chapter 887, and the court shall determine and allow, as provided in section 54-147, the cost of briefs, any other necessary expenses, and compensation of the counsel for the acquittee. The costs, expenses and compensation so allowed shall be paid by the state.

(b) At any hearing before the court under section 17a-582 or 17a-593, documents and reports considered by the court shall be available for examination by the acquittee, counsel for the acquittee and the state's attorney.

CONN. GEN. STAT. § 17A-599 (2010). (FORMERLY SEC. 17-257T). CONFINEMENT UNDER CONDITIONS OF MAXIMUM SECURITY.

At any time the court or the board determines that the acquittee is a person who should be confined, it shall make a further determination of whether the acquittee is so violent as to require confinement under conditions of maximum security. Any acquittee found so violent as to require confinement under conditions of maximum security shall not be confined in any hospital for psychiatric disabilities or placed with the Commissioner of Developmental Services unless such hospital or said commissioner has the trained and equipped staff, facilities or security to accommodate such acquittee.

CONN. GEN. STAT. § 54-56D (2010). (FORMERLY SEC. 54-40). COMPETENCY TO STAND TRIAL.

(a) Competency requirement. Definition. A defendant shall not be tried, convicted or sentenced while the defendant is not competent. For the purposes of this section, a defendant is not competent if the defendant is unable to understand the proceedings against him or her or to assist in his or her own defense.

(b) Presumption of competency. A defendant is presumed to be competent. The burden of proving that the defendant is not competent by a preponderance of the evidence and the burden of going forward with the evidence are on the party raising the issue. The burden of going forward with the evidence shall be on the state if the court raises the issue. The court may call its own witnesses and conduct its own inquiry.

(c) Request for examination. If, at any time during a criminal proceeding, it appears that the defendant is not competent, counsel for the defendant or for the state, or the court, on its own motion, may request an examination to determine the defendant's competency.

(d) Examination of defendant. Report. If the court finds that the request for an examination is justified and that, in accordance with procedures established by the judges of the Superior Court, there is probable cause to believe that the defendant has committed the crime for which the defendant is charged, the court shall order an examination of the

defendant as to his or her competency. The court may (1) appoint one or more physicians specializing in psychiatry to examine the defendant, or (2) order the Commissioner of Mental Health and Addiction Services to conduct the examination either (A) by a clinical team consisting of a physician specializing in psychiatry, a clinical psychologist and one of the following: A clinical social worker licensed pursuant to chapter 383b or a psychiatric nurse clinical specialist holding a master's degree in nursing, or (B) by one or more physicians specializing in psychiatry, except that no employee of the Department of Mental Health and Addiction Services who has served as a member of a clinical team in the course of such employment for at least five years prior to October 1, 1995, shall be precluded from being appointed as a member of a clinical team. If the Commissioner of Mental Health and Addiction Services is ordered to conduct the examination, the commissioner shall select the members of the clinical team or the physician or physicians. When performing an examination under this section, the examiners shall have access to information on treatment dates and locations in the defendant's treatment history contained in the Department of Mental Health and Addiction Services' database of treatment episodes for the purpose of requesting a release of treatment information from the defendant. If the examiners determine that the defendant is not competent, the examiners shall then determine whether there is a substantial probability that the defendant, if provided with a course of treatment, will regain competency within the maximum period of any placement order under this section. If the examiners determine that there is a substantial probability that the defendant, if provided with a course of treatment, will regain competency within the maximum period of any placement order under this section, the examiners shall then determine whether the defendant appears to be eligible for civil commitment, with monitoring by the Court Support Services Division, pursuant to subdivision (2) of subsection (h) of this section. If the examiners determine that there is not a substantial probability that the defendant, if provided with a course of treatment, will regain competency within the maximum period of any placement order under this section, the examiners shall then determine whether the defendant appears to be eligible for civil commitment to a hospital for psychiatric disabilities pursuant to subsection (m) of this section and make a recommendation to the court regarding the appropriateness of such civil commitment. The court may authorize a physician specializing in psychiatry, a clinical psychologist, a clinical social worker licensed pursuant to chapter 383b or a psychiatric nurse clinical specialist holding a master's degree in nursing selected by the defendant to observe the examination. Counsel for the defendant may observe the examination. The examination shall be completed within fifteen business days from the date it was ordered and the examiners shall prepare and sign, without notarization, a written report and file such report with the court within twenty-one business days of the date of the order. On receipt of the written report, the clerk of the court shall cause copies to be delivered immediately to the state's attorney and to counsel for the defendant.

(e) Hearing. Evidence. The court shall hold a hearing as to the competency of the defendant not later than ten days after the court receives the written report. Any evidence regarding the defendant's competency, including the written report, may be introduced at the hearing by either the defendant or the state, except that no treatment information contained in the Department of Mental Health and Addiction Services' database of

treatment episodes may be included in the written report or introduced at the hearing unless the defendant released the treatment information pursuant to subsection (d) of this section. If the written report is introduced, at least one of the examiners shall be present to testify as to the determinations in the report, unless the examiner's presence is waived by the defendant and the state. Any member of the clinical team shall be considered competent to testify as to the team's determinations. A defendant and the defendant's counsel may waive the court hearing only if the examiners, in the written report, determine without qualification that the defendant is competent. Nothing in this subsection shall limit any other release or use of information from said database permitted by law.

(f) Court finding of competency or incompetency. If the court, after the hearing, finds that the defendant is competent, the court shall continue with the criminal proceedings. If the court finds that the defendant is not competent, the court shall also find whether there is a substantial probability that the defendant, if provided with a course of treatment, will regain competency within the maximum period of any placement order permitted under this section.

(g) Court procedure if finding that defendant will not regain competency. If, at the hearing, the court finds that there is not a substantial probability that the defendant, if provided with a course of treatment, will regain competency within the period of any placement order under this section, the court shall follow the procedure set forth in subsection (m) of this section.

(h) Court procedure if finding that defendant will regain competency. Placement of defendant for treatment or pending civil commitment proceedings. Progress report.

(1) If, at the hearing, the court finds that there is a substantial probability that the defendant, if provided with a course of treatment, will regain competency within the period of any placement order under this section, the court shall either (A) order placement of the defendant for treatment for the purpose of rendering the defendant competent, or (B) order placement of the defendant at a treatment facility pending civil commitment proceedings pursuant to subdivision (2) of this subsection.

(2)(A) Except as provided in subparagraph (B) of this subdivision, if the court makes a finding pursuant to subdivision (1) of this subsection and does not order placement pursuant to subparagraph (A) of said subdivision, the court shall, on its own motion or on motion of the state or the defendant, order placement of the defendant in the custody of the Commissioner of Mental Health and Addiction Services at a treatment facility pending civil commitment proceedings. The treatment facility shall be determined by the Commissioner of Mental Health and Addiction Services. Such order shall: (i) Include an authorization for the Commissioner of Mental Health and Addiction Services to apply for civil commitment of such defendant pursuant to sections 17a-495 to 17a-528, inclusive; (ii) permit the defendant to agree to request voluntarily to be admitted under section 17a-506 and participate voluntarily in a treatment plan prepared by the Commissioner of Mental Health and Addiction Services, and require that the defendant comply with such

treatment plan; and (iii) provide that if the application for civil commitment is denied or not pursued by the Commissioner of Mental Health and Addiction Services, or if the defendant is unwilling or unable to comply with a treatment plan despite reasonable efforts of the treatment facility to encourage the defendant's compliance, the person in charge of the treatment facility, or such person's designee, shall submit a written progress report to the court and the defendant shall be returned to the court for a hearing pursuant to subsection (k) of this section. Such written progress report shall include the status of any civil commitment proceedings concerning the defendant, the defendant's compliance with the treatment plan, an opinion regarding the defendant's current competency to stand trial, the clinical findings of the person submitting the report and the facts upon which the findings are based, and any other information concerning the defendant requested by the court, including, but not limited to, the method of treatment or the type, dosage and effect of any medication the defendant is receiving. The Court Support Services Division shall monitor the defendant's compliance with any applicable provisions of such order. The period of placement and monitoring under such order shall not exceed the period of the maximum sentence which the defendant could receive on conviction of the charges against such defendant, or eighteen months, whichever is less. If the defendant has complied with such treatment plan and any applicable provisions of such order, at the end of the period of placement and monitoring, the court shall approve the entry of a nolle prosequi to the charges against the defendant or shall dismiss such charges.

(B) This subdivision shall not apply: (i) To any person charged with a class A felony, a class B felony, except a violation of section 53a-122 that does not involve the use, attempted use or threatened use of physical force against another person, or a violation of section 14-227a, subdivision (2) of subsection (a) of section 53-21 or section 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b; (ii) to any person charged with a crime or motor vehicle violation who, as a result of the commission of such crime or motor vehicle violation, causes the death of another person; or (iii) unless good cause is shown, to any person charged with a class C felony.

(i) Placement for treatment. Conditions. The placement of the defendant for treatment for the purpose of rendering the defendant competent shall comply with the following conditions: (1) The period of placement under the order or combination of orders shall not exceed the period of the maximum sentence which the defendant could receive on conviction of the charges against the defendant or eighteen months, whichever is less; (2) the placement shall be either in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Developmental Services or, if the defendant or the appropriate commissioner agrees to provide payment, in the custody of any appropriate mental health facility or treatment program which agrees to provide treatment to the defendant and to adhere to the requirements of this section; and (3) the court shall order the placement, on either an inpatient or an outpatient basis, which the court finds is the least restrictive placement appropriate and available to restore competency. If outpatient treatment is the least restrictive placement for a defendant who has not yet been released from a correctional facility, the court shall consider whether the availability of such treatment is a sufficient basis on which to release the defendant on a promise to appear, conditions of release,

cash bail or bond. If the court determines that the defendant may not be so released, the court shall order treatment of the defendant on an inpatient basis at a mental health facility or mental retardation facility. Not later than twenty-four hours after the court orders placement of the defendant for treatment for the purpose of rendering the defendant competent, the evaluators shall transmit information obtained about the defendant during the course of an evaluation pursuant to subsection (d) of this section to the health care provider named in the court's order.

(j) Progress reports re treatment. The person in charge of the treatment facility, or such person's designee, shall submit a written progress report to the court (1) at least seven days prior to the date of any hearing on the issue of the defendant's competency; (2) whenever he or she believes that the defendant has attained competency; (3) whenever he or she believes that there is not a substantial probability that the defendant will attain competency within the period covered by the placement order; or (4) whenever, within the first one hundred twenty days of the period covered by the placement order, he or she believes that the defendant would be eligible for civil commitment pursuant to subdivision (2) of subsection (h) of this section. The progress report shall contain: (A) The clinical findings of the person submitting the report and the facts on which the findings are based; (B) the opinion of the person submitting the report as to whether the defendant has attained competency or as to whether the defendant is making progress, under treatment, toward attaining competency within the period covered by the placement order; (C) the opinion of the person submitting the report as to whether the defendant appears to be eligible for civil commitment to a hospital for psychiatric disabilities pursuant to subsection (m) of this section and the appropriateness of such civil commitment, if there is not a substantial probability that the defendant will attain competency within the period covered by the placement order; and (D) any other information concerning the defendant requested by the court, including, but not limited to, the method of treatment or the type, dosage and effect of any medication the defendant is receiving. Not later than five business days after the court finds either that the defendant will not attain competency within the period of any placement order under this section or that the defendant has regained competency, the person in charge of the treatment facility, or such person's designee, shall provide a copy of the written progress report to the examiners who examined the defendant pursuant to subsection (d) of this section.

(k) Reconsideration of competency. Hearing. Involuntary medication. Appointment and duties of health care guardian.

(1) When any placement order for treatment is rendered or continued, the court shall set a date for a hearing, to be held within ninety days, for reconsideration of the issue of the defendant's competency. Whenever the court (A) receives a report pursuant to subsection (j) of this section which indicates that (i) the defendant has attained competency, (ii) the defendant will not attain competency within the remainder of the period covered by the placement order, (iii) the defendant will not attain competency within the remainder of the period covered by the placement order absent administration of psychiatric medication for which the defendant is unwilling or unable to provide consent, or (iv) the

defendant would be eligible for civil commitment pursuant to subdivision (2) of subsection (h) of this section, or (B) receives a report pursuant to subparagraph (A)(iii) of subdivision (2) of subsection (h) of this section which indicates that (i) the application for civil commitment of the defendant has been denied or has not been pursued by the Commissioner of Mental Health and Addiction Services, or (ii) the defendant is unwilling or unable to comply with a treatment plan despite reasonable efforts of the treatment facility to encourage the defendant's compliance, the court shall set the matter for a hearing not later than ten days after the report is received. The hearing may be waived by the defendant only if the report indicates that the defendant is competent. The court shall determine whether the defendant is competent or is making progress toward attainment of competency within the period covered by the placement order. If the court finds that the defendant is competent, the defendant shall be returned to the custody of the Commissioner of Correction or released, if the defendant has met the conditions for release, and the court shall continue with the criminal proceedings. If the court finds that the defendant is still not competent but that the defendant is making progress toward attaining competency, the court may continue or modify the placement order. If the court finds that the defendant is still not competent and will not attain competency within the remainder of the period covered by the placement order absent administration of psychiatric medication for which the defendant is unwilling or unable to provide consent, the court shall proceed as provided in subdivisions (2), (3) and (4) of this subsection. If the court finds that the defendant is eligible for civil commitment, the court may order placement of the defendant at a treatment facility pending civil commitment proceedings pursuant to subdivision (2) of subsection (h) of this section.

(2) If the court finds that the defendant will not attain competency within the remainder of the period covered by the placement order absent administration of psychiatric medication for which the defendant is unwilling or unable to provide consent, and after any hearing held pursuant to subdivision (3) of this subsection, the court may order the involuntary medication of the defendant if the court finds by clear and convincing evidence that: (A) To a reasonable degree of medical certainty, involuntary medication of the defendant will render the defendant competent to stand trial, (B) an adjudication of guilt or innocence cannot be had using less intrusive means, (C) the proposed treatment plan is narrowly tailored to minimize intrusion on the defendant's liberty and privacy interests, (D) the proposed drug regimen will not cause an unnecessary risk to the defendant's health, and (E) the seriousness of the alleged crime is such that the criminal law enforcement interest of the state in fairly and accurately determining the defendant's guilt or innocence overrides the defendant's interest in self-determination.

(3)(A) If the court finds that the defendant is unwilling or unable to provide consent for the administration of psychiatric medication, and prior to deciding whether to order the involuntary medication of the defendant under subdivision (2) of this subsection, the court shall appoint a health care guardian who shall be a licensed health care provider with specialized training in the treatment of persons with psychiatric disabilities to represent the health care interests of the defendant before the court. Notwithstanding the provisions of section 52-146e, such health care guardian shall have access to the psychiatric records of the defendant. Such health care guardian shall file a report with the

court not later than thirty days after his or her appointment. The report shall set forth such health care guardian's findings and recommendations concerning the administration of psychiatric medication to the defendant, including the risks and benefits of such medication, the likelihood and seriousness of any adverse side effects and the prognosis with and without such medication. The court shall hold a hearing on the matter not later than ten days after receipt of such health care guardian's report and shall, in deciding whether to order the involuntary medication of the defendant, take into account such health care guardian's opinion concerning the health care interests of the defendant.

(B) The court, in anticipation of considering continued involuntary medication of the defendant under subdivision (4) of this subsection, shall order the health care guardian to file a supplemental report updating the findings and recommendations contained in the health care guardian's report filed under subparagraph (A) of this subdivision.

(4) If, after the defendant has been found to have attained competency by means of involuntary medication ordered under subdivision (2) of this subsection, the court determines by clear and convincing evidence that the defendant will not remain competent absent the continued administration of psychiatric medication for which the defendant is unable to provide consent, and after any hearing held pursuant to subdivision (3) of this subsection and consideration of the supplemental report of the health care guardian, the court may order continued involuntary medication of the defendant if the court finds by clear and convincing evidence that: (A) To a reasonable degree of medical certainty, continued involuntary medication of the defendant will maintain the defendant's competency to stand trial, (B) an adjudication of guilt or innocence cannot be had using less intrusive means, (C) the proposed treatment plan is narrowly tailored to minimize intrusion on the defendant's liberty and privacy interests, (D) the proposed drug regimen will not cause an unnecessary risk to the defendant's health, and (E) the seriousness of the alleged crime is such that the criminal law enforcement interest of the state in fairly and accurately determining the defendant's guilt or innocence overrides the defendant's interest in self-determination. Continued involuntary medication ordered under this subdivision may be administered to the defendant while the criminal charges against the defendant are pending and the defendant is in the custody of the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services. An order for continued involuntary medication of the defendant under this subdivision shall be reviewed by the court every one hundred eighty days while such order remains in effect. The court shall order the health care guardian to file a supplemental report for each such review. After any hearing held pursuant to subdivision (3) of this subsection and consideration of the supplemental report of the health care guardian, the court may continue such order if the court finds, by clear and convincing evidence, that the criteria enumerated in subparagraphs (A) to (E), inclusive, of this subdivision are met.

(5) The state shall hold harmless and indemnify any health care guardian appointed by the court pursuant to subdivision (3) of this subsection from financial loss and expense arising out of any claim, demand, suit or judgment by reason of such health care guardian's alleged negligence or alleged deprivation of any person's civil rights or other

act or omission resulting in damage or injury, provided the health care guardian is found to have been acting in the discharge of his or her duties pursuant to said subdivision and such act or omission is found not to have been wanton, reckless or malicious. The provisions of subsections (b), (c) and (d) of section 5-141d shall apply to such health care guardian. The provisions of chapter 53 shall not apply to a claim against such health care guardian.

(l) Failure of defendant to return to treatment facility in accordance with terms and conditions of release. If a defendant who has been ordered placed for treatment on an inpatient basis at a mental health facility or mental retardation facility is released from such facility on a furlough or for work, therapy or any other reason and fails to return to the facility in accordance with the terms and conditions of the defendant's release, the person in charge of the facility, or such person's designee, shall, within twenty-four hours of the defendant's failure to return, report such failure to the prosecuting authority for the court location which ordered the placement of the defendant. Upon receipt of such a report, the prosecuting authority shall, within available resources, make reasonable efforts to notify any victim or victims of the crime for which the defendant is charged of such defendant's failure to return to the facility. No civil liability shall be incurred by the state or the prosecuting authority for failure to notify any victim or victims in accordance with this subsection. The failure of a defendant to return to the facility in which the defendant has been placed may constitute sufficient cause for the defendant's rearrest upon order by the court.

(m) Release or placement of defendant who will not attain competency. If at any time the court determines that there is not a substantial probability that the defendant will attain competency within the period of treatment allowed by this section, or if at the end of such period the court finds that the defendant is still not competent, the court shall consider any recommendation made by the examiners pursuant to subsection (d) of this section and any opinion submitted by the treatment facility pursuant to subparagraph (C) of subsection (j) of this section regarding eligibility for, and the appropriateness of, civil commitment to a hospital for psychiatric disabilities and shall either release the defendant from custody or order the defendant placed in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Developmental Services. If the court orders the defendant placed in the custody of the Commissioner of Children and Families or the Commissioner of Developmental Services, the commissioner given custody, or the commissioner's designee, shall then apply for civil commitment in accordance with sections 17a-75 to 17a-83, inclusive, or 17a-270 to 17a-282, inclusive. If the court orders the defendant placed in the custody of the Commissioner of Mental Health and Addiction Services, the court may order the commissioner, or the commissioner's designee, to apply for civil commitment in accordance with sections 17a-495 to 17a-528, inclusive, or order the commissioner, or the commissioner's designee, to provide services to the defendant in a less restrictive setting, provided the examiners have determined in the written report filed pursuant to subsection (d) of this section or have testified pursuant to subsection (e) of this section that such services are available and appropriate. The court shall hear arguments as to whether the defendant should be released or should be placed in the

custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Developmental Services. If the court orders the release of a defendant charged with the commission of a crime that resulted in the death or serious physical injury, as defined in section 53a-3, of another person, or orders the placement of such defendant in the custody of the Commissioner of Mental Health and Addiction Services, the court may, on its own motion or on motion of the prosecuting authority, order, as a condition of such release or placement, periodic examinations of the defendant as to the defendant's competency. Such an examination shall be conducted in accordance with subsection (d) of this section. Upon receipt of the written report as provided in subsection (d) of this section, the court shall, upon the request of either party filed not later than thirty days after the court receives such report, conduct a hearing as provided in subsection (e) of this section. Such hearing shall be held not later than ninety days after the court receives such report. If the court finds that the defendant has attained competency, the defendant shall be returned to the custody of the Commissioner of Correction or released, if the defendant has met the conditions for release, and the court shall continue with the criminal proceedings. Periodic examinations ordered by the court under this subsection shall continue until the court finds that the defendant has attained competency or until the time within which the defendant may be prosecuted for the crime with which the defendant is charged, as provided in section 54-193 or 54-193a, has expired, whichever occurs first. The court shall dismiss, with or without prejudice, any charges for which a nolle prosequi is not entered when the time within which the defendant may be prosecuted for the crime with which the defendant is charged, as provided in section 54-193 or 54-193a, has expired. Notwithstanding the erasure provisions of section 54-142a, police and court records and records of any state's attorney pertaining to a charge which is nolled or dismissed without prejudice while the defendant is not competent shall not be erased until the time for the prosecution of the defendant expires under section 54-193 or 54-193a. A defendant who is not civilly committed as a result of an application made by the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Developmental Services pursuant to this section shall be released. A defendant who is civilly committed pursuant to such an application shall be treated in the same manner as any other civilly committed person.

(n) Payment of costs. The cost of the examination effected by the Commissioner of Mental Health and Addiction Services and of testimony of persons conducting the examination effected by the commissioner shall be paid by the Department of Mental Health and Addiction Services. The cost of the examination and testimony by physicians appointed by the court shall be paid by the Judicial Department. If the defendant is indigent, the fee of the person selected by the defendant to observe the examination and to testify on the defendant's behalf shall be paid by the Public Defender Services Commission. The expense of treating a defendant placed in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Developmental Services pursuant to subdivision (2) of subsection (h) of this section or subsection (i) of this section shall be computed and paid for in the same manner as is provided for persons committed by a probate court under the provisions of sections 17b-122, 17b-124 to 17b-132, inclusive, 17b-136 to 17b-

138, inclusive, 17b-194 to 17b-197, inclusive, 17b-222 to 17b-250, inclusive, 17b-256, 17b-263, 17b-340 to 17b-350, inclusive, 17b-689b and 17b-743 to 17b-747, inclusive.

(o) Custody of defendant prior to hearing. Until the hearing is held, the defendant, if not released on a promise to appear, conditions of release, cash bail or bond, shall remain in the custody of the Commissioner of Correction unless hospitalized as provided in sections 17a-512 to 17a-517, inclusive.

(p) Placement of violent defendant. This section shall not be construed to require the Commissioner of Mental Health and Addiction Services to place any violent defendant in a mental institution which does not have the trained staff, facilities and security to accommodate such a person.

(q) Defense of defendant prior to trial. This section shall not prevent counsel for the defendant from raising, prior to trial and while the defendant is not competent, any issue susceptible of fair determination.

(r) Credit for time in confinement on inpatient basis. Actual time spent in confinement on an inpatient basis pursuant to this section shall be credited against any sentence imposed on the defendant in the pending criminal case or in any other case arising out of the same conduct in the same manner as time is credited for time spent in a correctional facility awaiting trial.

DELAWARE

DEL. CODE ANN. TIT. 11, § 403 (2010). VERDICT OF "NOT GUILTY BY REASON OF INSANITY"; COMMITMENT TO DELAWARE PSYCHIATRIC CENTER OF PERSONS NO LONGER ENDANGERING THE PUBLIC SAFETY; PERIODIC REVIEW OF COMMITMENTS TO DELAWARE PSYCHIATRIC CENTER; PARTICIPATION OF PATIENT IN TREATMENT PROGRAM

(a) Upon the rendition of a verdict of "not guilty by reason of insanity," the court shall, upon motion of the Attorney General, order that the person so acquitted shall forthwith be committed to the Delaware Psychiatric Center.

(b) Except as provided in subsection (c) below, a person committed, confined or transferred to the Delaware Psychiatric Center in accordance with subsection (a) of this section, § 404, § 405, § 406 or § 408 of this title (referred to herein as "the patient") shall be kept there at all times in a secured building until the Superior Court of the county wherein the case would be tried or was tried is satisfied that the public safety will not be endangered by the patient's release. The Superior Court shall without special motion reconsider the necessity of continued detention of a patient thus committed after the patient has been detained for 1 year. The Court shall thereafter reconsider the patient's detention upon petition on the patient's behalf or whenever advised by the Psychiatric

Center that the public safety will not be endangered by the patient's release.

(c) (1) Upon petition by a patient confined pursuant to this section, § 404, § 405, § 406 or § 408 of this title, or upon petition by the Center Director of the Delaware Psychiatric Center, the Court may permit housing in an unsecured building or participation by the patient in any treatment program that is offered by the Center, which requires or provides that the patient be placed outside a secured building. Such participation shall include, but not be limited to, employment off hospital grounds, job interviews, family visits and other activities inside and outside the Center, as may be prescribed by the Medical Director in the interest of rehabilitation.

(2) The petition shall include an affidavit from the Medical Director which states that the patient has not exhibited dangerous behavior during the last year of confinement and that in the opinion of the Medical Director, the patient will benefit from such participation.

(3) The petition shall set forth any specific treatment program being sought; the specific goals and course of treatment involved; and a schedule for periodic judicial reevaluation of the patient's treatment status, all of which shall be subject to the Court's approval and modification.

(4) Copies of the petition shall be served on the Attorney General, the Medical Director and the patient or the patient's counsel or guardian.

(5) There shall be a judicial hearing on the petition, and any person or agency served with a copy of the petition, or a representative of such person or agency, shall have the right to testify, present evidence and/or cross-examine witnesses. The patient shall have the right to be represented by counsel at any proceeding held in accordance with this section. The Court shall appoint counsel for the patient if the patient cannot afford to retain counsel.

(6) Upon conclusion of a hearing on a petition pursuant to this section, the Court may approve, modify or disapprove any request or matter within the petition. If the patient's participation in any treatment program is approved, such approval or participation shall be effective for not longer than 6 months from the date of the judge's signature on the petition or order permitting such participation. Immediately prior to the conclusion of the 6-month period, the Center Director shall report to the Court on the patient's status, and make recommendations. Any authorization by the Court for continued participation by the patient in any authorized treatment programs may be extended, modified or discontinued at the end of the effective period with or without further hearings, as the Court may determine.

(d) Any treatment program approved by the Court under this section may be terminated by the Medical Director of the Delaware Psychiatric Center. When a treatment program is terminated earlier than its court-approved expiration date, the Medical Director shall immediately notify the Superior Court. The Superior Court shall, after giving appropriate

notice, hear the matter and review the decision of the Medical Director. At such termination hearing, the patient shall have such rights as are provided for other hearings under this section, including the right to counsel, the right to present evidence and the right to cross-examine witnesses. Where the Medical Director's decision to terminate is based upon the patient's mental or psychological condition, the patient may be examined by an independent psychiatrist or other qualified expert; provided, however, that the termination hearing shall not be held until such examination has been finally concluded.

DEL. CODE ANN. TIT. 11, § 404 (2010). CONFINEMENT IN DELAWARE PSYCHIATRIC CENTER OF PERSONS TOO MENTALLY ILL TO STAND TRIAL; REQUIRING STATE TO PROVE PRIMA FACIE CASE IN SUCH CIRCUMSTANCES; ADJUSTMENT OF SENTENCES

(a) Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or mental defect, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial. However, upon motion of the defendant, the court may conduct a hearing to determine whether the State can make out a prima facie case against the defendant, and if the State fails to present sufficient evidence to constitute a prima facie case, the court shall dismiss the charge. This dismissal shall have the same effect as a judgment of acquittal.

(b) When the court finds that the defendant is capable of standing trial, the defendant may be tried in the ordinary way, but the court may make any adjustment in the sentence which is required in the interest of justice, including a remission of all or any part of the time spent in the Psychiatric Center.

DEL. CODE ANN. TIT. 11, § 405 (2010). CONFINEMENT IN DELAWARE PSYCHIATRIC CENTER OF PERSONS BECOMING MENTALLY DISABLED AFTER CONVICTION BUT BEFORE SENTENCING; ADJUSTMENT OF SENTENCES

(a) Whenever the court is satisfied that a prisoner has become mentally ill after conviction but before sentencing so that the prisoner is unable understandingly to participate in the sentencing proceedings, and if the court is satisfied that a sentence of imprisonment may be appropriate, the court may order the prisoner to be confined and treated in the Delaware Psychiatric Center until the prisoner is capable of participating in the sentencing proceedings.

(b) When the court finds that the prisoner is capable of participating in the sentencing proceedings, the prisoner may be sentenced in the ordinary way, but the court may make any adjustment in the sentence which is required in the interest of justice, including a remission of all or any part of the time spent in the Psychiatric Center.

DEL. CODE ANN. TIT. 11, § 406 (2010). TRANSFER OF CONVICTED PERSONS BECOMING MENTALLY DISABLED FROM PRISON TO DELAWARE

PSYCHIATRIC CENTER; APPOINTMENT OF PHYSICIANS TO CONDUCT INQUIRY; EXPENSES OF TRANSFER

(a) Whenever in any case it appears to the Superior Court, upon information received from the Department of Health and Social Services, that a prisoner confined with the Department has become mentally ill after conviction and sentence, the Court may appoint 2 reputable practicing physicians to inquire of the mental condition of the prisoner and make report of their finding to the Court within 2 days from the date of their appointment, by writing under their hands and seals. Should the report of the physicians be that the prisoner is mentally ill, the prisoner shall at once be ordered by the Court transferred from the prison facility where the prisoner is confined to the Delaware Psychiatric Center.

(b) The expenses of the removal of such mentally ill person and of admission into such Psychiatric Center and maintenance therein up and until the time the person is discharged by the Court shall be borne by the State. If any such mentally ill person has any real or personal estate, the Department of Health and Social Services shall have for the expenses and charges so incurred the same remedy as is provided in § 5127 of Title 16.

DEL. CODE ANN. TIT. 11, § 408 (2010). VERDICT OF "GUILTY, BUT MENTALLY ILL" -- SENTENCE; CONFINEMENT; DISCHARGE FROM TREATING FACILITY

(a) Where a defendant's defense is based upon allegations which, if true, would be grounds for a verdict of "guilty, but mentally ill" or the defendant desires to enter a plea to that effect, no finding of "guilty, but mentally ill" shall be rendered until the trier of fact has examined all appropriate reports (including the presentence investigation); has held a hearing on the sole issue of the defendant's mental illness, at which either party may present evidence; and is satisfied that the defendant was in fact mentally ill at the time of the offense to which the plea is entered. Where the trier of fact, after such hearing, is not satisfied that the defendant was mentally ill at the time of the offense, or determines that the facts do not support a "guilty, but mentally ill" plea, the trier of fact shall strike such plea, or permit such plea to be withdrawn by the defendant. A defendant whose plea is not accepted by the trier of fact shall be entitled to a jury trial, except that if a defendant subsequently waives the right to a jury trial, the judge who presided at the hearing on mental illness shall not preside at the trial.

(b) In a trial under this section a defendant found guilty but mentally ill, or whose plea to that effect is accepted, may have any sentence imposed which may lawfully be imposed upon any defendant for the same offense. Such defendant shall be committed into the custody of the Department of Correction, and shall undergo such further evaluation and be given such immediate and temporary treatment as is psychiatrically indicated. The Commissioner shall retain exclusive jurisdiction over such person in all matters relating to security. The Commissioner shall thereupon confine such person in the Delaware Psychiatric Center, or other suitable place for the residential treatment of criminally mentally ill individuals under the age of 18 who have been found nonamenable to the processes of Family Court. Although such person shall remain under the jurisdiction of the Department of Correction, decisions directly related to treatment for the mental

illness for individuals placed at the Delaware Psychiatric Center, shall be the joint responsibility of the Director of the Division of Substance Abuse and Mental Health and those persons at the Delaware Psychiatric Center who are directly responsible for such treatment. The Delaware Psychiatric Center, or any other residential treatment facility to which the defendant is committed by the Commissioner, shall have the authority to discharge the defendant from the facility and return the defendant to the physical custody of the Commissioner whenever the facility believes that such a discharge is in the best interests of the defendant. The offender may, by written statement, refuse to take any drugs which are prescribed for treatment of the offender's mental illness; except when such a refusal will endanger the life of the offender, or the lives or property of other persons with whom the offender has contact.

(c) When the Psychiatric Center or other treating facility designated by the Commissioner discharges an offender prior to the expiration of such person's sentence, the treating facility shall transmit to the Commissioner and to the Parole Board a report on the condition of the offender which contains the clinical facts; the diagnosis; the course of treatment, and prognosis for the remission of symptoms; the potential for the recidivism, and for danger to the offender's own person or the public; and recommendations for future treatment. Where an offender under this section is sentenced to the Psychiatric Center or other facility, the offender shall not be eligible for any privileges not permitted in writing by the Commissioner (including escorted or unescorted on-grounds or off-grounds privileges) until the offender has become eligible for parole. Where the court finds that the offender, before completing the sentence, no longer needs nor could benefit from treatment for the offender's mental illness, the offender shall be remanded to the Department of Correction. The offender shall have credited toward the sentence the time served at the Psychiatric Center or other facility.

(d) No individual under the age of 18 shall be placed at the Delaware Psychiatric Center. Nothing herein shall prevent either the transfer to or placement at the Delaware Psychiatric Center any person who has reached the age of 18 following any finding of guilty, but mentally ill.

DEL. CODE ANN. TIT. 11, § 3901 (2010). FIXING TERM OF IMPRISONMENT; CREDITS

(a) When imprisonment is a part of the sentence, the term shall be fixed, and the time of its commencement and ending specified. An act to be done at the expiration of a term of imprisonment shall be done on the last day thereof, unless it be Sunday, and in that case, the day previous. Months shall be reckoned as calendar months.

(b) All sentences for criminal offenses of persons who at the time sentence is imposed are held in custody in default of bail, or otherwise, shall begin to run and be computed from the date of incarceration for the offense for which said sentence shall be imposed, unless the person sentenced shall then be undergoing imprisonment under a sentence imposed for any other offense or offenses, in which case the said sentence shall begin to run and be computed, either from the date of imposition thereof or from the expiration of such other sentence or sentences, as the court shall, in its discretion, direct.

(c) Any period of actual incarceration of a person awaiting trial, who thereafter before trial or sentence succeeds in securing provisional liberty on bail, shall be credited to the person in determining the termination date of sentence. Where a prisoner is hospitalized, the time spent in an institution under involuntary restraint is to be credited to the person when calculating the sentence under this subsection.

(d) No sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant.

DISTRICT OF COLUMBIA

D.C. CODE ANN. § 7-1131.13 (2010). PROSECUTION AND REPRESENTATION BY ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA.

The Office of Attorney General for the District of Columbia shall have charge of the prosecution of actions brought in the name of the District of Columbia for emergency detention and commitment of persons requiring receipt of involuntary mental health services and mental health supports. The Office of the Attorney General for the District of Columbia shall also have charge of any litigation arising out of the execution of the Department's powers and duties.

D.C. CODE ANN. § 16-1901 (2010). PETITION; ISSUANCE OF WRIT

(a) A person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or a person in his behalf, may apply by petition to the appropriate court, or a judge thereof, for a writ of habeas corpus, to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into. The court or the judge applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant the writ, directed to the officer or other person in whose custody or keeping the party so detained is returnable forthwith before the court or judge.

(b) Petitions for writs directed to Federal officers and employees shall be filed in the United States District Court for the District of Columbia.

(c) Petitions for writs directed to any other person shall be filed in the Superior Court of the District of Columbia.

D.C. CODE ANN. § 16-1905 (2010). RIGHT TO COPY OF COMMITMENT; FORFEITURE

A person committed or detained, or a person in his behalf, may demand a true copy of the warrant of commitment or detainer. An officer or other person detaining a person, who refuses or neglects to deliver to him or to a person in his behalf a true copy of the warrant

of commitment or detainer, if one exists, within six hours after the demand, shall forfeit to the party so detained the sum of $ 500.

D.C. CODE ANN. § 22-3803 (2010). DEFINITIONS [FORMERLY § 22-3503]

For the purposes of this chapter:

(1) The term "sexual psychopath" means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his or her sexual impulses as to be dangerous to other persons because he or she is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his or her desire.

(2) The term "court" means a court in the District of Columbia having jurisdiction of criminal offenses or delinquent acts.

(3) The term "patient" means a person with respect to whom there has been filed with the clerk of any court a statement in writing setting forth facts tending to show that such person is a sexual psychopath.

(4) The term "criminal proceeding" means a proceeding in any court against a person for a criminal offense, and includes all stages of such a proceeding from the time the person is indicted, charged by an information, or charged with a delinquent act, to the entry of judgment, or, if the person is granted probation, the completion of the period of probation.

D.C. CODE ANN. § 22-3804 (2010). FILING OF STATEMENT [FORMERLY § 22-3504]

(a) Whenever it shall appear to the United States Attorney for the District of Columbia that any person within the District of Columbia, other than a defendant in a criminal proceeding, is a sexual psychopath, such Attorney may file with the clerk of the Superior Court of the District of Columbia a statement in writing setting forth the facts tending to show that such a person is a sexual psychopath.

(b) Whenever it shall appear to the United States Attorney for the District of Columbia that any defendant in any criminal proceeding prosecuted by such Attorney or any Assistant United States Attorney is a sexual psychopath, such Attorney may file with the clerk of the court in which such proceeding is pending a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(c) Whenever it shall appear to any court that any defendant in any criminal proceeding pending in such court is a sexual psychopath, the court may, if it deems such procedure advisable, direct the officer prosecuting the defendant to file with the clerk of such court a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(d) Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of this

section may be filed only:

(1) Before trial;

(2) After conviction or plea of guilty but before sentencing; or

(3) After conviction or plea of guilty but before the completion of probation.

(e) This section shall not apply to an individual in a criminal proceeding who is charged with first degree sexual abuse, second degree sexual abuse, or assault with intent to commit first or second degree sexual abuse.

D.C. CODE ANN. § 22-3805 (2010). RIGHT TO COUNSEL [FORMERLY § 22-3505]

A patient shall have the right to have the assistance of counsel at every stage of the proceeding under this chapter. Before the court appoints psychiatrists pursuant to § 22-3806 it shall advise the patient of his or her right to counsel and shall assign counsel to represent him or her unless the patient is able to obtain counsel or elects to proceed without counsel.

D.C. CODE ANN. § 22-3806 (2010). EXAMINATION BY PSYCHIATRISTS [FORMERLY § 22-3506]

(a) When a statement has been filed with the clerk of any court pursuant to § 22-3804, such court shall appoint 2 qualified psychiatrists to make a personal examination of the patient. The patient shall be required to answer questions asked by the psychiatrists under penalty of contempt of court. Each psychiatrist shall file a written report of the examination, which shall include a statement of his or her conclusion as to whether the patient is a sexual psychopath.

(b) The counsel for the patient shall have the right to inspect the reports of the examination of the patient. No such report and no evidence resulting from the personal examination of the patient shall be admissible against him or her in any judicial proceeding except a proceeding under this chapter to determine whether the patient is a sexual psychopath.

D.C. CODE ANN. § 22-3807 (2010). WHEN HEARING IS REQUIRED [FORMERLY § 22-3507]

If, in their reports filed pursuant to § 22-3806, both psychiatrists state that the patient is a sexual psychopath, or if both state that they are unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, or if one states that the patient is a sexual psychopath and the other states that he or she is unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, then the court shall conduct a hearing in the manner provided in § 22-3808 to determine whether the patient is a sexual psychopath. If, on the basis of the reports filed, the court is not required to conduct such a hearing, the court

shall enter an order dismissing the proceeding under this chapter to determine whether the patient is a sexual psychopath.

D.C. CODE ANN. § 22-3808 (2010). HEARING; COMMITMENT [FORMERLY § 22-3508]

Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexual psychopath. Such hearing shall be conducted without a jury unless, before such hearing and within 15 days after the date on which the second report is filed pursuant to § 22-3806, a jury is demanded by the patient or by the officer filing the statement. The rules of evidence applicable in judicial proceedings in the court shall be applicable to hearings pursuant to this section; but, notwithstanding any such rule, evidence of conviction of any number of crimes the commission of which tends to show that the patient is a sexual psychopath and of the punishment inflicted therefor shall be admissible at any such hearing. The patient shall be entitled to an appeal as in other cases. If the patient is determined to be a sexual psychopath, the court shall commit him or her to an institution to be confined there until released in accordance with § 22-3809.

D.C. CODE ANN. § 22-3809 (2010). PAROLE; DISCHARGE [FORMERLY § 22-3509]

Any person committed under this chapter may be released from confinement when an appropriate supervisory official finds that he or she has sufficiently recovered so as to not be dangerous to other persons, provided if the person to be released be one charged with crime or undergoing sentence therefor, that official shall give notice thereof to the judge of the criminal court and deliver him or her to the court in obedience to proper precept.

D.C. CODE ANN. § 22-3810 (2010). STAY OF CRIMINAL PROCEEDINGS [FORMERLY § 22-3510]

Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of § 22-3804 shall stay such criminal proceeding until whichever of the following first occurs:

(1) The proceeding under this chapter to determine whether the patient is a sexual psychopath is dismissed pursuant to § 22-3807 or withdrawn;

(2) It is determined pursuant to § 22-3808 that the patient is not a sexual psychopath; or

(3) The patient is discharged from an institution pursuant to § 22-3809.

D.C. CODE ANN. § 24-501 (2010). COMMITMENT DURING TRIAL; RESTORATION TO COMPETENCY; ACQUITTAL BY REASON OF INSANITY; RELEASE AFTER CONFINEMENT; EXPENSES OF CONFINEMENT; INCONSISTENT STATUTES SUPERSEDED; ESCAPED PERSONS; INSANITY DEFENSE; MOTIONS FOR RELIEF [FORMERLY § 24-301]

(a) Repealed.

(a-1) Repealed.

(b) Repealed.

(c) When any person tried upon an indictment or information for an offense, or tried in the Family Division of the Superior Court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(d) (1) If any person tried upon an indictment or information for an offense raises the defense of insanity and is acquitted solely on the ground that he was insane at the time of its commission, he shall be committed to a hospital for the mentally ill until such time as he is eligible for release pursuant to this subsection or subsection (e) of this section.

(2) (A) A person confined pursuant to paragraph (1) of this subsection shall have a hearing, unless waived, within 50 days of his confinement to determine whether he is entitled to release from custody. At the conclusion of the criminal action referred to in paragraph (1) of this subsection, the court shall provide such person with representation by counsel:

(i) In the case of a person who is eligible to have counsel appointed by the court, by continuing any appointment of counsel made to represent such person in the prior criminal action or by appointing new counsel; or

(ii) In the case of a person who is not eligible to have counsel appointed by the court, by assuring representation by retained counsel.

(B) If the hearing is not waived, the court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney and hold the hearing. Within 10 days from the date the hearing was begun, the court shall determine the issues and make findings of fact and conclusions of law with respect thereto. The person confined shall have the burden of proof. If the court finds by a preponderance of the evidence that the person confined is entitled to his release from custody, either conditional or unconditional, the court shall enter such order as may appear appropriate.

(3) An appeal may be taken from an order entered upon paragraph (2) of this subsection to the court having jurisdiction to review final judgments of the court entering the order.

(e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies: (1) that such person has recovered his sanity; (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others; and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Attorney General for the District of Columbia, whichever office prosecuted the accused, such certificate shall

be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of 15 days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of 1 or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) of this section is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of 15 days from the time such certificate is filed and served pursuant to this section; provided, that the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

(f) (1) Except as provided in paragraph (2) of this subsection, when an accused person is acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, the person and the person's estate shall be charged with the expense of the person's support in the hospital.

(2) The District shall not charge a person or his estate for the expense of the person's support in a hospital for the mentally ill if the source of the funds being sought to compensate the District were obtained as a result of:

(A) A judgment against the District pertaining to its care of the person; or

(B) A settlement reached by the District with a person or his estate pertaining to its care of the person.

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia the provisions of any federal statutes or parts thereof inconsistent with this section.

(i) When a person has been ordered confined in a hospital for the mentally ill pursuant to this section and has escaped from such hospital, the court which ordered confinement

shall, upon request of the government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital.

(j) Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty, or within 15 days thereafter, or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense. No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence.

(k) (1) A person in custody or conditionally released from custody, pursuant to the provisions of this section, claiming the right to be released from custody, the right to any change in the conditions of his release, or other relief concerning his custody, may move the court having jurisdiction to order his release, to release him from custody, to change the conditions of his release, or to grant other relief.

(2) A motion for relief may be made at any time after a hearing has been held or waived pursuant to subsection (d)(2) of this section.

(3) Unless the motion and the files and records of the case conclusively show that the person is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. On all issues raised by his motion, the person shall have the burden of proof. If the court finds by a preponderance of the evidence that the person is entitled to his release from custody, either conditional or unconditional, a change in the conditions of his release, or other relief, the court shall enter such order as may appear appropriate.

(4) A court may entertain and determine the motion without requiring the production of the persons at the hearing.

(5) A court shall not be required to entertain a second or successive motion for relief under this section more often than once every 6 months. A court for good cause shown may in its discretion entertain such a motion more often than once every 6 months.

(6) An appeal may be taken from an order entered under this section to the court having jurisdiction to review final judgments of the court entering the order.

(7) An application for habeas corpus on behalf of a person who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the

applicant has failed to apply for relief, by motion, to the court having jurisdiction to entertain a motion pursuant to this section, unless it also appears that the remedy by motion is inadequate or ineffective to test the validity of his detention.

D.C. CODE ANN. § 24-502 (2010). COMMITMENT WHILE SERVING SENTENCE [FORMERLY § 24-302]

Any person while serving sentence of any court of the District of Columbia for crime, in a District of Columbia penal institution, and who, in the opinion of the Director of the Department of Corrections of the District of Columbia, is mentally ill, shall be referred by such Director to the psychiatrist functioning under § 24-306, and if such psychiatrist certifies that the person is mentally ill, this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness.

D.C. CODE ANN. § 24-531.02 (2010). COMPETENCE TO PROCEED -- GENERALLY

(a) A defendant shall not be tried, be sentenced, enter a guilty plea, or be subject to revocation of probation or a transfer proceeding if the court determines that the defendant is incompetent.

(b) (1) Any proceeding to determine whether a defendant is incompetent shall not delay a determination of probable cause to believe that the defendant has committed the offense with which he or she is charged or the defendant's eligibility for pretrial release or detention pursuant to subchapter I of Chapter 23 of Title 16 or subchapter II of Chapter 13 of Title 23 of the District of Columbia Code.

(2) A defendant who is otherwise entitled to pretrial release shall not be involuntarily confined or taken into custody solely because the issue of the defendant's competence has been raised and an examination or treatment has been ordered, unless the court determines that the defendant may be committed as an inpatient for a full competence examination pursuant to § 24-531.03(e) or for competence treatment pursuant to § 24-531.05.

(3) If the court orders a full competence examination or competence treatment on an outpatient basis, the court may order the defendant to appear at a designated time and place for the examination or treatment and may make the appearance a condition of the defendant's pretrial release.

(c) The prosecutor or defense attorney may file any motion in the underlying criminal case, transfer proceeding, or probation revocation at any time while the defendant is incompetent. The court shall hear and decide any issue presented by the motion if the defendant's presence is not constitutionally required or, as determined by the court, essential for a fair hearing.

(d) Nothing in this chapter shall be construed to prevent the government or any person from petitioning the court for involuntary civil commitment pursuant to subchapter IV of

Chapter 5 of Title 21 (§ 21-541 et seq.) or subchapter IV of Chapter 13 of Title 7 (§ 7-1304.01 et seq.).

D.C. CODE ANN. § 24-531.03 (2010). COMPETENCE EXAMINATIONS

(a) At any time after the prosecutor moves for a transfer from the Family Court to the Criminal Division of the Superior Court or charges a criminal offense by complaint, information, or indictment, either party may request, or the court on its own may order, that the defendant be examined to determine the defendant's competence.

(b) When the issue of a defendant's competence has been raised, the court shall order a preliminary screening examination before ordering a full competence examination pursuant to subsection (d) of this section.

(c) (1) A preliminary screening examination shall be performed either in the courthouse or on an outpatient basis by a psychiatrist or psychologist affiliated with the Department of Mental Health.

(2) The court shall schedule a return date or time for the defendant as early as possible following the order for the preliminary screening examination issued pursuant to subsection (b) of this section. In no case shall the return date be more than 3 business days after the order if the defendant is not released and no more than 5 business days after the order if the defendant is released.

(3) The examination shall be completed and a report submitted to the court in advance of the return date or time. The report shall indicate whether the defendant is competent, incompetent, or whether further evaluation is needed.

(4) The court shall consider the report of the preliminary screening examination, any arguments made by the parties, and any other information available to the court, and shall either:

(A) Find the defendant competent and resume the criminal case or transfer proceeding; or

(B) Order the defendant to submit to a full competence examination.

(d) (1) An order for a full competence examination pursuant to subsection (c)(4)(B) of this section shall direct the Department of Mental Health to examine the defendant. The full competence examination shall be performed by a psychiatrist or psychologist affiliated with the Department of Mental Health.

(2) The Department of Mental Health shall submit a written report to the court as to the defendant's competence.

(3) Any psychiatrist or psychologist who participated in the examination shall be available to testify at any hearing involving the defendant's competence.

(e) A full competence examination may be conducted on an inpatient or outpatient basis. The court may order the defendant committed to Saint Elizabeths Hospital or to the Department of Mental Health for an inpatient examination only after a finding by the court that:

(1) Placement in an inpatient treatment facility is necessary in order to conduct an adequate examination; or

(2) The defendant is unlikely to comply with an order for an outpatient examination.

(f) (1) If the court orders the defendant committed as an inpatient for a full competence examination under subsection (e) of this section, the commitment for examination shall not exceed 30 days, except that the commitment may be extended for a 15-day period for good cause shown.

(2) (A) The Department of Mental Health shall submit a written report to the court:

(i) As soon as it reaches a conclusion that the defendant is competent or is incompetent; or

(ii) Any time it determines that the criteria for an inpatient examination set forth in subsection (e) of this section are no longer met.

(B) If the defendant is reported incompetent, the report shall include an opinion regarding the likelihood of the defendant's attaining competence in the foreseeable future or should state that no opinion has been formed on the likelihood of the defendant attaining competence.

(C) If a report indicates that the criteria for an inpatient examination set forth in subsection (e) of this section are no longer met, the court shall make new findings under subsection (e) of this section and, if it determines that the examination can be conducted on an outpatient basis, shall determine the defendant's eligibility for pretrial release pursuant to subchapter I of Chapter 23 of Title 16 or subchapter II of Chapter 13 of Title 23 of the District of Columbia Code, if it has not previously done so. If necessary, the court may enter a new order for a full competence examination to be completed on an outpatient basis.

(D) If the court receives either report required under subparagraph (A) of this paragraph more than one court day prior to the scheduled return date, the court shall have the defendant brought before the appropriate judge on the next court day following receipt of the report for appropriate proceedings under § 24-531.04.

(g) (1) If the court orders a full competence examination to be conducted on an outpatient basis, it shall be completed and a report submitted to the court in advance of the defendant's return date as determined under § 24-531.04(a).

(2) The Department of Mental Health shall submit a written report to the court at any time it determines that the criteria for an inpatient examination set forth in subsection (e) of this section are met. If the court receives such a report, it shall schedule the matter for a hearing as soon as practicable, to determine the appropriate disposition under subsection (e) of this section.

D.C. CODE ANN. § 24-531.04 (2010). INITIAL COMPETENCE DETERMINATION

(a) (1) A hearing to determine competence of a defendant shall be set:

(A) No more than 30 days from the date the competence examination is ordered for a defendant who is detained or committed for an inpatient examination; and

(B) No more than 45 days from the date the competence examination is ordered for a defendant who is released and ordered to participate in an outpatient examination.

(2) On its own motion or the motion of one of the parties, and for good cause shown, the court may extend the time for the hearing by not more than 15 days.

(b) A defendant is presumed to be competent. Incompetence must be established by a preponderance of the evidence. The burden of proof is on the party asserting incompetence. The court may call its own witnesses and conduct its own inquiry.

(c) (1) At the conclusion of the hearing, the court shall:

(A) Find that the defendant is competent; or

(B) Find that the defendant is incompetent and:

(i) Is likely to attain competence in the foreseeable future or additional time is necessary to assess whether the defendant is likely to attain competence in the foreseeable future; or

(ii) Is unlikely to attain competence in the foreseeable future.

(2) If the court finds the defendant is competent, it shall resume the criminal case or transfer proceeding.

(3) If the court finds the defendant is incompetent and makes either of the findings under paragraph (1)(B)(i) of this subsection, the court shall order treatment for the restoration of competence.

(4) If the court finds the defendant is incompetent and unlikely to attain competence in the foreseeable future, the court shall order either the release of the defendant or further treatment pursuant to § 24-531.06(c)(4).

D.C. CODE ANN. § 24-531.05 (2010). COMPETENCE TREATMENT

(a) (1) If the court makes a finding pursuant to § 24-531.04(c)(1)(B)(i), the court may order the defendant to participate in treatment for restoration of competence on an inpatient or outpatient basis. The court shall order treatment in the least restrictive setting consistent with the goal of restoration of competence.

(2) The court may order inpatient treatment if it finds that:

(A) Placement in an inpatient treatment facility setting is necessary in order to provide appropriate treatment; or

(B) The defendant is unlikely to comply with an order for outpatient treatment.

(3) If the court orders treatment on an outpatient basis, it shall direct DMH or MRDDA, or both, to designate an appropriate treatment provider. If the court orders treatment on an inpatient basis it shall commit the defendant to Saint Elizabeths Hospital or direct DMH or MRDDA, or both, to designate an appropriate inpatient treatment facility.

(b) Except as provided in subsections (c) and (d) of this section, the court may order the defendant to undergo competence treatment on an inpatient basis for one or more periods of time, not to exceed 180 days in the aggregate.

(c) Except as provided in subsection (d) of this section, the court may order a defendant charged with a crime of violence, as defined in § 23-1331(4), to undergo competence treatment on an inpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds:

(1) There is a substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal; and

(2) Inpatient treatment is the least restrictive setting based on the criteria set forth in subsection (a) of this section.

(d) (1) Excluding extended treatment pending the completion of civil commitment proceedings ordered pursuant to § 24-531.06(c)(4) or § 24-531.07(a)(2), inpatient treatment may last no longer than the maximum possible sentence that the defendant could have received if convicted of the pending charges.

(2) If, during inpatient treatment ordered to restore a defendant to competence, the maximum possible sentence the defendant could have received if convicted of the pending charges expires, the court shall either release the defendant or, where appropriate, enter an order for extended treatment pursuant to § 24-531.06(c)(4) or § 24-531.07(a)(2).

(3) The defendant shall be awarded credit against any term of imprisonment imposed

after being found competent for any time during which he was committed to an inpatient treatment facility for either a competence examination or competence treatment.

(e) (1) The court may order the defendant to undergo competence treatment on an outpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds there is substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal.

(2) The Department of Mental Health or the treatment provider shall submit a written report to the court at any time it determines that the criteria for inpatient treatment set forth in subsection (a) of this section are met.

D.C. CODE ANN. § 24-531.06 (2010). COURT HEARINGS DURING AND AFTER TREATMENT

(a) The Court shall hold a prompt hearing, with reasonable notice of such hearing given to the prosecuting attorney, the defendant, and the defendant's attorney of record, and make a new finding as to the defendant's competence when:

(1) Any period of treatment ordered under § 24-531.05(b), (c), or (e) of this section [sic] is completed; or

(2) The treatment provider reports to the court that reasonable grounds exist to believe that:

(A) An incompetent defendant has attained competence;

(B) There is no longer a substantial probability that a defendant will attain competence during the allowable treatment period;

(C) If the defendant is committed to an inpatient treatment facility, such commitment is no longer the least restrictive setting considering the factors in § 24-531.05(a); or

(D) If the defendant has been ordered to undergo competence treatment on an outpatient basis, such a setting is no longer appropriate considering the factors in § 24-531.05(a).

(b) In advance of any hearing held pursuant to subsection (a) of this section, the treatment provider shall submit a written report to the court addressing:

(1) The defendant's competence, including any progress or lack thereof made toward attaining competence;

(2) Whether there is a substantial probability that the defendant will attain competence during the foreseeable future, or make substantial progress toward that goal;

(3) If the defendant is committed to an inpatient facility, whether such commitment remains the least restrictive setting considering the factors in § 24-531.05(a); and

(4) If the defendant has been ordered to undergo treatment on an outpatient basis, whether such a setting is no longer appropriate considering the factors in § 24-531.05(a).

(c) (1) At the conclusion of a hearing held pursuant to subsection (a) of this section, the court shall:

(A) Find that the defendant is competent; or

(B) Find that the defendant is incompetent and:

(i) There is a substantial probability that the defendant will attain competence or make substantial progress toward that goal with an additional period of time; or

(ii) There is no substantial probability that he or she will attain competence or make substantial progress toward that goal in the foreseeable future.

(2) If the court finds the defendant is competent, it shall order the criminal case or transfer proceeding to be resumed.

(3) If the court finds the defendant is incompetent pursuant to paragraph (1)(B)(i) of this subsection, the court shall order treatment for an additional period of time in accordance with § 24-531.05(b), (c), or (e), after making a finding as to the least restrictive placement for treatment pursuant to § 24-531.05(a).

(4) If the court finds the defendant is incompetent pursuant to paragraph (1)(B)(ii) of this subsection, the court shall either order the release of the defendant or, where appropriate, enter an order for treatment pursuant to § 24-531.05(a) for up to 30 days pending the filing of a petition for civil commitment pursuant to subchapter IV of Chapter 5 of Title 21 (§ 21-541 et seq.) or subchapter IV of Chapter 13 of Title 7 (§ 7-1304.01 et seq.). The court also may order treatment pursuant to § 24-531.07(a)(2) for such period as is necessary for the completion of the civil commitment proceedings.

D.C. CODE ANN. § 24-531.07 (2010). EXTENDING TREATMENT PENDING THE COMPLETION OF A CIVIL COMMITMENT PROCEEDING

(a) Thirty days after the court has ordered extended treatment pursuant to § 24-531.06(c)(4), the court shall hold a status hearing to determine whether civil commitment proceedings have been initiated pursuant to § 21-541 or subchapter IV of Chapter 13 of Title 7.

(1) If a petition for civil commitment has not been filed prior to the hearing, the court shall release the defendant from treatment unless extraordinary cause is shown for the failure to file the petition, in which case the court may grant an additional 5 days within which to file a petition.

(2) If a petition for civil commitment has been filed, the court may either order that treatment be continued until the entry of a final order in the civil commitment case or release the defendant from treatment.

(b) (1) If the court orders the release of a person in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility, and a petition for civil commitment has been filed pursuant to subchapter IV of Chapter 13 of Title 7, the court shall remand the person to the inpatient treatment facility and the inpatient treatment facility may detain the person pending a hearing on the petition conducted pursuant to § 7-1303.12a.

(2) Within 7 days of the remand order, a person so detained may request a probable cause hearing on the defendant's continued detention before the Family Court of the Superior Court of the District of Columbia, in which case a hearing shall be held within 24 hours after the receipt of the request.

(c) (1) If the court orders the release of a person in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility, and a petition for civil commitment has been filed pursuant to § 21-541, the court shall remand the person to the inpatient treatment facility and the inpatient treatment facility may detain the person pending a hearing on the petition conducted pursuant to § 21-542.

(2) Within 7 days of the remand order, a person so detained may request a probable cause hearing on the person's continued detention before the Family Court of the Superior Court of the District of Columbia pursuant to § 21-525, in which case a hearing shall be held within 24 hours after the receipt of the request.

(d) If the court orders the release of a defendant in the criminal case or transfer proceeding who has been committed to an inpatient treatment facility, and a petition for civil commitment has not been filed pursuant to § 21-541 or subchapter IV of Chapter 13 of Title 7, the court may stay the defendant's release for a period not to exceed 48 hours and remand the person to Saint Elizabeths Hospital or other inpatient treatment facility for the period of the stay so that the Department of Mental Health or the Mental Retardation and Development Disabilities Administration, or both, may, where appropriate, file a petition for the defendant's involuntary commitment to either the Department of Mental Health or to the Mental Retardation and Developmental Disabilities Administration, or both.

D.C. CODE ANN. § 24-531.08 (2010). DISMISSAL

(a) If a defendant charged with any offense other than a crime of violence, as defined in § 23-1331(4), does not attain competence within 180 days of an order for treatment pursuant to § 24-531.05, the charge shall be dismissed without prejudice upon:

(1) The completion of civil commitment proceedings, if a petition for commitment was filed; or

(2) A determination by the court that the time within which the government must file a petition for civil commitment has expired and a petition for civil commitment has not been filed.

(b) If a defendant charged with a crime of violence, as defined in § 23-1331(4), except murder, first degree sexual abuse, or first degree child sexual abuse, has not attained competence within 5 years of the initial order for treatment pursuant to § 24-531.04, the charge shall be dismissed without prejudice.

(c) Any charge dismissed pursuant to subsection (a) or (b) of this section may be refiled if, at any time within the statute of limitations, the defendant attains competence; provided, that a defendant may not be arrested or detained on such a charge unless a court has found that the defendant is competent.

(d) Nothing in this section shall preclude the prosecutor or the defendant from moving to dismiss a case at an earlier time on any appropriate grounds.

D.C. CODE ANN. § 24-531.13 (2010). GENERAL PROVISIONS

(a) Nothing in this chapter shall preclude a person confined under the authority of this chapter from establishing his or her eligibility for release under the provisions of this chapter by a writ of habeas corpus.

(b) The provisions of this chapter shall supersede in the District of Columbia the provisions of any federal statutes or parts thereof inconsistent with this chapter.

(c) When a person has been ordered confined in a hospital for the mentally ill pursuant to this chapter and has escaped from such hospital, the court which ordered confinement shall, upon request of the government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital.

D.C. CODE ANN. § 24-607 (2010). COMMITMENT BY COURT ORDER [FORMERLY § 24-527]

(a) The Court may, on a petition of the Attorney General for the District of Columbia on behalf of the Mayor, filed and heard before the period of detention for detoxification and diagnosis expires, order a person to be committed to the custody of the Mayor for inpatient treatment and care if: (1) the Court determines that the person is a chronic alcoholic and that as a result of chronic or acute intoxication such person is in immediate danger of substantial physical harm; and (2) such person received notice of the filing of such petition within a reasonable time before the hearing held by the Court. The period of such commitment, computed from the date of admission to a detoxification center, shall not exceed: (1) thirty days in the case of the first or second such commitment within any 24-month period; or (2) ninety days in the case of the third or subsequent such

commitment within any 24-month period.

(b) (1) (A) The Court may, after making the findings prescribed in paragraph (2) of this subsection, commit to the custody of the Mayor for treatment and care for up to a specified period of time a chronic alcoholic who:

(i) Is charged with any misdemeanor and who, prior to trial for such misdemeanor, voluntarily requests such treatment in lieu of criminal prosecution for such misdemeanor;

(ii) Is charged with a violation of § 25-1001 and is acquitted on the ground of chronic alcoholism; or

(iii) Is convicted of a violation of such § 25-1001.

(B) The term of commitment of a chronic alcoholic ordered by the Court under this subsection may not exceed the maximum term of imprisonment authorized for the misdemeanor for which the chronic alcoholic was charged.

(2) (A) Before any person may be committed under this subsection, the Court shall, after a medical diagnosis and a civil hearing, find that:

(i) The person is a chronic alcoholic;

(ii) Adequate and appropriate treatment provided by the Mayor is available for the person; and

(iii) In the case of a person described in sub-subparagraph (iii) of subparagraph (A) of paragraph (1) of this subsection, he constitutes a continuing danger to the safety of himself or of other persons.

(B) The Court shall give reasonable notice of such hearing to the person sought to be committed and his attorney. In the case of a person described in sub-subparagraph (iii) of subparagraph (A) of paragraph (1) of this subsection, if the Court does not make the finding described in sub-subparagraph (ii) of subparagraph (A) of this paragraph, the Court may sentence the person to a penal institution pending the availability of such treatment, but for a period not to exceed the maximum term of imprisonment authorized for a violation of such § 25-1001.

(c) A committed person may challenge by a petition for a writ of habeas corpus the applicability of such findings, except that no more than 1 such petition may be filed in any 6-month period. The limitation prescribed in the preceding sentence shall not apply in the case of petitions based on newly discovered evidence.

(d) The Mayor may transfer a committed person who has been adjudged a continuing danger to the safety of himself or of other persons from inpatient to outpatient status only with permission of the Court. The Mayor may transfer any other committed person from

inpatient to outpatient status, and any committed person from outpatient to inpatient status, without permission of the Court, but may not release a committed person without permission of the Court.

(e) If any person subject to a commitment proceeding initiated under this section does not have an attorney and cannot afford one, the Court shall appoint one to represent him.

FLORIDA

FLA. STAT. ANN. § 394.453 (2010). LEGISLATIVE INTENT

It is the intent of the Legislature to authorize and direct the Department of Children and Family Services to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders. It is the intent of the Legislature that treatment programs for such disorders shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that such persons be provided with emergency service and temporary detention for evaluation when required; that they be admitted to treatment facilities on a voluntary basis when extended or continuing care is needed and unavailable in the community; that involuntary placement be provided only when expert evaluation determines that it is necessary; that any involuntary treatment or examination be accomplished in a setting which is clinically appropriate and most likely to facilitate the person's return to the community as soon as possible; and that individual dignity and human rights be guaranteed to all persons who are admitted to mental health facilities or who are being held under s. 394.463. It is the further intent of the Legislature that the least restrictive means of intervention be employed based on the individual needs of each person, within the scope of available services. It is the policy of this state that the use of restraint and seclusion on clients is justified only as an emergency safety measure to be used in response to imminent danger to the client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness.

FLA. STAT. ANN. § 394.469 (2010). DISCHARGE OF INVOLUNTARY PATIENTS

(1) *Power to discharge.* --At any time a patient is found to no longer meet the criteria for involuntary placement, the administrator shall:

(a) Discharge the patient, unless the patient is under a criminal charge, in which case the patient shall be transferred to the custody of the appropriate law enforcement officer;

(b) Transfer the patient to voluntary status on his or her own authority or at the patient's request, unless the patient is under criminal charge or adjudicated incapacitated; or

(c) Place an improved patient, except a patient under a criminal charge, on convalescent status in the care of a community facility.

(2) *Notice.* --Notice of discharge or transfer of a patient shall be given as provided in s. 394.4599.

FLA. STAT. ANN. § 394.910 (2010). LEGISLATIVE FINDINGS AND INTENT

The Legislature finds that a small but extremely dangerous number of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for involuntary treatment under the Baker Act, part I of this chapter, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under the Baker Act, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities, and those features render them likely to engage in criminal, sexually violent behavior. The Legislature further finds that the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedures under the Baker Act for the treatment and care of mentally ill persons are inadequate to address the risk these sexually violent predators pose to society. The Legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from the traditional treatment modalities for people appropriate for commitment under the Baker Act. It is therefore the intent of the Legislature to create a civil commitment procedure for the long-term care and treatment of sexually violent predators.

FLA. STAT. ANN. § 394.911 (2010). LEGISLATIVE INTENT

The Legislature intends that persons who are subject to the civil commitment procedure for sexually violent predators under this part be subject to the procedures established in this part and not to the provisions of part I of this chapter. Less restrictive alternatives are not applicable to cases initiated under this part.

FLA. STAT. ANN. § 394.912 (2010). DEFINITIONS

As used in this part, the term:

(1) "Agency with jurisdiction" means the agency that releases, upon lawful order or authority, a person who is serving a sentence in the custody of the Department of Corrections, a person who was adjudicated delinquent and is committed to the custody of the Department of Juvenile Justice, or a person who was involuntarily committed to the custody of the Department of Children and Family Services upon an adjudication of not guilty by reason of insanity.

(2) "Convicted of a sexually violent offense" means a person who has been:

(a) Adjudicated guilty of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere;

(b) Adjudicated not guilty by reason of insanity of a sexually violent offense; or

(c) Adjudicated delinquent of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere.

(3) "Department" means the Department of Children and Family Services.

(4) "Likely to engage in acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(5) "Mental abnormality" means a mental condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

(6) "Person" means an individual 18 years of age or older who is a potential or actual subject of proceedings under this part.

(7) "Secretary" means the secretary of the Department of Children and Family Services.

(8) "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for sexual gratification.

(9) "Sexually violent offense" means:

(a) Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2.;

(b) Kidnapping of a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(c) Committing the offense of false imprisonment upon a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(d) Sexual battery in violation of s. 794.011;

(e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04 or s. 847.0135(5);

(f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;

(g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or

(h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

(10) "Sexually violent predator" means any person who:

(a) Has been convicted of a sexually violent offense; and

(b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

(11) "Total confinement" means that the person is currently being held in any physically secure facility being operated or contractually operated for the Department of Corrections, the Department of Juvenile Justice, or the Department of Children and Family Services. A person shall also be deemed to be in total confinement for applicability of provisions under this part if the person is serving an incarcerative sentence under the custody of the Department of Corrections or the Department of Juvenile Justice and is being held in any other secure facility for any reason.

FLA. STAT. ANN. § 394.9135 (2010). IMMEDIATE RELEASES FROM TOTAL CONFINEMENT; TRANSFER OF PERSON TO DEPARTMENT; TIME LIMITATIONS ON ASSESSMENT, NOTIFICATION, AND FILING PETITION TO HOLD IN CUSTODY; FILING PETITION AFTER RELEASE

(1) If the anticipated release from total confinement of a person who has been convicted of a sexually violent offense becomes immediate for any reason, the agency with jurisdiction shall upon immediate release from total confinement transfer that person to the custody of the Department of Children and Family Services to be held in an appropriate secure facility.

(2) Within 72 hours after transfer, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator. If the multidisciplinary team determines that the person does not meet the definition of a sexually violent predator, that person shall be immediately released. If the multidisciplinary team determines that the person meets the definition of a sexually violent predator, the team shall provide the state attorney, as designated by s. 394.913, with its written assessment and recommendation within the 72-hour period or, if the 72-hour period ends on a weekend or holiday, within

the next working day thereafter.

(3) Within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney, as designated in s. 394.913, may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. If a petition is not filed within 48 hours after receipt of the written assessment and recommendation by the state attorney, the person shall be immediately released. If a petition is filed pursuant to this section and the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order the person be maintained in custody and held in an appropriate secure facility for further proceedings in accordance with this part.

(4) The provisions of this section are not jurisdictional, and failure to comply with the time limitations, which results in the release of a person who has been convicted of a sexually violent offense, is not dispositive of the case and does not prevent the state attorney from proceeding against a person otherwise subject to the provisions of this part.

FLA. STAT. ANN. § 394.914 (2010). PETITION; CONTENTS

Following receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney, in accordance with s. 394.913, may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. No fee shall be charged for the filing of a petition under this section.

FLA. STAT. ANN. § 394.915 (2010). DETERMINATION OF PROBABLE CAUSE; HEARING; EVALUATION; RESPONDENT TAKEN INTO CUSTODY; BAIL

(1) When the state attorney files a petition seeking to have a person declared a sexually violent predator, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the judge determines that there is probable cause to believe that the person is a sexually violent predator, the judge shall order that the person remain in custody and be immediately transferred to an appropriate secure facility if the person's incarcerative sentence expires.

(2) Upon the expiration of the incarcerative sentence and before the release from custody of a person whom the multidisciplinary team recommends for civil commitment, but after the state attorney files a petition under s. 394.914, the court may conduct an adversarial probable cause hearing if it determines such hearing is necessary. The court shall only consider whether to have an adversarial probable cause hearing in cases where the failure to begin a trial is not the result of any delay caused by the respondent. The person shall be provided with notice of, and an opportunity to appear in person at, an adversarial hearing. At this hearing, the judge shall:

(a) Receive evidence and hear argument from the person and the state attorney; and

(b) Determine whether probable cause exists to believe that the person is a sexually violent predator.

(3) At the adversarial probable cause hearing, the person has the right to:

(a) Be represented by counsel;

(b) Present evidence;

(c) Cross-examine any witnesses who testify against the person; and

(d) View and copy all petitions and reports in the court file.

(4) If the court again concludes that there is probable cause to believe that the person is a sexually violent predator, the court shall order that the person be held in an appropriate secure facility upon the expiration of his or her incarcerative sentence.

(5) After a court finds probable cause to believe that the person is a sexually violent predator, the person must be held in custody in a secure facility without opportunity for pretrial release or release during the trial proceedings.

FLA. STAT. ANN. § 394.9155 (2010). RULES OF PROCEDURE AND EVIDENCE

In all civil commitment proceedings for sexually violent predators under this part, the following shall apply:

(1) The Florida Rules of Civil Procedure apply unless otherwise specified in this part.

(2) The Florida Rules of Evidence apply unless otherwise specified in this part.

(3) The psychotherapist-patient privilege under s. 90.503 does not exist or apply for communications relevant to an issue in proceedings to involuntarily commit a person under this part.

(4) The court may consider evidence of prior behavior by a person who is subject to proceedings under this part if such evidence is relevant to proving that the person is a sexually violent predator.

(5) Hearsay evidence, including reports of a member of the multidisciplinary team or reports produced on behalf of the multidisciplinary team, is admissible in proceedings under this part unless the court finds that such evidence is not reliable. In a trial, however, hearsay evidence may not be used as the sole basis for committing a person under this part.

(6) Rules adopted under s. 394.930 shall not constitute:

(a) An evidentiary predicate for the admission of any physical evidence or testimony;

(b) A basis for excluding or otherwise limiting the presentation of any physical

evidence or testimony in judicial proceedings under this part; or

(c) Elements of the cause of action that the state needs to allege or prove in judicial proceedings under this part.

(7) If the person who is subject to proceedings under this part refuses to be interviewed by or fully cooperate with members of the multidisciplinary team or any state mental health expert, the court may, in its discretion:

(a) Order the person to allow members of the multidisciplinary team and any state mental health experts to review all mental health reports, tests, and evaluations by the person's mental health expert or experts; or

(b) Prohibit the person's mental health experts from testifying concerning mental health tests, evaluations, or examinations of the person.

The failure of any party to comply with such rules shall not constitute a defense in any judicial proceedings under this part.

FLA. STAT. ANN. § 394.916 (2010). TRIAL; COUNSEL AND EXPERTS; INDIGENT PERSONS; JURY

(1) Within 30 days after the determination of probable cause, the court shall conduct a trial to determine whether the person is a sexually violent predator.

(2) The trial may be continued once upon the request of either party for not more than 120 days upon a showing of good cause, or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced. No additional continuances may be granted unless the court finds that a manifest injustice would otherwise occur.

(3) At all adversarial proceedings under this act, the person subject to this act is entitled to the assistance of counsel, and, if the person is indigent, the court shall appoint the public defender or, if a conflict exists, other counsel to assist the person.

(4) If the person is subjected to a mental health examination under this part, the person also may retain experts or mental health professionals to perform an examination. If the person wishes to be examined by a professional of the person's own choice, the examiner must be provided reasonable access to the person, as well as to all relevant medical and mental health records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether such an examination is necessary. If the court determines that an examination is necessary, the court shall appoint a mental health professional and determine the reasonable compensation for the professional's services, which shall be paid by the state.

(5) The person or the state attorney has the right to demand that the trial be before a jury

of six members. A demand for a jury trial must be filed, in writing, at least 5 days before the trial. If no demand is made, the trial shall be to the court.

FLA. STAT. ANN. § 394.917 (2010). DETERMINATION; COMMITMENT PROCEDURE; MISTRIALS; HOUSING; COUNSEL AND COSTS IN INDIGENT APPELLATE CASES

(1) The court or jury shall determine by clear and convincing evidence whether the person is a sexually violent predator. If the determination is made by a jury, the verdict must be unanimous. If the jury is unable to reach a unanimous verdict, the court must declare a mistrial and poll the jury. If a majority of the jury would find the person is a sexually violent predator, the state attorney may refile the petition and proceed according to the provisions of this part. Any retrial must occur within 90 days after the previous trial, unless the subsequent proceeding is continued in accordance with s. 394.916(2). The determination that a person is a sexually violent predator may be appealed.

(2) If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services, the person shall be committed to the custody of the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that it is safe for the person to be at large. At all times, persons who are detained or committed under this part shall be kept in a secure facility segregated from patients of the department who are not detained or committed under this part.

(3) The public defender of the circuit in which a person was determined to be a sexually violent predator shall be appointed to represent the person on appeal. That public defender may request the public defender who handles criminal appeals for the circuit to represent the person on appeal in the manner provided in s. 27.51(4). If the public defender is unable to represent the person on appeal due to a conflict, the court shall appoint other counsel, who shall be compensated at a rate not less than that provided for appointed counsel in criminal cases. Filing fees for indigent appeals under this act are waived. Costs and fees related to such appeals, including the amounts paid for records, transcripts, and compensation of appointed counsel, shall be authorized by the trial court and paid from state funds that are appropriated for such purposes.

FLA. STAT. ANN. § 394.918 (2010). EXAMINATIONS; NOTICE; COURT HEARINGS FOR RELEASE OF COMMITTED PERSONS; BURDEN OF PROOF

(1) A person committed under this part shall have an examination of his or her mental condition once every year or more frequently at the court's discretion. The person may retain or, if the person is indigent and so requests, the court may appoint, a qualified professional to examine the person. Such a professional shall have access to all records concerning the person. The results of the examination shall be provided to the court that committed the person under this part. Upon receipt of the report, the court shall conduct a review of the person's status.

(2) The department shall provide the person with annual written notice of the person's right to petition the court for release over the objection of the director of the facility where the person is housed. The notice must contain a waiver of rights. The director of the facility shall forward the notice and waiver form to the court.

(3) The court shall hold a limited hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged. The person has the right to be represented by counsel at the probable cause hearing, but the person is not entitled to be present. If the court determines that there is probable cause to believe it is safe to release the person, the court shall set a trial before the court on the issue.

(4) At the trial before the court, the person is entitled to be present and is entitled to the benefit of all constitutional protections afforded the person at the initial trial, except for the right to a jury. The state attorney shall represent the state and has the right to have the person examined by professionals chosen by the state. At the hearing, the state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.

FLA. STAT. ANN. § 394.919 (2010). AUTHORIZED PETITION FOR RELEASE; PROCEDURE

(1) If the secretary or the secretary's designee at any time determines that the person is not likely to commit acts of sexual violence if discharged, the secretary or the secretary's designee shall authorize the person to petition the court for release. The petition shall be served upon the court and the state attorney. The court, upon receipt of such a petition, shall order a trial before the court within 30 days, unless continued for good cause.

(2) The state attorney shall represent the state, and has the right to have the person examined by professionals of the state attorney's choice. The state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.

FLA. STAT. ANN. § 394.921 (2010). RELEASE OF RECORDS TO AGENCIES, MULTIDISCIPLINARY TEAMS, AND STATE ATTORNEY

(1) In order to protect the public, relevant information and records that are otherwise confidential or privileged shall be released to the agency with jurisdiction, to a multidisciplinary team, or to the state attorney for the purpose of meeting the notice requirements of this part and determining whether a person is or continues to be a sexually violent predator. A person, agency, or entity receiving information under this section which is confidential and exempt from the provisions of s. 119.07(1) must maintain the confidentiality of that information. Such information does not lose its confidential status due to its release under this section.

(2) Psychological or psychiatric reports, drug and alcohol reports, treatment records, medical records, or victim impact statements that have been submitted to the court or admitted into evidence under this part shall be part of the record but shall be sealed and may be opened only pursuant to a court order.

FLA. STAT. ANN. § 394.9215 (2010). RIGHT TO HABEAS CORPUS

(1) (a) At any time after exhausting all administrative remedies, a person held in a secure facility under this part may file a petition for habeas corpus in the circuit court for the county in which the facility is located alleging that:

1. The person's conditions of confinement violate a statutory right under state law or a constitutional right under the State Constitution or the United States Constitution; or

2. The facility in which the person is confined is not an appropriate secure facility, as that term is used in s. 394.915.

(b) Upon filing a legally sufficient petition stating a prima facie case under paragraph (a), the court may direct the Department of Children and Family Services to file a response. If necessary, the court may conduct an evidentiary proceeding and issue an order to correct a violation of state or federal rights found to exist by the court. A final order entered under this section may be appealed to the district court of appeal. A nonfinal order may be appealed to the extent provided by the Florida Rules of Appellate Procedure. An appeal by the department shall stay the trial court's order until disposition of the appeal.

(2) Any claim referred to in subsection (1) may be asserted only as provided in this section. No claim referred to in subsection (1) shall be considered in commitment proceedings brought under this part. A person does not have a right to appointed counsel in any proceeding initiated under this section.

(3) Relief granted on a petition filed under this section must be narrowly drawn and may not exceed that which is minimally necessary to correct, in the least intrusive manner possible, the violation of the state or federal rights of a particular petitioner. A court considering a petition under this section must give substantial weight to whether the granting of relief would adversely impact the operation of the detention and treatment facility or would adversely impact public safety.

(4) The court may not enter an order releasing a person from secure detention unless the court expressly finds that no relief short of release will remedy the violation of state or federal rights which is found to have occurred.

FLA. STAT. ANN. § 775.21 (2010). THE FLORIDA SEXUAL PREDATORS ACT

(1) *Short title.* --This section may be cited as "The Florida Sexual Predators Act."

(2) *Definitions.*. --As used in this section, the term:

(a) "Change in enrollment or employment status" means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.

(b) "Chief of police" means the chief law enforcement officer of a municipality.

(c) "Child care facility" has the same meaning as provided in s. 402.302.

(d) "Community" means any county where the sexual predator lives or otherwise establishes or maintains a temporary or permanent residence.

(e) "Conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(f) "Department" means the Department of Law Enforcement.

(g) "Electronic mail address" has the same meaning as provided in s. 668.602.

(h) "Entering the county" includes being discharged from a correctional facility or jail or secure treatment facility within the county or being under supervision within the county for the commission of a violation enumerated in subsection (4).

(i) "Instant message name" means an identifier that allows a person to communicate in real time with another person using the Internet.

(j) "Institution of higher education" means a career center, community college, college, state university, or independent postsecondary institution.

(k) "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.

(l) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

(m) "Transient residence" means a place or county where a person lives, remains, or is

located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

(3) *Legislative findings and purpose; legislative intent.*

(a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and 948.30. The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.

3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.

4. Providing for community and public notification concerning the presence of sexual predators.

5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

(c) The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.

(d) It is the purpose of the Legislature that, upon the court's written finding that an

offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and that members of the community and the public be notified of the sexual predator's presence. The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.

(e) It is the intent of the Legislature to address the problem of sexual predators by:

1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;

2. Requiring sexual predators to register with the Florida Department of Law Enforcement, as provided in this section; and

3. Requiring community and public notification of the presence of a sexual predator, as provided in this section.

(4) *Sexual predator criteria.*

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent or guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(b) In order to be counted as a prior felony for purposes of this subsection, the felony must have resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony regardless of the date of offense of the prior felony.

(c) If an offender has been registered as a sexual predator by the Department of Corrections, the department, or any other law enforcement agency and if:

1. The court did not, for whatever reason, make a written finding at the time of sentencing that the offender was a sexual predator; or

2. The offender was administratively registered as a sexual predator because the Department of Corrections, the department, or any other law enforcement agency obtained information that indicated that the offender met the criteria for designation as a sexual predator based on a violation of a similar law in another jurisdiction,

the department shall remove that offender from the department's list of sexual predators and, for an offender described under subparagraph 1., shall notify the state attorney who prosecuted the offense that met the criteria for administrative designation as a sexual predator, and, for an offender described under this paragraph, shall notify the state attorney of the county where the offender establishes or maintains a permanent, temporary, or transient residence. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the criteria for designation as a sexual predator. If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender may not be designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

(d) An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394 shall be designated as a "sexual predator" under subsection (5) and subject to registration under subsection (6) and community and public notification under subsection (7).

(5) *Sexual predator designation.*. --An offender is designated as a sexual predator as follows:

(a) 1. An offender who meets the sexual predator criteria described in paragraph (4)(d) is a sexual predator, and the court shall make a written finding at the time such offender is determined to be a sexually violent predator under chapter 394 that such person meets

the criteria for designation as a sexual predator for purposes of this section. The clerk shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order;

2. An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order; or

3. If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender who establishes or maintains a permanent, temporary, or transient residence in this state meets the sexual predator criteria described in paragraph (4)(a) or paragraph (4)(d) because the offender was civilly committed or committed a similar violation in another jurisdiction on or after October 1, 1993, the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney of the county where the offender establishes or maintains a permanent, temporary, or transient residence of the offender's presence in the community. The state attorney shall file a petition with the criminal division of the circuit court for the purpose of holding a hearing to determine if the offender's criminal record or record of civil commitment from another jurisdiction meets the sexual predator criteria. If the court finds that the offender meets the sexual predator criteria because the offender has violated a similar law or similar laws in another jurisdiction, the court shall make a written finding that the offender is a sexual predator.

When the court makes a written finding that an offender is a sexual predator, the court shall inform the sexual predator of the registration and community and public notification requirements described in this section. Within 48 hours after the court designating an offender as a sexual predator, the clerk of the circuit court shall transmit a copy of the court's written sexual predator finding to the department. If the offender is sentenced to a term of imprisonment or supervision, a copy of the court's written sexual predator finding must be submitted to the Department of Corrections.

(b) If a sexual predator is not sentenced to a term of imprisonment, the clerk of the court shall ensure that the sexual predator's fingerprints are taken and forwarded to the department within 48 hours after the court renders its written sexual predator finding. The fingerprint card shall be clearly marked, "Sexual Predator Registration Card." The clerk of the court that convicts and sentences the sexual predator for the offense or offenses described in subsection (4) shall forward to the department and to the Department of Corrections a certified copy of any order entered by the court imposing any special condition or restriction on the sexual predator which restricts or prohibits access to the victim, if the victim is a minor, or to other minors.

(c) If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender meets the sexual predator

criteria but the court did not make a written finding that the offender is a sexual predator as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney who prosecuted the offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence upon first entering the state for offenders described in subparagraph (a)3. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the state attorney fails to establish that an offender meets the sexual predator criteria and the court does not make a written finding that an offender is a sexual predator, the offender is not required to register with the department as a sexual predator. The Department of Corrections, the department, or any other law enforcement agency shall not administratively designate an offender as a sexual predator without a written finding from the court that the offender is a sexual predator.

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) *Registration.*.

(a) A sexual predator must register with the department through the sheriff's office by providing the following information to the department:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; photograph; address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any instant message name required to be provided pursuant to subparagraph (g)4.; home telephone number and any cellular telephone number; date and place of any employment; date and

place of each conviction; fingerprints; and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address.

a. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

b. If the sexual predator is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, or the Department of Corrections if the sexual predator is in the custody or control of or under the supervision of the Department of Corrections, within 48 hours after any change in status. The sheriff or the Department of Corrections shall promptly notify each institution of the sexual predator's presence and any change in the sexual predator's enrollment or employment status.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(b) If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections, or is in the custody of a private correctional facility, the sexual predator must register with the Department of Corrections. A sexual predator who is under the supervision of the Department of Corrections but who is not incarcerated must register with the Department of Corrections within 3 business days after the court finds the offender to be a sexual predator. The Department of Corrections shall provide to the department registration information and the location of, and local telephone number for, any Department of Corrections office that is responsible for supervising the sexual predator. In addition, the Department of Corrections shall notify the department if the sexual predator escapes or absconds from custody or supervision or if the sexual predator dies.

(c) If the sexual predator is in the custody of a local jail, the custodian of the local jail shall register the sexual predator within 3 business days after intake of the sexual predator for any reason and upon release, and shall forward the registration information to the department. The custodian of the local jail shall also take a digitized photograph of the

sexual predator while the sexual predator remains in custody and shall provide the digitized photograph to the department. The custodian shall notify the department if the sexual predator escapes from custody or dies.

(d) If the sexual predator is under federal supervision, the federal agency responsible for supervising the sexual predator may forward to the department any information regarding the sexual predator which is consistent with the information provided by the Department of Corrections under this section, and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by the department for purposes of public notification.

(e) 1. If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections or is not in the custody of a private correctional facility, the sexual predator shall register in person:

a. At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and

b. At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.

2. Any change in the sexual predator's permanent or temporary residence, name, or any electronic mail address and any instant message name required to be provided pursuant to subparagraph (g)4., after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1., shall be accomplished in the manner provided in paragraphs (g), (i), and (j). When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the predator and forward the photographs and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(f) Within 48 hours after the registration required under paragraph (a) or paragraph (e), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to comply with this section, provide his or her place of permanent, temporary, or transient residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the

sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued to the sexual predator must be in compliance with s. 322.141(3).

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

(g) 1. Each time a sexual predator's driver's license or identification card is subject to renewal, and, without regard to the status of the predator's driver's license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver's license office and shall be subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section.

2. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator must provide or update all of the registration information required under paragraph (a). The sexual predator must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When

the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. A sexual predator must register any electronic mail address or instant message name with the department prior to using such electronic mail address or instant message name on or after October 1, 2007. The department shall establish an online system through which sexual predators may securely access and update all electronic mail address and instant message name information.

(h) The department must notify the sheriff and the state attorney of the county and, if applicable, the police chief of the municipality, where the sexual predator maintains a residence.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction. The sexual predator must provide to the sheriff the address, municipality, county, and state of intended residence. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual predator's intended residence. The failure of a sexual predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(j) A sexual predator who indicates his or her intent to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida and later decides to remain in this state shall, within 48 hours after the date upon which the sexual predator indicated he or she would leave this state, report in person to the sheriff to which the sexual predator reported the intended change of residence, and report his or her intent to remain in this state. If the sheriff is notified by the sexual predator that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual predator who reports his or her intent to establish a permanent, temporary, or transient residence in another state or jurisdiction, but who remains in this state without reporting to the sheriff in the manner required by this paragraph, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(k) 1. The department is responsible for the online maintenance of current information regarding each registered sexual predator. The department must maintain hotline access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sexual predators for purposes of monitoring, tracking, and prosecution. The photograph and fingerprints do not have to be stored in a computerized format.

2. The department's sexual predator registration list, containing the information described in subparagraph (a)1., is a public record. The department is authorized to disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose. When the department provides information regarding a registered sexual predator to the public, department personnel must advise the person making the inquiry that positive identification of a person believed to be a sexual predator cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of sexual predators and the dissemination of information regarding sexual predators as required by this section.

(l) A sexual predator must maintain registration with the department for the duration of his or her life, unless the sexual predator has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation.

(7) *Community and public notification.*.

(a) Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. Upon notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify members of the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides shall notify each licensed child care facility, elementary school, middle school, and high school within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. Information provided to members of the community and the public regarding a sexual predator must include:

1. The name of the sexual predator;

2. A description of the sexual predator, including a photograph;

3. The sexual predator's current permanent, temporary, and transient addresses, and descriptions of registered locations that have no specific street address, including the name of the county or municipality if known;

4. The circumstances of the sexual predator's offense or offenses; and

5. Whether the victim of the sexual predator's offense or offenses was, at the time of

the offense, a minor or an adult.

(a) This paragraph does not authorize the release of the name of any victim of the sexual predator.

(b) The sheriff or the police chief may coordinate the community and public notification efforts with the department. Statewide notification to the public is authorized, as deemed appropriate by local law enforcement personnel and the department.

(c) The department shall notify the public of all designated sexual predators through the Internet. The Internet notice shall include the information required by paragraph (a).

(d) The department shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and the public of the presence of sexual predators.

(8) *Verification.*. --The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. The Department of Corrections shall verify the addresses of sexual predators who are not incarcerated but who reside in the community under the supervision of the Department of Corrections and shall report to the department any failure by a sexual predator to comply with registration requirements. County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections. Local law enforcement agencies shall report to the department any failure by a sexual predator to comply with registration requirements.

(a) A sexual predator must report in person each year during the month of the sexual predator's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The sheriff's office may determine the appropriate times and days for reporting by the sexual predator, which shall be consistent with the reporting requirements of this paragraph. Reregistration shall include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any instant message name required to be provided pursuant to subparagraph (6)(g)4.; home telephone number and any cellular telephone number; date and place of any employment; vehicle make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.

2. If the sexual predator is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment or employment status.

3. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

(b) The sheriff's office shall, within 2 working days, electronically submit and update all information provided by the sexual predator to the department in a manner prescribed by the department.

(9) *Immunity.* --The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, any law enforcement agency in this state, and the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of this section or for the release of information under this section, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a sexual predator fails to report or falsely reports his or her current place of permanent or temporary residence.

(10) *Penalties.*.

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver's license or identification card; who fails to provide required location information, electronic mail address information, instant message name information, home telephone number and any cellular telephone number, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; or who otherwise fails, by

act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) A sexual predator who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

(e) An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

(f) Registration following such arrest, service, or arraignment is not a defense and does

not relieve the sexual predator of criminal liability for the failure to register.

(g) Any person who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this section:

1. Withholds information from, or does not notify, the law enforcement agency about the sexual predator's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual predator;

2. Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator;

3. Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator; or

4. Provides information to the law enforcement agency regarding the sexual predator which the person knows to be false information,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This paragraph does not apply if the sexual predator is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

GEORGIA

GA. CODE ANN. § 17-7-130 (2010). PROCEEDINGS UPON PLEA OF MENTAL INCOMPETENCY TO STAND TRIAL

(a) As used in this Code section, the term:

(1) "Child" means a person under the jurisdiction of the superior court pursuant to Code Section 15-11-28.

(2) "Committing court" means the court which has jurisdiction over the criminal charges against the defendant.

(3) "Developmental disability" shall have the same meaning as set forth in paragraph (8) of Code Section 37-1-1.

(4) "Inpatient" shall have the same meaning as in paragraph (9.1) of Code Section 37-3-1; provided, however, that as applied to a child for purposes of this Code section, the term shall mean a child who is mentally ill or has a developmental disability and is in

need of involuntary placement.

(5) "Nonviolent offense" means any offense other than:

(A) (i) Murder;

(ii) Rape;

(iii) Aggravated sodomy;

(iv) Armed robbery;

(v) Aggravated assault;

(vi) Hijacking of a motor vehicle or an aircraft;

(vii) Aggravated battery;

(viii) Aggravated sexual battery;

(ix) Aggravated child molestation;

(x) Aggravated stalking;

(xi) Arson in the first degree and in the second degree;

(xii) Stalking;

(xiii) Fleeing and attempting to elude a police officer;

(xiv) Any sexual offense against a minor; or

(xv) Any offense which involves the use of a deadly weapon or destructive device; and

(B) Those felony offenses deemed by the committing court to involve an allegation of actual or potential physical harm to another person.

(6) "Outpatient" shall have the same meaning as in paragraph (12.1) of Code Section 37-3-1, provided that:

(A) As applied to a child for purposes of this Code section, the term shall mean a child who is mentally ill or has a developmental disability and is in need of involuntary placement; and

(B) The court determines that the defendant meets the criteria for release on bail or

other pre-trial release pursuant to Code Section 17-6-1.

(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental competency to stand trial to be tried first by a special jury. If the special jury finds the defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the defendant but shall transfer the defendant to the Department of Behavioral Health and Developmental Disabilities and if the defendant is a child, the department shall be authorized to place such defendant in a secure hospital or secure community facility designated by the department; provided, however, that if the defendant is charged with a misdemeanor offense other than as included in subparagraph (a)(5)(A) of this Code section or a nonviolent offense, the court may, in its discretion, retain jurisdiction over the defendant, and may allow evaluation to be done on an outpatient basis by the Department of Behavioral Health and Developmental Disabilities. If the court allows outpatient evaluation and the defendant is in custody, the court may release the defendant in accordance with the provisions of Code Section 17-6-1, et seq.

(c) Within 90 days after the Department of Behavioral Health and Developmental Disabilities has received actual custody of a defendant or, in the case of an outpatient, a court order requiring evaluation of a defendant pursuant to subsection (b) of this Code section, the defendant shall be evaluated and a diagnosis made as to whether the defendant is presently mentally incompetent to stand trial and, if so, whether there is a substantial probability that the defendant will attain mental competency to stand trial in the foreseeable future. If the defendant is found to be mentally competent to stand trial, the department shall immediately report that finding and the reasons therefor to the committing court; and the defendant shall be returned to the court as provided for in subsection (f) of this Code section.

(d) If the defendant is found to be mentally incompetent to stand trial by the Department of Behavioral Health and Developmental Disabilities and there is not a substantial probability that the person will attain competency in the foreseeable future, the department shall return the physical custody of the defendant to a law enforcement officer of the jurisdiction of the court which committed the defendant unless in the opinion of the department's attending physician, and with concurrence of the court, such detention by law enforcement would be detrimental to the well-being of the defendant, in which case the defendant may be held by the department until the date of the defendant's hearing. The department shall report to the committing court the finding regarding competency, the reasons therefor, and its opinion as to whether the defendant currently meets criteria for commitment as an inpatient or as an outpatient pursuant to Chapter 3 or 4 of Title 37. The law enforcement officer of the jurisdiction of the court which committed the defendant shall retain custody of the defendant and the committing court may order an independent evaluation of the defendant by a court appointed licensed clinical psychologist or psychiatrist, who shall report to the court in writing as to the current mental and emotional condition of the defendant. Based on consideration of all evidence and all reports, the committing court may:

(1) If the defendant is not a child, refer the case to the probate court for commitment proceedings pursuant to Chapter 3 or 4 of Title 37, if appropriate and if the charges are dismissed for any reason; or

(2) Retain jurisdiction of the defendant and conduct a hearing at which it shall hear evidence and consider all psychiatric and psychological reports submitted to the court and determine whether the state has proved by clear and convincing evidence that the defendant meets the criteria for involuntary civil commitment as an inpatient or as an outpatient pursuant to Chapter 3 or 4 of Title 37, whichever is applicable. The burden of proof in such hearings shall be upon the state.

(A) If the defendant does not meet the criteria for inpatient or outpatient civil commitment, the defendant shall be released in accordance with the provisions of Code Section 17-6-1 et seq.

(B) If the defendant is found to meet the criteria for involuntary civil commitment as an inpatient or outpatient, the judge may issue an order committing the defendant; provided, however, that if the defendant is a child, the Department of Behavioral Health and Developmental Disabilities shall be authorized to place such defendant in a secure hospital or secure community facility designated by the department.

(i) If the defendant so committed is charged with a misdemeanor offense, the committing court may civilly commit the defendant for a period not to exceed one year. Following the commitment period, the charges against the defendant shall be dismissed by operation of law.

(ii) A defendant who is so committed and is charged with a felony may only be released from that inpatient or outpatient commitment by order of the committing court in accordance with the procedures specified in paragraphs (1) through (3) of subsection (f) of Code Section 17-7-131 except that the burden of proof in such release hearing shall be on the state and if the committed person cannot afford a physician or licensed clinical psychologist of the defendant's choice, the person may petition the court and the court may order such cost to be paid by the county.

The Department of Behavioral Health and Developmental Disabilities shall report annually to the committing court on whether the civilly committed defendant continues to meet criteria for involuntary commitment as an inpatient or an outpatient pursuant to Chapter 3 or 4 of Title 37. The committing court shall review the case and enter an appropriate order, either to renew the inpatient or outpatient civil commitment, to change the commitment either from inpatient to outpatient or from outpatient to inpatient, or in the event charges are dismissed, transfer the jurisdiction of the case to the probate court for further proceedings pursuant to Title 37, if appropriate.

(e) If the defendant is found to be mentally incompetent to stand trial but there is a substantial probability that the person will attain competency in the foreseeable future, by the end of the 90 day period, or at any prior time, the department shall report that finding

and the reasons therefor to the committing court and shall retain custody over the defendant for the purpose of continued treatment for an additional period not to exceed nine months; provided, however, that if the defendant is charged with a misdemeanor offense or a nonviolent offense, the court shall retain jurisdiction over the defendant, but may, in its discretion, allow continued treatment to be done on an outpatient basis by the Department of Behavioral Health and Developmental Disabilities. The department shall monitor the defendant's outpatient treatment for an additional period not to exceed nine months. If, by the end of the nine-month period or at any prior time if the defendant's condition warrants, the defendant is still found not to be competent to stand trial, irrespective of the probability of recovery in the foreseeable future, the department shall report that finding and the reasons therefor to the committing court. The committing court shall then follow the procedures in subsection (d) of this Code section for further commitment or release.

(f) (1) If the defendant found to be mentally incompetent to stand trial is at any time found by the Department of Behavioral Health and Developmental Disabilities to be mentally competent to stand trial, the committing court shall be notified. A defendant who is an inpatient and is found by the Department of Behavioral Health and Developmental Disabilities to be mentally competent to stand trial shall be discharged into the custody of a law enforcement officer of the jurisdiction of the court which committed the defendant to the department unless the charges which led to the commitment have been dismissed, in which case the defendant shall be discharged. In the event a law enforcement officer does not appear and take custody of the defendant within 20 days after notice to the appropriate law enforcement official in the jurisdiction of the committing court, the presiding judge of the committing court, and the prosecuting attorney for the court, the department shall itself return the defendant to one of the committing court's detention facilities; and the cost of returning the defendant shall be paid by the county in which the committing court is located. All notifications shall be sent by certified mail or statutory overnight delivery, return receipt requested. With the concurrence of the appropriate court and upon the recommendation of the department's attending physician, any defendant discharged as competent to stand trial may be held by the department instead of at the court's detention facilities whenever, in the attending physician's opinion, such detention in the court's facilities would be detrimental to the well-being of the defendant so committed. Such alternative detention shall continue only until the date of the defendant's trial.

(2) A defendant who is an outpatient and is found by the Department of Behavioral Health and Developmental Disabilities to be mentally competent to stand trial may remain in the community under conditions of bond or other conditions ordered by the committing court, if any, until the date of the person's trial.

(g) Any person found by the Department of Behavioral Health and Developmental Disabilities to be mentally competent to stand trial returned to the court as provided in subsection (f) of this Code section shall again be entitled to file a special plea as provided for in this Code section.

(h) If a defendant is found to be mentally incompetent to stand trial, whether or not committed pursuant to this Code section, the state may file at any time a motion for rehearing on the issue of the defendant's mental competency. The court shall grant said motion upon a showing by the state that there are reasonable grounds to believe that the defendant's mental condition has changed. If this motion is granted, the case shall proceed as provided in subsection (b) of this Code section.

GA. CODE ANN. § 17-7-131 (2010). PROCEEDINGS UPON PLEA OF INSANITY OR MENTAL INCOMPETENCY AT TIME OF CRIME

(a) For purposes of this Code section, the term:

(1) "Insane at the time of the crime" means meeting the criteria of Code Section 16-3-2 or Code Section 16-3-3. However, the term shall not include a mental state manifested only by repeated unlawful or antisocial conduct.

(2) "Mentally ill" means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. However, the term "mental illness" shall not include a mental state manifested only by repeated unlawful or antisocial conduct.

(3) "Mentally retarded" means having significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the developmental period.

(b)(1) In all cases in which the defense of insanity is interposed, the jury, or the court if tried by it, shall find whether the defendant is:

(A) Guilty;

(B) Not guilty;

(C) Not guilty by reason of insanity at the time of the crime;

(D) Guilty but mentally ill at the time of the crime, but the finding of guilty but mentally ill shall be made only in felony cases; or

(E) Guilty but mentally retarded, but the finding of mental retardation shall be made only in felony cases.

(2) A plea of guilty but mentally ill at the time of the crime or a plea of guilty but mentally retarded shall not be accepted until the defendant has undergone examination by a licensed psychologist or psychiatrist and the court has examined the psychological or psychiatric reports, held a hearing on the issue of the defendant's mental condition, and is satisfied that there is a factual basis that the defendant was mentally ill at the time of the offense or mentally retarded to which the plea is entered.

(2.1) A plea of not guilty by reason of insanity at the time of the crime shall not be

accepted and the defendant adjudicated not guilty by reason of insanity by the court without a jury until the defendant has undergone examination by a licensed psychologist or psychiatrist and the court has examined the psychological or psychiatric reports, has held a hearing on the issue of the defendant's mental condition, and the court is satisfied that the defendant was insane at the time of the crime according to the criteria of Code Section 16-3-2 or 16-3-3.

(3) In all cases in which the defense of insanity is interposed, the trial judge shall charge the jury, in addition to other appropriate charges, the following:

(A) I charge you that should you find the defendant not guilty by reason of insanity at the time of the crime, the defendant will be committed to a state mental health facility until such time, if ever, that the court is satisfied that he or she should be released pursuant to law.

(B) I charge you that should you find the defendant guilty but mentally ill at the time of the crime, the defendant will be placed in the custody of the Department of Corrections which will have responsibility for the evaluation and treatment of the mental health needs of the defendant, which may include, at the discretion of the Department of Corrections, referral for temporary hospitalization at a facility operated by the Department of Behavioral Health and Developmental Disabilities.

(C) I charge you that should you find the defendant guilty but mentally retarded, the defendant will be placed in the custody of the Department of Corrections, which will have responsibility for the evaluation and treatment of the mental health needs of the defendant, which may include, at the discretion of the Department of Corrections, referral for temporary hospitalization at a facility operated by the Department of Behavioral Health and Developmental Disabilities.

(c) In all criminal trials in any of the courts of this state wherein an accused shall contend that he was insane or otherwise mentally incompetent under the law at the time the act or acts charged against him were committed, the trial judge shall instruct the jury that they may consider, in addition to verdicts of "guilty" and "not guilty," the additional verdicts of "not guilty by reason of insanity at the time of the crime," "guilty but mentally ill at the time of the crime," and "guilty but mentally retarded."

(1) The defendant may be found "not guilty by reason of insanity at the time of the crime" if he meets the criteria of Code Section 16-3-2 or 16-3-3 at the time of the commission of the crime. If the court or jury should make such finding, it shall so specify in its verdict.

(2) The defendant may be found "guilty but mentally ill at the time of the crime" if the jury, or court acting as trier of facts, finds beyond a reasonable doubt that the defendant is guilty of the crime charged and was mentally ill at the time of the commission of the crime. If the court or jury should make such finding, it shall so specify in its verdict.

(3) The defendant may be found "guilty but mentally retarded" if the jury, or court acting as trier of facts, finds beyond a reasonable doubt that the defendant is guilty of the crime charged and is mentally retarded. If the court or jury should make such finding, it shall so specify in its verdict.

(d) Whenever a defendant is found not guilty by reason of insanity at the time of the crime, the court shall retain jurisdiction over the person so acquitted and shall order such person to be detained in a state mental health facility, to be selected by the Department of Behavioral Health and Developmental Disabilities, for a period not to exceed 30 days from the date of the acquittal order, for evaluation of the defendant's present mental condition. Upon completion of the evaluation, the proper officials of the mental health facility shall send a report of the defendant's present mental condition to the trial judge, the prosecuting attorney, and the defendant's attorney, if any.

(e)(1) After the expiration of the 30 days' evaluation period in the state mental health facility, if the evaluation report from the Department of Behavioral Health and Developmental Disabilities indicates that the defendant does not meet the inpatient commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the trial judge may issue an order discharging the defendant from custody without a hearing.

(2) If the defendant is not so discharged, the trial judge shall order a hearing to determine if the defendant meets the inpatient commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37. If such criteria are not met, the defendant must be discharged.

(3) The defendant shall be detained in custody until completion of the hearing. The hearing shall be conducted at the earliest opportunity after the expiration of the 30 days' evaluation period but in any event within 30 days after receipt by the prosecuting attorney of the evaluation report from the mental health facility. The court may take judicial notice of evidence introduced during the trial of the defendant and may call for testimony from any person with knowledge concerning whether the defendant is currently a mentally ill person in need of involuntary treatment or currently mentally retarded and in need of being ordered to receive services, as those terms are defined by paragraph (12) of Code Section 37-3-1 and Code Section 37-4-40. The prosecuting attorney may cross-examine the witnesses called by the court and the defendant's witnesses and present relevant evidence concerning the issues presented at the hearing.

(4) If the judge determines that the defendant meets the inpatient commitment criteria of Chapter 3 of Title 37 or Chapter 4 of Title 37, the judge shall order the defendant to be committed to the Department of Behavioral Health and Developmental Disabilities to receive involuntary treatment under Chapter 3 of Title 37 or to receive services under Chapter 4 of Title 37. The defendant is entitled to the following rights specified below and shall be notified in writing of these rights at the time of his admission for evaluation under subsection (d) of this Code section. Such rights are:

(A) A notice that a hearing will be held and the time and place thereof;

(B) A notice that the defendant has the right to counsel and that the defendant or his

representatives may apply immediately to the court to have counsel appointed if the defendant cannot afford counsel and that the court will appoint counsel for the defendant unless he indicates in writing that he does not desire to be represented by counsel;

(C) The right to confront and cross-examine witnesses and to offer evidence;

(D) The right to subpoena witnesses and to require testimony before the court in person or by deposition from any person upon whose evaluation the decision of the court may rest;

(E) Notice of the right to have established an individualized service plan specifically tailored to the person's treatment needs, as such plans are defined in Chapter 3 of Title 37 and Chapter 4 of Title 37; and

(F) A notice that the defendant has the right to be examined by a physician or a licensed clinical psychologist of his own choice at his own expense and to have that physician or psychologist submit a suggested service plan for the patient which conforms with the requirements of Chapter 3 of Title 37 or Chapter 4 of Title 37, whichever is applicable.

(5)(A) If a defendant appears to meet the criteria for outpatient involuntary treatment as defined in Part 3 of Article 3 of Chapter 3 of Title 37, which shall be the criteria for release on a trial basis in the community in preparation for a full release, the court may order a period of conditional release subject to certain conditions set by the court. The court is authorized to appoint an appropriate community service provider to work in conjunction with the Department of Behavioral Health and Developmental Disabilities to monitor the defendant's compliance with these conditions and to make regular reports to the court.

(B) If the defendant successfully completes all requirements during this period of conditional release, the court shall discharge the individual from commitment at the end of that period. Such individuals may be referred for community mental health, mental retardation, or substance abuse services as appropriate. The court may require the individual to participate in outpatient treatment or any other services or programs authorized by Chapter 3, 4, or 7 of Title 37.

(C) If the defendant does not successfully complete any or all requirements of the conditional release period, the court may:

(i) Revoke the period of conditional release and return the defendant to a state hospital for inpatient services; or

(ii) Impose additional or revise existing conditions on the defendant as appropriate and continue the period of conditional release.

(D) For any decision rendered under subparagraph (C) of this paragraph, the defendant may request a review by the court of such decision within 20 days of the order

of the court.

(E) The Department of Behavioral Health and Developmental Disabilities and any community services providers, including the employees and agents of both, providing supervision or treatment during a period of conditional release shall not be held criminally or civilly liable for any acts committed by a defendant placed by the committing court on a period of conditional release.

(f) A defendant who has been found not guilty by reason of insanity at the time of the crime and is ordered committed to the Department of Behavioral Health and Developmental Disabilities under subsection (e) of this Code section may only be discharged from that commitment by order of the committing court in accordance with the procedures specified in this subsection:

(1) Application for the release of a defendant who has been committed to the Department of Behavioral Health and Developmental Disabilities under subsection (e) of this Code section upon the ground that he does not meet the civil commitment criteria under Chapter 3 of Title 37 or Chapter 4 of Title 37 may be made to the committing court, either by such defendant or by the superintendent of the state hospital in which the said defendant is detained;

(2) The burden of proof in such release hearing shall be upon the applicant. The defendant shall have the same rights in the release hearing as set forth in subsection (e) of this Code section; and

(3) If the finding of the court is adverse to release in such hearing held pursuant to this subsection on the grounds that such defendant does meet the inpatient civil commitment criteria, a further release application by the defendant shall not be heard by the court until 12 months have elapsed from the date of the hearing upon the last preceding application. The Department of Behavioral Health and Developmental Disabilities shall have the independent right to request a release hearing once every 12 months.

(g) (1) Whenever a defendant is found guilty but mentally ill at the time of a felony or guilty but mentally retarded, or enters a plea to that effect that is accepted by the court, the court shall sentence him or her in the same manner as a defendant found guilty of the offense, except as otherwise provided in subsection (j) of this Code section. A defendant who is found guilty but mentally ill at the time of the felony or guilty but mentally retarded shall be committed to an appropriate penal facility and shall be evaluated then treated, if indicated, within the limits of state funds appropriated therefor, in such manner as is psychiatrically indicated for his or her mental illness or mental retardation.

(2) If at any time following the defendant's conviction as a guilty but mentally ill or guilty but mentally retarded offender it is determined that a temporary transfer to the Department of Behavioral Health and Developmental Disabilities is clinically indicated for his or her mental illness or mental retardation, then the defendant shall be transferred to the Department of Behavioral Health and Developmental Disabilities pursuant to

procedures set forth in regulations of the Department of Corrections and the Department of Behavioral Health and Developmental Disabilities. In all such cases, the legal custody of the defendant shall be retained by the Department of Corrections. Upon notification from the Department of Behavioral Health and Developmental Disabilities to the Department of Corrections that hospitalization at a Department of Behavioral Health and Developmental Disabilities facility is no longer clinically indicated for his or her mental illness or mental retardation, the Department of Corrections shall transfer the defendant back to its physical custody and shall place such individual in an appropriate penal institution.

(h) If a defendant who is found guilty but mentally ill at the time of a felony or guilty but mentally retarded is placed on probation under the "State-wide Probation Act," Article 2 of Chapter 8 of Title 42, the court may require that the defendant undergo available outpatient medical or psychiatric treatment or seek similar available voluntary inpatient treatment as a condition of probation. Persons required to receive such services may be charged fees by the provider of the services.

(i) In any case in which the defense of insanity is interposed or a plea of guilty but mentally ill at the time of the felony or a plea of guilty but mentally retarded is made and an examination is made of the defendant pursuant to Code Section 17-7-130.1 or paragraph (2) of subsection (b) of this Code section, upon the defendant's being found guilty or guilty but mentally ill at the time of the crime or guilty but mentally retarded, a copy of any such examination report shall be forwarded to the Department of Corrections with the official sentencing document. The Department of Behavioral Health and Developmental Disabilities shall forward, in addition to its examination report, any records maintained by such department that it deems appropriate pursuant to an agreement with the Department of Corrections, within ten business days of receipt by the Department of Behavioral Health and Developmental Disabilities of the official sentencing document from the Department of Corrections.

(j) In the trial of any case in which the death penalty is sought which commences on or after July 1, 1988, should the judge find in accepting a plea of guilty but mentally retarded or the jury or court find in its verdict that the defendant is guilty of the crime charged but mentally retarded, the death penalty shall not be imposed and the court shall sentence the defendant to imprisonment for life.

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HAW. REV. STAT. ANN. § 704-406 (2010). EFFECT OF FINDING OF UNFITNESS TO PROCEED.

(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. If the court is satisfied that

the defendant may be released on condition without danger to the defendant or to the person or property of others, the court shall order the defendant's release, which shall continue at the discretion of the court on conditions the court determines necessary. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions. When the defendant is committed to the custody of the director of health for detention, care, and treatment, the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation of who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.

(2) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and:

(a) Order the defendant to be discharged;

(b) Subject to the law governing the involuntary civil commitment of persons affected by physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or

(c) Subject to the law governing involuntary outpatient treatment, order the defendant to be released on conditions the court determines necessary.

(3) Within a reasonable time following any commitment under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report. If, following a report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

(a) Release the defendant; or

(b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.

(4) Within a reasonable time following any release under subsection (1), the court shall appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

(a) Release the defendant; or

(b) Subject to the law governing involuntary civil commitment, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.

HAW. REV. STAT. ANN. § 704-407 (2010). SPECIAL HEARING FOLLOWING COMMITMENT OR RELEASE ON CONDITIONS.

(1) At any time after commitment as provided in section 704-406, the defendant or the defendant's counsel or the director of health may apply for a special post-commitment or post-release hearing. If the application is made by or on behalf of a defendant not represented by counsel, the defendant shall be afforded a reasonable opportunity to obtain counsel, and if the defendant lacks funds to do so, counsel shall be assigned by the court. The application shall be granted only if the counsel for the defendant satisfies the court by affidavit or otherwise that, as an attorney, the counsel has reasonable grounds for a good faith belief that the counsel's client has an objection based upon legal grounds to the charge.

(2) If the motion for a special post-commitment or post-release hearing is granted, the hearing shall be by the court without a jury. No evidence shall be offered at the hearing by either party on the issue of physical or mental disease, disorder, or defect as a defense to, or in mitigation of, the offense charged.

(3) After the hearing, the court shall rule on any legal objection raised by the application and, in an appropriate case, may quash the indictment or other charge, find it to be defective or insufficient, or otherwise terminate the proceedings on the law. In any such case, unless all defects in the proceedings are promptly cured, the court shall terminate the commitment or release ordered under section 704-406 and :

(a) Order the defendant to be discharged;

(b) Subject to the law governing involuntary civil commitment of persons affected by a physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or

(c) Subject to the law governing involuntary outpatient treatment, order the defendant to be released on such conditions as the court deems necessary.

HAW. REV. STAT. ANN. § 704-411 (2010). LEGAL EFFECT OF ACQUITTAL ON THE GROUND OF PHYSICAL OR MENTAL DISEASE, DISORDER, OR DEFECT EXCLUDING RESPONSIBILITY; COMMITMENT; CONDITIONAL RELEASE; DISCHARGE; PROCEDURE FOR SEPARATE POST-ACQUITTAL HEARING.

(1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall make an order as follows:

(a) The court shall order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:

(i) Is affected by a physical or mental disease, disorder, or defect;

(ii) Presents a risk of danger to self or others; and

(iii) Is not a proper subject for conditional release;

provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant's treatment needs and the need to prevent harm to the person confined and others. The county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation of who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law;

(b) The court shall order the defendant to be granted conditional release with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or

(c) The court shall order the defendant discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents a danger to self or others and is not in need of care, supervision, or treatment.

(2) The court, upon its own motion or on the motion of the prosecuting attorney or the defendant, shall order a separate post-acquittal hearing for the purpose of taking evidence on the issue of physical or mental disease, disorder, or defect and the risk of danger that the defendant presents to self or others.

(3) When ordering a hearing pursuant to subsection (2):

(a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners; and

(b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or such longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

(4) Whether the court's order under subsection (1) is made on the basis of the medical or psychological evidence given at the trial, or on the basis of the report made pursuant to section 704-404, or the medical or psychological evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant is affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the defendant should be either committed or conditionally released as provided in subsection (1).

(5) In any proceeding governed by this section, the defendant's fitness shall not be an issue.

HAW. REV. STAT. ANN. § 706-607 (2010). CIVIL COMMITMENT IN LIEU OF PROSECUTION OR OF SENTENCE.

(1) When a person prosecuted for a class C felony, misdemeanor, or petty misdemeanor is a chronic alcoholic, narcotic addict, or person suffering from mental abnormality and the person is subject by law to involuntary hospitalization for medical, psychiatric, or other rehabilitative treatment, the court may order such hospitalization and dismiss the prosecution. The order of involuntary hospitalization may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

(2) The court shall not make an order under subsection (1) unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

IDAHO

IDAHO CODE ANN. § 18-212 (2010). DETERMINATION OF FITNESS OF DEFENDANT TO PROCEED -- SUSPENSION OF PROCEEDING AND COMMITMENT OF DEFENDANT -- POSTCOMMITMENT HEARING

(1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. The court shall also determine, based on the examiner's findings, whether the defendant lacks capacity to make informed decisions about treatment. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 18-211, Idaho Code, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the psychiatrist or licensed psychologist who submitted the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsections (5) and (6) of this section, and the court shall commit him to the custody of the director of the department of health and welfare, for a period not exceeding ninety (90) days, for care and treatment at an appropriate facility of the department of health and welfare or if the defendant is found to be dangerously mentally ill as defined in section 66-1305, Idaho Code, to the department of correction for a period not exceeding ninety (90) days. The order of commitment shall include the finding by the court whether the defendant lacks capacity to make informed decisions about treatment. For purposes of this section "facility" shall mean a state hospital, institution, mental health center, or those facilities enumerated in

subsection (8) of section 66-402, Idaho Code, equipped to evaluate or rehabilitate such defendants. The order of commitment shall require the county sheriff to transport the defendant to and from the facility and require an evaluation of the defendant's mental condition at the time of admission to the facility, and a progress report on the defendant's mental condition. The progress report shall include an opinion whether the defendant is fit to proceed, or if not, whether there is a substantial probability the defendant will be fit to proceed within the foreseeable future. If the report concludes that there is a substantial probability that the defendant will be fit to proceed in the foreseeable future, the court may order the continued commitment of the defendant for an additional one hundred eighty (180) days. If at any time the director of the facility to which the defendant is committed determines that the defendant is fit to proceed, such determination shall be reported to the court.

(3) If during a commitment under this section a defendant who has the capacity to make informed decisions about treatment refuses any and all treatment, or the only treatment available to restore competency for trial, the court shall, within seven (7) days, excluding weekends and holidays, of receiving notice of the defendant's refusal from the facility, conduct a hearing on whether to order involuntary treatment or order such other terms and conditions as may be determined appropriate. The burden shall be on the state to demonstrate grounds for involuntary treatment including, but not limited to: the prescribed treatment is essential to restore the defendant's competency, the medical necessity and appropriateness of the prescribed treatment, no less intrusive treatment alternative exists to render the defendant competent for trial, and other relevant information. If each of these findings is made by the court, treatment shall be ordered consistent with the findings.

(4) Each report shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant. Upon receipt of a report, the court shall determine, after a hearing if a hearing is requested, the disposition of the defendant and the proceedings against him. If the court determines that the defendant is fit to proceed, the proceeding shall be resumed. If at the end of the initial ninety (90) days the court determines that the defendant is unfit and there is not a substantial probability the defendant will be fit to proceed within the foreseeable future or if the defendant is not fit to proceed after the expiration of the additional one hundred eighty (180) days, involuntary commitment proceedings shall be instituted pursuant to either section 66-329 or 66-406, Idaho Code, in the court in which the criminal charge is pending.

(5) In its review of commitments pursuant to section 66-337, Idaho Code, the department of health and welfare shall determine whether the defendant is fit to proceed with trial. The department of health and welfare shall review its commitments pursuant to chapter 4, title 66, Idaho Code, and may recommend that the defendant is fit to proceed with trial. If the district court which committed the defendant pursuant to section 66-406, Idaho Code, agrees with the department's recommendation and finds the conditions which justified the order pursuant to section 66-406, Idaho Code, do not continue to exist, criminal proceedings may resume. If the defendant is fit to proceed, the court in which the

criminal charge is pending shall be notified and the criminal proceedings may resume. If, however, the court is of the view that so much time has elapsed, excluding any time spent free from custody by reason of the escape of the defendant, since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge.

(6) If a defendant escapes from custody during his confinement, the director shall immediately notify the court from which committed, the prosecuting attorney and the sheriff of the county from which committed. The court shall forthwith issue an order authorizing any health officer, peace officer, or the director of the institution from which the defendant escaped, to take the defendant into custody and immediately return him to his place of confinement.

IDAHO CODE ANN. § 66-1301 (2010). PROGRAM ESTABLISHED

The state board of correction shall establish, operate and maintain a program for persons displaying evidence of mental illness or psychosocial disorders and requiring diagnostic services and treatment in a maximum security setting, and for other criminal commitments as determined by the board of correction or its designee. The program shall be identifiably separate and apart from those functions and other programs maintained by the board for the ordinary prison population.

IDAHO CODE ANN. § 66-1304 (2010). SOURCES OF RESIDENTS

(1) Patients admitted to the program may originate from the following sources:

(a) Commitments by the courts as unfit to proceed pursuant to section 18-212, Idaho Code.

(b) Commitments by the courts of persons acquitted of a crime on the grounds of mental illness or defect pursuant to section 18-214, Idaho Code.

(c) Referrals by the courts for psychosocial diagnosis and recommendations as part of the pretrial or presentence procedure or determination of mental competency to stand trial.

(d) Mentally ill adult prisoners from city, county and state correctional institutions for diagnosis, evaluation or treatment.

(e) Commitments by the courts pursuant to section 66-329, Idaho Code.

(f) Criminal commitments of the Idaho department of correction requiring some form of specialized program not otherwise available.

(2) Residents coming to the program in the circumstances of subsection (1)(a), (b) and (e) of this section must first be found to be both dangerous and mentally ill, as defined in section 66-1305, Idaho Code, in judicial proceedings conducted in accordance with section 66-329, Idaho Code.

IDAHO CODE ANN. § 66-1305 (2010). DANGEROUS AND MENTALLY ILL PERSONS DEFINED

For purposes of this chapter persons found to be both dangerous and mentally ill shall mean persons found by a court of competent jurisdiction pursuant to any lawful proceeding:

(1) To be in such mental condition that they are in need of supervision, evaluation, treatment and care; and

(2) To present a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; and

(3) To be dangerous to such a degree that a maximum security treatment setting is required.

IDAHO CODE ANN. § 66-1306 (2010). FINAL DECISION

The final decision regarding the admission or discharge of patients to the program shall rest with the director of the department of correction, after consultation with the administrator.

IDAHO CODE ANN. § 66-1307 (2010). RETURN OF PATIENT

When a patient transferred under the program from any other correctional institution or admitted by order of any court no longer requires special treatment in the maximum security setting, the patient shall be returned to the source from which received. The correctional institution or court that referred the patient to the program shall retain constructive jurisdiction over the patient.

ILLINOIS

725 ILL. COMP. STAT. ANN. § 5/104-17 (2010). COMMITMENT FOR TREATMENT; TREATMENT PLAN

(a) If the defendant is eligible to be or has been released on bail or on his own recognizance, the court shall select the least physically restrictive form of treatment therapeutically appropriate and consistent with the treatment plan.

(b) If the defendant's disability is mental, the court may order him placed for treatment in the custody of the Department of Human Services, or the court may order him placed in the custody of any other appropriate public or private mental health facility or treatment program which has agreed to provide treatment to the defendant. If the defendant is placed in the custody of the Department of Human Services, the defendant shall be placed in a secure setting unless the court determines that there are compelling reasons

why such placement is not necessary. During the period of time required to determine the appropriate placement the defendant shall remain in jail. If upon the completion of the placement process the Department of Human Services determines that the defendant is currently fit to stand trial, it shall immediately notify the court and shall submit a written report within 7 days. In that circumstance the placement shall be held pending a court hearing on the Department's report. Otherwise, upon completion of the placement process, the sheriff shall be notified and shall transport the defendant to the designated facility. The placement may be ordered either on an inpatient or an outpatient basis.

(c) If the defendant's disability is physical, the court may order him placed under the supervision of the Department of Human Services which shall place and maintain the defendant in a suitable treatment facility or program, or the court may order him placed in an appropriate public or private facility or treatment program which has agreed to provide treatment to the defendant. The placement may be ordered either on an inpatient or an outpatient basis.

(d) The clerk of the circuit court shall transmit to the Department, agency or institution, if any, to which the defendant is remanded for treatment, the following:

(1) a certified copy of the order to undergo treatment;

(2) the county and municipality in which the offense was committed;

(3) the county and municipality in which the arrest took place;

(4) a copy of the arrest report, criminal charges, arrest record, jail record, and the report prepared under Section 104-15 [725 ILCS 5/104-15]; and

(5) all additional matters which the Court directs the clerk to transmit.

(e) Within 30 days of entry of an order to undergo treatment, the person supervising the defendant's treatment shall file with the court, the State, and the defense a report assessing the facility's or program's capacity to provide appropriate treatment for the defendant and indicating his opinion as to the probability of the defendant's attaining fitness within a period of one year from the date of the finding of unfitness. If the report indicates that there is a substantial probability that the defendant will attain fitness within the time period, the treatment supervisor shall also file a treatment plan which shall include:

(1) A diagnosis of the defendant's disability;

(2) A description of treatment goals with respect to rendering the defendant fit, a specification of the proposed treatment modalities, and an estimated timetable for attainment of the goals;

(3) An identification of the person in charge of supervising the defendant's treatment.

725 ILL. COMP. STAT. ANN. § 5/104-20 (2010). NINETY-DAY HEARINGS; CONTINUING TREATMENT

(a) Upon entry or continuation of any order to undergo treatment, the court shall set a date for hearing to reexamine the issue of the defendant's fitness not more than 90 days thereafter. In addition, whenever the court receives a report from the supervisor of the defendant's treatment pursuant to subparagraph (2) or (3) of paragraph (a) of Section 104-18 [725 ILCS 5/104-18], the court shall forthwith set the matter for a first hearing within 21 days unless good cause is demonstrated why the hearing cannot be held. On the date set or upon conclusion of the matter then pending before it, the court, sitting without a jury, shall conduct a hearing, unless waived by the defense, and shall determine:

(1) Whether the defendant is fit to stand trial or to plead; and if not,

(2) Whether the defendant is making progress under treatment toward attainment of fitness within one year from the date of the original finding of unfitness.

(b) If the court finds the defendant to be fit pursuant to this Section, the court shall set the matter for trial; provided that if the defendant is in need of continued care or treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the court may enter any order it deems appropriate for the continued care or treatment of the defendant by the facility or program pending the conclusion of the criminal proceedings.

(c) If the court finds that the defendant is still unfit but that he is making progress toward attaining fitness, the court may continue or modify its original treatment order entered pursuant to Section 104-17 [725 ILCS 5/104-17].

(d) If the court finds that the defendant is still unfit and that he is not making progress toward attaining fitness such that there is not a substantial probability that he will attain fitness within one year from the date of the original finding of unfitness, the court shall proceed pursuant to Section 104-23 [725 ILCS 5/104-23]. However, if the defendant is in need of continued care and treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the court may enter any order it deems appropriate for the continued care or treatment by the facility or program pending the conclusion of the criminal proceedings.

725 ILL. COMP. STAT. ANN. § 5/104-23 (2010). UNFIT DEFENDANTS

Cases involving an unfit defendant who demands a discharge hearing or a defendant who cannot become fit to stand trial and for whom no special provisions or assistance can compensate for his disability and render him fit shall proceed in the following manner:

(a) Upon a determination that there is not a substantial probability that the defendant will attain fitness within one year from the original finding of unfitness, a defendant or the attorney for the defendant may move for a discharge hearing pursuant to the provisions of Section 104-25 [725 ILCS 5/104-25]. The discharge hearing shall be held within 120 days of the filing of a motion for a discharge hearing, unless the delay is occasioned by

the defendant.

(b) If at any time the court determines that there is not a substantial probability that the defendant will become fit to stand trial or to plead within one year from the date of the original finding of unfitness, or if at the end of one year from that date the court finds the defendant still unfit and for whom no special provisions or assistance can compensate for his disabilities and render him fit, the State shall request the court:

(1) To set the matter for hearing pursuant to Section 104-25 [725 ILCS 5/104-25] unless a hearing has already been held pursuant to paragraph (a) of this Section; or

(2) To release the defendant from custody and to dismiss with prejudice the charges against him; or

(3) To remand the defendant to the custody of the Department of Human Services and order a hearing to be conducted pursuant to the provisions of the Mental Health and Developmental Disabilities Code, as now or hereafter amended [405 ILCS 5/1-100 et seq.]. The Department of Human Services shall have 7 days from the date it receives the defendant to prepare and file the necessary petition and certificates that are required for commitment under the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.]. If the defendant is committed to the Department of Human Services pursuant to such hearing, the court having jurisdiction over the criminal matter shall dismiss the charges against the defendant, with the leave to reinstate. In such cases the Department of Human Services shall notify the court, the State's attorney and the defense attorney upon the discharge of the defendant. A former defendant so committed shall be treated in the same manner as any other civilly committed patient for all purposes including admission, selection of the place of treatment and the treatment modalities, entitlement to rights and privileges, transfer, and discharge. A defendant who is not committed shall be remanded to the court having jurisdiction of the criminal matter for disposition pursuant to subparagraph (1) or (2) of paragraph (b) of this Section.

(c) If the defendant is restored to fitness and the original charges against him are reinstated, the speedy trial provisions of Section 103-5 [725 ILCS 5/103-5] shall commence to run.

725 ILL. COMP. STAT. ANN. § 5/104-25 (2010). DISCHARGE HEARING

(a) As provided for in paragraph (a) of Section 104-23 and subparagraph (1) of paragraph (b) of Section 104-23 [725 ILCS 5/104-23] a hearing to determine the sufficiency of the evidence shall be held. Such hearing shall be conducted by the court without a jury. The State and the defendant may introduce evidence relevant to the question of defendant's guilt of the crime charged.

The court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, court and business records, and public documents.

(b) If the evidence does not prove the defendant guilty beyond a reasonable doubt, the court shall enter a judgment of acquittal; however nothing herein shall prevent the State from requesting the court to commit the defendant to the Department of Human Services under the provisions of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.].

(c) If the defendant is found not guilty by reason of insanity, the court shall enter a judgment of acquittal and the proceedings after acquittal by reason of insanity under Section 5-2-4 of the Unified Code of Corrections [730 ILCS 5/5-2-4] shall apply.

(d) If the discharge hearing does not result in an acquittal of the charge the defendant may be remanded for further treatment and the one year time limit set forth in Section 104-23 [725 ILCS 5/104-23] shall be extended as follows:

(1) If the most serious charge upon which the State sustained its burden of proof was a Class 1 or Class X felony, the treatment period may be extended up to a maximum treatment period of 2 years; if a Class 2, 3, or 4 felony, the treatment period may be extended up to a maximum of 15 months;

(2) If the State sustained its burden of proof on a charge of first degree murder, the treatment period may be extended up to a maximum treatment period of 5 years.

(e) Transcripts of testimony taken at a discharge hearing may be admitted in evidence at a subsequent trial of the case, subject to the rules of evidence, if the witness who gave such testimony is legally unavailable at the time of the subsequent trial.

(f) If the court fails to enter an order of acquittal the defendant may appeal from such judgment in the same manner provided for an appeal from a conviction in a criminal case.

(g) At the expiration of an extended period of treatment ordered pursuant to this Section:

(1) Upon a finding that the defendant is fit or can be rendered fit consistent with Section 104-22 [725 ILCS 5/104-22], the court may proceed with trial.

(2) If the defendant continues to be unfit to stand trial, the court shall determine whether he or she is subject to involuntary admission under the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.] or constitutes a serious threat to the public safety. If so found, the defendant shall be remanded to the Department of Human Services for further treatment and shall be treated in the same manner as a civilly committed patient for all purposes, except that the original court having jurisdiction over the defendant shall be required to approve any conditional release or discharge of the defendant, for the period of commitment equal to the maximum sentence to which the defendant would have been subject had he or she been convicted in a criminal proceeding. During this period of commitment, the original court having jurisdiction over the defendant shall hold hearings under clause (i) of this paragraph (2). However, if the

defendant is remanded to the Department of Human Services, the defendant shall be placed in a secure setting unless the court determines that there are compelling reasons why such placement is not necessary.

If the defendant does not have a current treatment plan, then within 3 days of admission under this subdivision (g)(2), a treatment plan shall be prepared for each defendant and entered into his or her record. The plan shall include (i) an assessment of the defendant's treatment needs, (ii) a description of the services recommended for treatment, (iii) the goals of each type of element of service, (iv) an anticipated timetable for the accomplishment of the goals, and (v) a designation of the qualified professional responsible for the implementation of the plan. The plan shall be reviewed and updated as the clinical condition warrants, but not less than every 30 days.

Every 90 days after the initial admission under this subdivision (g)(2), the facility director shall file a typed treatment plan report with the original court having jurisdiction over the defendant. The report shall include an opinion as to whether the defendant is fit to stand trial and whether the defendant is currently subject to involuntary admission, in need of mental health services on an inpatient basis, or in need of mental health services on an outpatient basis. The report shall also summarize the basis for those findings and provide a current summary of the 5 items required in a treatment plan. A copy of the report shall be forwarded to the clerk of the court, the State's Attorney, and the defendant's attorney if the defendant is represented by counsel.

The court on its own motion may order a hearing to review the treatment plan. The defendant or the State's Attorney may request a treatment plan review every 90 days and the court shall review the current treatment plan to determine whether the plan complies with the requirements of this Section. The court may order an independent examination on its own initiative and shall order such an evaluation if either the recipient or the State's Attorney so requests and has demonstrated to the court that the plan cannot be effectively reviewed by the court without such an examination. Under no circumstances shall the court be required to order an independent examination pursuant to this Section more than once each year. The examination shall be conducted by a psychiatrist or clinical psychologist as defined in Section 1-103 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-103] who is not in the employ of the Department of Human Services.

If, during the period within which the defendant is confined in a secure setting, the court enters an order that requires the defendant to appear, the court shall timely transmit a copy of the order or writ to the director of the particular Department of Human Services facility where the defendant resides authorizing the transportation of the defendant to the court for the purpose of the hearing.

(i) 180 days after a defendant is remanded to the Department of Human Services, under paragraph (2) and every 180 days thereafter for so long as the defendant is confined under the order entered thereunder, the court shall set a hearing and shall direct that notice of the time and place of the hearing be served upon the defendant, the facility

director, the State's Attorney, and the defendant's attorney. If requested by either the State or the defense or if the court determines that it is appropriate, an impartial examination of the defendant by a psychiatrist or clinical psychologist as defined in Section 1-103 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-103] who is not in the employ of the Department of Human Services shall be ordered, and the report considered at the time of the hearing. If the defendant is not currently represented by counsel the court shall appoint the public defender to represent the defendant at the hearing. The court shall make a finding as to whether the defendant is:

(A) subject to involuntary admission; or

(B) in need of mental health services in the form of inpatient care; or

(C) in need of mental health services but not subject to involuntary admission nor inpatient care.

The findings of the court shall be established by clear and convincing evidence and the burden of proof and the burden of going forward with the evidence shall rest with the State's Attorney. Upon finding by the court, the court shall enter its findings and an appropriate order.

(ii) The terms "subject to involuntary admission", "in need of mental health services in the form of inpatient care" and "in need of mental health services but not subject to involuntary admission nor inpatient care" shall have the meanings ascribed to them in clause (d)(3) of Section 5-2-4 of the Unified Code of Corrections [730 ILCS 5/5-2-4].

(3) If the defendant is not committed pursuant to this Section, he or she shall be released.

(4) In no event may the treatment period be extended to exceed the maximum sentence to which a defendant would have been subject had he or she been convicted in a criminal proceeding. For purposes of this Section, the maximum sentence shall be determined by Section 5-8-1 (730 ILCS 5/5-8-1) or Article 4.5 of Chapter V of the "Unified Code of Corrections", excluding any sentence of natural life.

725 ILL. COMP. STAT. ANN. § 5/104-26 (2010). DISPOSITION OF DEFENDANTS SUFFERING DISABILITIES

(a) A defendant convicted following a trial conducted under the provisions of Section 104-22 [725 ILCS 5/104-22] shall not be sentenced before a written presentence report of investigation is presented to and considered by the court. The presentence report shall be prepared pursuant to Sections 5-3-2, 5-3-3 and 5-3-4 of the Unified Code of Corrections, as now or hereafter amended [730 ILCS 5/5-3-2, 730 ILCS 5/5-3-3 and 730 ILCS 5/5-3-4], and shall include a physical and mental examination unless the court finds that the reports of prior physical and mental examinations conducted pursuant to this Article are adequate and recent enough so that additional examinations would be unnecessary.

(b) A defendant convicted following a trial under Section 104-22 [725 ILCS 5/104-22]

shall not be subject to the death penalty.

(c) A defendant convicted following a trial under Section 104-22 [725 ILCS 5/104-22] shall be sentenced according to the procedures and dispositions authorized under the Unified Code of Corrections, as now or hereafter amended, subject to the following provisions:

(1) The court shall not impose a sentence of imprisonment upon the offender if the court believes that because of his disability a sentence of imprisonment would not serve the ends of justice and the interests of society and the offender or that because of his disability a sentence of imprisonment would subject the offender to excessive hardship. In addition to any other conditions of a sentence of conditional discharge or probation the court may require that the offender undergo treatment appropriate to his mental or physical condition.

(2) After imposing a sentence of imprisonment upon an offender who has a mental disability, the court may remand him to the custody of the Department of Human Services and order a hearing to be conducted pursuant to the provisions of the Mental Health and Developmental Disabilities Code, as now or hereafter amended [405 ILCS 5/1-100 et seq.]. If the offender is committed following such hearing, he shall be treated in the same manner as any other civilly committed patient for all purposes except as provided in this Section. If the defendant is not committed pursuant to such hearing, he shall be remanded to the sentencing court for disposition according to the sentence imposed.

(3) If the court imposes a sentence of imprisonment upon an offender who has a mental disability but does not proceed under subparagraph (2) of paragraph (c) of this Section, it shall order the Department of Corrections to proceed pursuant to Section 3-8-5 of the Unified Code of Corrections, as now or hereafter amended [730 ILCS 5/3-8-5].

(4) If the court imposes a sentence of imprisonment upon an offender who has a physical disability, it may authorize the Department of Corrections to place the offender in a public or private facility which is able to provide care or treatment for the offender's disability and which agrees to do so.

(5) When an offender is placed with the Department of Human Services or another facility pursuant to subparagraph (2) or (4) of this paragraph (c), the Department or private facility shall not discharge or allow the offender to be at large in the community without prior approval of the court. If the defendant is placed in the custody of the Department of Human Services, the defendant shall be placed in a secure setting unless the court determines that there are compelling reasons why such placement is not necessary. The offender shall accrue good time and shall be eligible for parole in the same manner as if he were serving his sentence within the Department of Corrections. When the offender no longer requires hospitalization, care, or treatment, the Department of Human Services or the facility shall transfer him, if his sentence has not expired, to the Department of Corrections. If an offender is transferred to the Department of Corrections,

the Department of Human Services shall transfer to the Department of Corrections all related records pertaining to length of custody and treatment services provided during the time the offender was held.

(6) The Department of Corrections shall notify the Department of Human Services or a facility in which an offender has been placed pursuant to subparagraph (2) or (4) of paragraph (c) of this Section of the expiration of his sentence. Thereafter, an offender in the Department of Human Services shall continue to be treated pursuant to his commitment order and shall be considered a civilly committed patient for all purposes including discharge. An offender who is in a facility pursuant to subparagraph (4) of paragraph (c) of this Section shall be informed by the facility of the expiration of his sentence, and shall either consent to the continuation of his care or treatment by the facility or shall be discharged.

725 ILL. COMP. STAT. ANN. § 5/104-28 (2010). DISPOSITION OF DEFENDANTS FOUND UNFIT PRIOR TO THIS ARTICLE

(a) Upon reviewing the report, the court shall determine whether the defendant has been in the custody of the Department of Mental Health and Developmental Disabilities (now the Department of Human Services) for a period of time equal to the length of time that the defendant would have been required to serve, less good time, before becoming eligible for parole or mandatory supervised release had he been convicted of the most serious offense charged and had he received the maximum sentence therefor. If the court so finds, it shall dismiss the charges against the defendant, with leave to reinstate. If the defendant has not been committed pursuant to the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.], the court shall order him discharged or shall order a hearing to be conducted forthwith pursuant to the provisions of the Code. If the defendant was committed pursuant to the Code, he shall continue to be treated pursuant to his commitment order and shall be considered a civilly committed patient for all purposes including discharge.

(b) If the court finds that a defendant has been in the custody of the Department of Mental Health and Developmental Disabilities (now the Department of Human Services) for a period less than that specified in paragraph (a) of this Section, the court shall conduct a hearing pursuant to Section 104-20 [725 ILCS 5/104-20] forthwith to redetermine the issue of the defendant's fitness to stand trial or to plead. If the defendant is fit, the matter shall be set for trial. If the court finds that the defendant is unfit, it shall proceed pursuant to Section 104-20 or 104-23 [725 ILCS 5/104-20 or 725 ILCS 5/104-23], provided that a defendant who is still unfit and who has been in the custody of the Department of Mental Health and Developmental Disabilities (now the Department of Human Services) for a period of more than one year from the date of the finding of unfitness shall be immediately subject to the provisions of Section 104-23 [725 ILCS 5/104-23].

725 ILL. COMP. STAT. ANN. § 5/110-6.1 (2010). DENIAL OF BAIL IN NON-PROBATIONABLE FELONY OFFENSES

(a) Upon verified petition by the State, the court shall hold a hearing to determine

whether bail should be denied to a defendant who is charged with a felony offense for which a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction, when it is alleged that the defendant's admission to bail poses a real and present threat to the physical safety of any person or persons.

(1) A petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days, except as provided in Section 110-6 [725 ILCS 5/110-6], after arrest and release of the defendant upon reasonable notice to defendant; provided that while such petition is pending before the court, the defendant if previously released shall not be detained.

(2) The hearing shall be held immediately upon the defendant's appearance before the court, unless for good cause shown the defendant or the State seeks a continuance. A continuance on motion of the defendant may not exceed 5 calendar days, and a continuance on the motion of the State may not exceed 3 calendar days. The defendant may be held in custody during such continuance.

(b) The court may deny bail to the defendant where, after the hearing, it is determined that:

(1) the proof is evident or the presumption great that the defendant has committed an offense for which a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, must be imposed by law as a consequence of conviction, and

(2) the defendant poses a real and present threat to the physical safety of any person or persons, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, physical harm, an offense under the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.] which is a Class X felony, or an offense under the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.] which is a Class X felony, and

(3) the court finds that no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article [725 ILCS 5/110-10], can reasonably assure the physical safety of any other person or persons.

(c) Conduct of the hearings.

(1) The hearing on the defendant's culpability and dangerousness shall be conducted in accordance with the following provisions:

(A) Information used by the court in its findings or stated in or offered at such hearing may be by way of proffer based upon reliable information offered by the State or by defendant. Defendant has the right to be represented by counsel, and if he is indigent, to have counsel appointed for him. Defendant shall have the opportunity to testify, to present witnesses in his own behalf, and to cross-examine witnesses if any are called by

the State. The defendant has the right to present witnesses in his favor. When the ends of justice so require, the court may exercise its discretion and compel the appearance of a complaining witness. The court shall state on the record reasons for granting a defense request to compel the presence of a complaining witness. Cross-examination of a complaining witness at the pretrial detention hearing for the purpose of impeaching the witness' credibility is insufficient reason to compel the presence of the witness. In deciding whether to compel the appearance of a complaining witness, the court shall be considerate of the emotional and physical well-being of the witness. The pre-trial detention hearing is not to be used for purposes of discovery, and the post arraignment rules of discovery do not apply. The State shall tender to the defendant, prior to the hearing, copies of defendant's criminal history, if any, if available, and any written or recorded statements and the substance of any oral statements made by any person, if relied upon by the State in its petition. The rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. At the trial concerning the offense for which the hearing was conducted neither the finding of the court nor any transcript or other record of the hearing shall be admissible in the State's case in chief, but shall be admissible for impeachment, or as provided in Section 115-10.1 of this Code [725 ILCS 5/115-10.1] or in a perjury proceeding.

(B) A motion by the defendant to suppress evidence or to suppress a confession shall not be entertained. Evidence that proof may have been obtained as the result of an unlawful search and seizure or through improper interrogation is not relevant to this state of the prosecution.

(2) The facts relied upon by the court to support a finding that the defendant poses a real and present threat to the physical safety of any person or persons shall be supported by clear and convincing evidence presented by the State.

(d) Factors to be considered in making a determination of dangerousness. The court may, in determining whether the defendant poses a real and present threat to the physical safety of any person or persons, consider but shall not be limited to evidence or testimony concerning:

(1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon.

(2) The history and characteristics of the defendant including:

(A) Any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of such behavior. Such evidence may include testimony or documents received in juvenile proceedings, criminal, quasi-criminal, civil commitment, domestic relations or other proceedings.

(B) Any evidence of the defendant's psychological, psychiatric or other similar social history which tends to indicate a violent, abusive, or assaultive nature, or lack of any such

history.

(3) The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the nature of the threat;

(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them;

(5) The age and physical condition of any person assaulted by the defendant;

(6) Whether the defendant is known to possess or have access to any weapon or weapons;

(7) Whether, at the time of the current offense or any other offense or arrest, the defendant was on probation, parole, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law;

(8) Any other factors, including those listed in Section 110-5 of this Article [725 ILCS 5/110-5] deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive or assaultive behavior, or lack of such behavior.

(e) Detention order. The court shall, in any order for detention:

(1) briefly summarize the evidence of the defendant's culpability and its reasons for concluding that the defendant should be held without bail;

(2) direct that the defendant be committed to the custody of the sheriff for confinement in the county jail pending trial;

(3) direct that the defendant be given a reasonable opportunity for private consultation with counsel, and for communication with others of his choice by visitation, mail and telephone; and

(4) direct that the sheriff deliver the defendant as required for appearances in connection with court proceedings.

(f) If the court enters an order for the detention of the defendant pursuant to subsection (e) of this Section, the defendant shall be brought to trial on the offense for which he is detained within 90 days after the date on which the order for detention was entered. If the defendant is not brought to trial within the 90 day period required by the preceding sentence, he shall not be held longer without bail. In computing the 90 day period, the court shall omit any period of delay resulting from a continuance granted at the request of the defendant.

(g) Rights of the defendant. Any person shall be entitled to appeal any order entered

under this Section denying bail to the defendant.

(h) The State may appeal any order entered under this Section denying any motion for denial of bail.

(i) Nothing in this Section shall be construed as modifying or limiting in any way the defendant's presumption of innocence in further criminal proceedings.

725 ILL. COMP. STAT. ANN. § 205/3 (2010). [PETITION]

When any person is charged with a criminal offense and it shall appear to the Attorney General or to the State's Attorney of the county wherein such person is so charged, that such person is a sexually dangerous person, within the meaning of this Act, then the Attorney General or State's Attorney of such county may file with the clerk of the court in the same proceeding wherein such person stands charged with criminal offense, a petition in writing setting forth facts tending to show that the person named is a sexually dangerous person.

725 ILL. COMP. STAT. ANN. § 205/3.01 (2010). [PROCEEDINGS CIVIL IN NATURE; BURDEN OF PROOF]

The proceedings under this Act shall be civil in nature, however, the burden of proof required to commit a defendant to confinement as a sexually dangerous person shall be the standard of proof required in a criminal proceedings of proof beyond a reasonable doubt. The provisions of the Civil Practice Law [735 ILCS 5/2-101 et seq.], and all existing and future amendments of that Law and modifications thereof and the Supreme Court Rules now or hereafter adopted in relation to that Law shall apply to all proceedings hereunder except as otherwise provided in this Act.

725 ILL. COMP. STAT. ANN. § 205/4 (2010). [APPOINTMENT OF QUALIFIED PSYCHIATRISTS; PSYCHIATRISTS' REPORTS]

After the filing of the petition, the court shall appoint two qualified psychiatrists to make a personal examination of such alleged sexually dangerous person, to ascertain whether such person is sexually dangerous, and the psychiatrists shall file with the court a report in writing of the result of their examination, a copy of which shall be delivered to the respondent.

725 ILL. COMP. STAT. ANN. § 205/5 (2010). [RIGHT TO TRIAL BY JURY]

The respondent in any proceedings under this Act shall have the right to demand a trial by jury and to be represented by counsel. At the hearing on the petition it shall be competent to introduce evidence of the commission by the respondent of any number of crimes together with whatever punishments, if any, were inflicted.

725 ILL. COMP. STAT. ANN. § 205/8 (2010). [APPOINTMENT OF DIRECTOR OF CORRECTIONS AS GUARDIAN]

If the respondent is found to be a sexually dangerous person then the court shall appoint the Director of Corrections guardian of the person found to be sexually dangerous and

such person shall stand committed to the custody of such guardian. The Director of Corrections as guardian shall keep safely the person so committed until the person has recovered and is released as hereinafter provided. The Director of Corrections as guardian shall provide care and treatment for the person committed to him designed to effect recovery. Any treatment provided under this Section shall be in conformance with the standards promulgated by the Sex Offender Management Board Act [20 ILCS 4026/1 et seq.] and conducted by a treatment provider approved by the Board. The Director may place that ward in any facility in the Department of Corrections or portion thereof set aside for the care and treatment of sexually dangerous persons. The Department of Corrections may also request another state Department or Agency to examine such person and upon such request, such Department or Agency shall make such examination and the Department of Corrections may, with the consent of the chief executive officer of such other Department or Agency, thereupon place such person in the care and treatment of such other Department or Agency.

725 ILL. COMP. STAT. ANN. § 207/9 (2010). SEXUALLY VIOLENT PERSON REVIEW; WRITTEN NOTIFICATION TO STATE'S ATTORNEY

The Illinois Department of Corrections or the Department of Juvenile Justice, not later than 6 months prior to the anticipated release from imprisonment or the anticipated entry into mandatory supervised release of a person who has been convicted or adjudicated delinquent of a sexually violent offense, shall send written notice to the State's Attorney in the county in which the person was convicted or adjudicated delinquent of the sexually violent offense informing the State's Attorney of the person's anticipated release date and that the person will be considered for commitment under this Act prior to that release date.

725 ILL. COMP. STAT. ANN. § 207/10 (2010). NOTICE TO THE ATTORNEY GENERAL AND STATE'S ATTORNEY

(a) In this Act, "agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(b) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform the Attorney General and the State's Attorney in a position to file a petition under paragraph (a)(2) of Section 15 of this Act [725 ILCS 207/15] regarding the person as soon as possible beginning 3 months prior to the applicable date of the following:

(1) The anticipated release from imprisonment or the anticipated entry into mandatory supervised release of a person who has been convicted of a sexually violent offense.

(2) The anticipated release from a Department of Corrections correctional facility or juvenile correctional facility of a person adjudicated delinquent under Section 5-20 of the Juvenile Court Act of 1987 [705 ILCS 405/5-20] (now repealed) or found guilty under Section 5-620 of that Act [705 ILCS 405/5-620], on the basis of a sexually violent offense.

(3) The discharge or conditional release of a person who has been found not guilty of a sexually violent offense by reason of insanity under Section 5-2-4 of the Unified Code of Corrections [730 ILCS 5/5-2-4].

(c) The agency with jurisdiction shall provide the Attorney General and the State's Attorney with all of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history;

(2) A comprehensive evaluation of the person's mental condition, the basis upon which a determination has been made that the person is subject to commitment under subsection (b) of Section 15 of this Act [725 ILCS 207/15] and a recommendation for action in furtherance of the purposes of this Act. The evaluation shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board; and

(3) If applicable, documentation of any treatment and the person's adjustment to any institutional placement.

(d) Any agency or officer, employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this Section.

725 ILL. COMP. STAT. ANN. § 207/15 (2010). SEXUALLY VIOLENT PERSON PETITION; CONTENTS; FILING

(a) A petition alleging that a person is a sexually violent person may be filed by:

(1) The Attorney General, at the request of the agency with jurisdiction over the person, as defined in subsection (a) of Section 10 of this Act [725 ILCS 207/10], or on his or her own motion. If the Attorney General, after consulting with and advising the State's Attorney of the county referenced in paragraph (a)(2) of this Section, decides to file a petition under this Section, he or she shall file the petition before the release or discharge of the person or within 30 days of placement onto parole or mandatory supervised release for an offense enumerated in paragraph (e) of Section 5 of this Act [725 ILCS 207/5].

(2) If the Attorney General does not file a petition under this Section, the State's Attorney of the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity, mental disease, or mental defect may file a petition.

(3) The Attorney General and the State's Attorney referenced in paragraph (a)(2) of this Section jointly.

(b) A petition filed under this Section shall allege that all of the following apply to the

person alleged to be a sexually violent person:

(1) The person satisfies any of the following criteria:

(A) The person has been convicted of a sexually violent offense;

(B) The person has been found delinquent for a sexually violent offense; or

(C) The person has been found not guilty of a sexually violent offense by reason of insanity, mental disease, or mental defect.

(2) (Blank).

(3) (Blank).

(4) The person has a mental disorder.

(5) The person is dangerous to others because the person's mental disorder creates a substantial probability that he or she will engage in acts of sexual violence.

(b-5) The petition must be filed no more than 90 days before discharge or entry into mandatory supervised release from a Department of Corrections or the Department of Juvenile Justice correctional facility for a sentence that was imposed upon a conviction for a sexually violent offense. For inmates sentenced under the law in effect prior to February 1, 1978, the petition shall be filed no more than 90 days after the Prisoner Review Board's order granting parole pursuant to Section 3-3-5 of the Unified Code of Corrections [730 ILCS 5/3-3-5].

(b-6) The petition must be filed no more than 90 days before discharge or release:

(1) from a Department of Juvenile Justice juvenile correctional facility if the person was placed in the facility for being adjudicated delinquent under Section 5-20 of the Juvenile Court Act of 1987 [705 ILCS 405/5-20] or found guilty under Section 5-620 of that Act [705 ILCS 405/5-620] on the basis of a sexually violent offense; or

(2) from a commitment order that was entered as a result of a sexually violent offense.

(b-7) A person convicted of a sexually violent offense remains eligible for commitment as a sexually violent person pursuant to this Act under the following circumstances: (1) the person is in custody for a sentence that is being served concurrently or consecutively with a sexually violent offense; (2) the person returns to the custody of the Illinois Department of Corrections or the Department of Juvenile Justice for any reason during the term of parole or mandatory supervised release being served for a sexually violent offense; or (3) the person is convicted or adjudicated delinquent for any offense committed during the term of parole or mandatory supervised release being served for a sexually violent offense, regardless of whether that conviction or adjudication was for a

sexually violent offense.

(c) A petition filed under this Section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under paragraph (b)(1) of this Section was an act that was sexually motivated as provided under paragraph (e)(2) of Section 5 of this Act [725 ILCS 207/5], the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(d) A petition under this Section shall be filed in either of the following:

(1) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of insanity, mental disease or mental defect.

(2) The circuit court for the county in which the person is in custody under a sentence, a placement to a Department of Corrections correctional facility or a Department of Juvenile Justice juvenile correctional facility, or a commitment order.

(e) The filing of a petition under this Act shall toll the running of the term of parole or mandatory supervised release until:

(1) dismissal of the petition filed under this Act;

(2) a finding by a judge or jury that the respondent is not a sexually violent person; or

(3) the sexually violent person is discharged under Section 65 of this Act [725 ILCS 207/65], unless the person has successfully completed a period of conditional release pursuant to Section 60 of this Act [725 ILCS 207/60].

725 ILL. COMP. STAT. ANN. § 207/20 (2010). CIVIL NATURE OF PROCEEDINGS

The proceedings under this Act shall be civil in nature. The provisions of the Civil Practice Law [735 ILCS 5/2-101 et seq.], and all existing and future amendments of that Law shall apply to all proceedings hereunder except as otherwise provided in this Act.

725 ILL. COMP. STAT. ANN. § 207/25 (2010). RIGHTS OF PERSONS SUBJECT TO PETITION

(a) Any person who is the subject of a petition filed under Section 15 of this Act [725 ILCS 207/15] shall be served with a copy of the petition in accordance with the Civil Practice Law [735 ILCS 5/2-101 et seq.].

(b) The circuit court in which a petition under Section 15 of this Act [725 ILCS 207/15] is filed shall conduct all hearings under this Act. The court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(c) Except as provided in paragraph (b)(1) of Section 65 and Section 70 of this Act [725 ILCS 207/65 and 725 ILCS 207/70], at any hearing conducted under this Act, the person who is the subject of the petition has the right:

(1) To be present and to be represented by counsel. If the person is indigent, the court shall appoint counsel.

(2) To remain silent.

(3) To present and cross-examine witnesses.

(4) To have the hearing recorded by a court reporter.

(d) The person who is the subject of the petition, the person's attorney, the Attorney General or the State's Attorney may request that a trial under Section 35 of this Act [725 ILCS 207/35] be to a jury. A verdict of a jury under this Act is not valid unless it is unanimous.

(e) Whenever the person who is the subject of the petition is required to submit to an examination under this Act, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records and patient health care records. If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of a court-appointed expert or professional person to perform an examination and participate in the trial on behalf of an indigent person.

725 ILL. COMP. STAT. ANN. § 207/30 (2010). DETENTION; PROBABLE CAUSE HEARING; TRANSFER FOR EXAMINATION

(a) Upon the filing of a petition under Section 15 of this Act [725 ILCS 207/15], the court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is cause to believe that the person is eligible for commitment under subsection (f) of Section 35 of this Act [725 ILCS 207/35]. A person detained under this Section shall be held in a facility approved by the Department. If the person is serving a sentence of imprisonment, is in a Department of Corrections correctional facility or juvenile correctional facility or is committed to institutional care, and the court orders detention under this Section, the court shall order that the person be transferred to a detention facility approved by the Department. A detention order under this Section remains in effect until the person is discharged after a trial under Section 35 of this Act [725 ILCS 207/35] or until the effective date of a commitment order under Section 40 of this Act [725 ILCS 207/40], whichever is applicable.

(b) Whenever a petition is filed under Section 15 of this Act [725 ILCS 207/15], the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. The court may grant a continuance of the probable cause hearing for no more than 7 additional days upon the motion of the respondent, for good cause. If the person named in the petition has been released, is on parole, is on mandatory supervised release, or otherwise is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition. At the probable cause hearing, the court shall admit and consider all relevant hearsay evidence.

(c) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the person who is named in the petition refuses to speak to, communicate with, or otherwise fails to cooperate with the examining evaluator from the Department of Human Services or the Department of Corrections, that person may only introduce evidence and testimony from any expert or professional person who is retained or court-appointed to conduct an examination of the person that results from a review of the records and may not introduce evidence resulting from an examination of the person. Notwithstanding the provisions of Section 10 of the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110/1 et seq.], all evaluations conducted pursuant to this Act and all Illinois Department of Corrections treatment records shall be admissible at all proceedings held pursuant to this Act, including the probable cause hearing and the trial.

If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

(d) The Department shall promulgate rules that provide the qualifications for persons conducting evaluations under subsection (c) of this Section.

(e) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under subsection (b) of this Section, appoint counsel.

725 ILL. COMP. STAT. ANN. § 207/35 (2010). TRIAL

(a) A trial to determine whether the person who is the subject of a petition under Section 15 of this Act [725 ILCS 207/15] is a sexually violent person shall commence no later than 120 days after the date of the probable cause hearing under Section 30 of this Act [725 ILCS 207/30]. Delay is considered to be agreed to by the person unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record. Delay occasioned by the person temporarily suspends for the time of the delay the period within which a person must be tried. If the delay occurs within 21 days after

the end of the period within which a person must be tried, the court may continue the cause on application of the State for not more than an additional 21 days beyond the period prescribed. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties, provided that any continuance granted shall be subject to Section 103-5 of the Code of Criminal Procedure of 1963 [725 ILCS 5/103-5].

(b) At the trial on the petition it shall be competent to introduce evidence of the commission by the respondent of any number of crimes together with whatever punishments, if any, were imposed. The petitioner may present expert testimony from both the Illinois Department of Corrections evaluator and the Department of Human Services psychologist.

(c) The person who is the subject of the petition, the person's attorney, the Attorney General or the State's Attorney may request that a trial under this Section be by a jury. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under Section 30 of this Act [725 ILCS 207/30]. If no request is made, the trial shall be by the court. The person, the person's attorney or the Attorney General or State's Attorney, whichever is applicable, may withdraw his or her request for a jury trial.

(d)(1) At a trial on a petition under this Act, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

(2) If the State alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated as provided in paragraph (e)(2) of Section 5 of this Act [725 ILCS 207/5], the State is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(e) Evidence that the person who is the subject of a petition under Section 15 of this Act [725 ILCS 207/15] was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(f) If the court or jury determines that the person who is the subject of a petition under Section 15 [725 ILCS 207/15] is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under Section 40 of this Act [725 ILCS 207/40]. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

(g) A judgment entered under subsection (f) of this Section on the finding that the person who is the subject of a petition under Section 15 [725 ILCS 207/15] is a sexually violent person is interlocutory to a commitment order under Section 40 [725 ILCS 207/40] and is reviewable on appeal.

725 Ill. Comp. Stat. Ann. § 207/40 (2010). Commitment
(a) If a court or jury determines that the person who is the subject of a petition under Section 15 of this Act [725 ILCS 207/15] is a sexually violent person, the court shall order the person to be committed to the custody of the Department for control, care and treatment until such time as the person is no longer a sexually violent person.

(b)(1) The court shall enter an initial commitment order under this Section pursuant to a hearing held as soon as practicable after the judgment is entered that the person who is the subject of a petition under Section 15 [725 ILCS 207/15] is a sexually violent person. If the court lacks sufficient information to make the determination required by paragraph (b)(2) of this Section immediately after trial, it may adjourn the hearing and order the Department to conduct a predisposition investigation or a supplementary mental examination, or both, to assist the court in framing the commitment order. A supplementary mental examination under this Section shall be conducted in accordance with Section 3-804 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/3-804].

(2) An order for commitment under this Section shall specify either institutional care in a secure facility, as provided under Section 50 of this Act [725 ILCS 207/50], or conditional release. In determining whether commitment shall be for institutional care in a secure facility or for conditional release, the court shall consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15 [725 ILCS 207/15], the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment. All treatment, whether in institutional care, in a secure facility, or while on conditional release, shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act [20 ILCS 4026/1 et seq.] and conducted by a treatment provider approved by the Board. The Department shall arrange for control, care and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the court's commitment order.

(3) If the court finds that the person is appropriate for conditional release, the court shall notify the Department. The Department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan. The conditional release program operated under this Section is not subject to the provisions of the Mental Health and Developmental Disabilities

Confidentiality Act [740 ILCS 110/1 et seq.].

(4) An order for conditional release places the person in the custody and control of the Department. A person on conditional release is subject to the conditions set by the court and to the rules of the Department. Before a person is placed on conditional release by the court under this Section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this Section does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified. If the Department alleges that a released person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, he or she may be taken into custody under the rules of the Department.

At any time during which the person is on conditional release, if the Department determines that the person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, the Department may request the Attorney General or State's Attorney to request the court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and transport the person to the county jail. The Department may request, or the Attorney General or State's Attorney may request independently of the Department, that a petition to revoke conditional release be filed. When a petition is filed, the court may order the Department to issue a notice to the person to be present at the Department or other agency designated by the court, order a summons to the person to be present, or order a body attachment for all law enforcement officers to take the person into custody and transport him or her to the county jail, hospital, or treatment facility. The Department shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court within 48 hours after the detention. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the Department may detain the person in a jail, in a hospital or treatment facility. The State has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that the conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment under Section 65 [725 ILCS 207/65] of this Act or until again placed on conditional release under Section 60 of this Act [725 ILCS 207/60].

(5) An order for conditional release places the person in the custody, care, and control of the Department. The court shall order the person be subject to the following rules of conditional release, in addition to any other conditions ordered, and the person shall be given a certificate setting forth the conditions of conditional release. These conditions shall be that the person:

(A) not violate any criminal statute of any jurisdiction;

(B) report to or appear in person before such person or agency as directed by the court and the Department;

(C) refrain from possession of a firearm or other dangerous weapon;

(D) not leave the State without the consent of the court or, in circumstances in which the reason for the absence is of such an emergency nature, that prior consent by the court is not possible without the prior notification and approval of the Department;

(E) at the direction of the Department, notify third parties of the risks that may be occasioned by his or her criminal record or sexual offending history or characteristics, and permit the supervising officer or agent to make the notification requirement;

(F) attend and fully participate in assessment, treatment, and behavior monitoring including, but not limited to, medical, psychological or psychiatric treatment specific to sexual offending, drug addiction, or alcoholism, to the extent appropriate to the person based upon the recommendation and findings made in the Department evaluation or based upon any subsequent recommendations by the Department;

(G) waive confidentiality allowing the court and Department access to assessment or treatment results or both;

(H) work regularly at a Department approved occupation or pursue a course of study or vocational training and notify the Department within 72 hours of any change in employment, study, or training;

(I) not be employed or participate in any volunteer activity that involves contact with children, except under circumstances approved in advance and in writing by the Department officer;

(J) submit to the search of his or her person, residence, vehicle, or any personal or real property under his or her control at any time by the Department;

(K) financially support his or her dependents and provide the Department access to any requested financial information;

(L) serve a term of home confinement, the conditions of which shall be that the person:

(i) remain within the interior premises of the place designated for his or her confinement during the hours designated by the Department;

(ii) admit any person or agent designated by the Department into the offender's place of confinement at any time for purposes of verifying the person's compliance with the condition of his or her confinement;

(iii) if deemed necessary by the Department, be placed on an electronic monitoring device;

(M) comply with the terms and conditions of an order of protection issued by the court pursuant to the Illinois Domestic Violence Act of 1986 [750 ILCS 60/101 et seq.]. A copy of the order of protection shall be transmitted to the Department by the clerk of the court;

(N) refrain from entering into a designated geographic area except upon terms the Department finds appropriate. The terms may include consideration of the purpose of the entry, the time of day, others accompanying the person, and advance approval by the Department;

(O) refrain from having any contact, including written or oral communications, directly or indirectly, with certain specified persons including, but not limited to, the victim or the victim's family, and report any incidental contact with the victim or the victim's family to the Department within 72 hours; refrain from entering onto the premises of, traveling past, or loitering near the victim's residence, place of employment, or other places frequented by the victim;

(P) refrain from having any contact, including written or oral communications, directly or indirectly, with particular types of persons, including but not limited to members of street gangs, drug users, drug dealers, or prostitutes;

(Q) refrain from all contact, direct or indirect, personally, by telephone, letter, or through another person, with minor children without prior identification and approval of the Department;

(R) refrain from having in his or her body the presence of alcohol or any illicit drug prohibited by the Cannabis Control Act [720 ILCS 550/1 et seq.], the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.], or the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.], unless prescribed by a physician, and submit samples of his or her breath, saliva, blood, or urine for tests to determine the presence of alcohol or any illicit drug;

(S) not establish a dating, intimate, or sexual relationship with a person without prior written notification to the Department;

(T) neither possess or have under his or her control any material that is pornographic, sexually oriented, or sexually stimulating, or that depicts or alludes to sexual activity or depicts minors under the age of 18, including but not limited to visual, auditory, telephonic, electronic media, or any matter obtained through access to any computer or material linked to computer access use;

(U) not patronize any business providing sexually stimulating or sexually oriented entertainment nor utilize "900" or adult telephone numbers or any other sex-related

telephone numbers;

(V) not reside near, visit, or be in or about parks, schools, day care centers, swimming pools, beaches, theaters, or any other places where minor children congregate without advance approval of the Department and report any incidental contact with minor children to the Department within 72 hours;

(W) not establish any living arrangement or residence without prior approval of the Department;

(X) not publish any materials or print any advertisements without providing a copy of the proposed publications to the Department officer and obtaining permission prior to publication;

(Y) not leave the county except with prior permission of the Department and provide the Department officer or agent with written travel routes to and from work and any other designated destinations;

(Z) not possess or have under his or her control certain specified items of contraband related to the incidence of sexually offending items including video or still camera items or children's toys;

(AA) provide a written daily log of activities as directed by the Department;

(BB) comply with all other special conditions that the Department may impose that restrict the person from high-risk situations and limit access or potential victims.

(6) A person placed on conditional release and who during the term undergoes mandatory drug or alcohol testing or is assigned to be placed on an approved electronic monitoring device may be ordered to pay all costs incidental to the mandatory drug or alcohol testing and all costs incidental to the approved electronic monitoring in accordance with the person's ability to pay those costs. The Department may establish reasonable fees for the cost of maintenance, testing, and incidental expenses related to the mandatory drug or alcohol testing and all costs incidental to approved electronic monitoring.

725 ILL. COMP. STAT. ANN. § 207/55 (2010). PERIODIC REEXAMINATION; REPORT

(a) If a person has been committed under Section 40 of this Act [725 ILCS 207/40] and has not been discharged under Section 65 of this Act [725 ILCS 207/65], the Department shall submit a written report to the court on his or her mental condition within 6 months after an initial commitment under Section 40 [725 ILCS 207/40] and then at least once every 12 months thereafter for the purpose of determining whether the person has made sufficient progress to be conditionally released or discharged. At the time of a reexamination under this Section, the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a

professional person to examine him or her.

(b) Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's health care records and shall provide a copy of the report to the court that committed the person under Section 40 [725 ILCS 207/40]. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act [20 ILCS 4026/1 et seq.] and by an evaluator approved by the Board.

(c) Notwithstanding subsection (a) of this Section, the court that committed a person under Section 40 [725 ILCS 207/40] may order a reexamination of the person at any time during the period in which the person is subject to the commitment order. Any examiner conducting an examination under this Section shall prepare a written report of the examination no later than 30 days after the date of the examination.

(d) Petitions for discharge after reexamination must follow the procedure outlined in Section 65 of this Act [725 ILCS 207/65].

725 ILL. COMP. STAT. ANN. § 207/60 (2010). PETITION FOR CONDITIONAL RELEASE

(a) Any person who is committed for institutional care in a secure facility or other facility under Section 40 of this Act [725 ILCS 207/40] may petition the committing court to modify its order by authorizing conditional release if at least 6 months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this Section on the person's behalf at any time.

(b) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the Attorney General or State's Attorney, whichever is applicable and, subject to paragraph (c)(1) of Section 25 of this Act [725 ILCS 207/25], appoint counsel. If the person petitions through counsel, his or her attorney shall serve the Attorney General or State's Attorney, whichever is applicable.

(c) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the mental condition of the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records and patient health care records. If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release. The State has the right to have the person evaluated by experts chosen by the State. Any examination or evaluation conducted under this Section shall be in conformance with the standards developed under the Sex Offender Management Board

Act [20 ILCS 4026/1 et seq.] and conducted by an evaluator approved by the Board. The court shall set a probable cause hearing as soon as practical after the examiner's report is filed. If the court determines at the probable cause hearing that cause exists to believe that it is not substantially probable that the person will engage in acts of sexual violence if on release or conditional release, the court shall set a hearing on the issue.

(d) The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. The court shall grant the petition unless the State proves by clear and convincing evidence that the person has not made sufficient progress to be conditionally released. In making a decision under this subsection, the court must consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15 of this Act [725 ILCS 207/15], the person's mental history and present mental condition, where the person will live, how the person will support himself or herself and what arrangements are available to ensure that the person has access to and will participate in necessary treatment.

(e) Before the court may enter an order directing conditional release to a less restrictive alternative it must find the following: (1) the person will be treated by a Department approved treatment provider, (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for the treatment and will report progress to the Department on a regular basis, and will report violations immediately to the Department, consistent with treatment and supervision needs of the respondent, (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the Department if the person leaves the housing to which he or she has been assigned without authorization, (4) the person is willing to or has agreed to comply with the treatment provider, the Department, and the court, and (5) the person has agreed or is willing to agree to comply with the behavioral monitoring requirements imposed by the court and the Department.

(f) If the court finds that the person is appropriate for conditional release, the court shall notify the Department. The Department shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The Department may contract with a county health department, with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the Department and the person to be released request additional time to develop the plan.

(g) The provisions of paragraphs (b)(4), (b)(5), and (b)(6) of Section 40 of this Act [725 ILCS 207/40] apply to an order for conditional release issued under this Section.

725 ILL. COMP. STAT. ANN. § 207/65 (2010). PETITION FOR DISCHARGE; PROCEDURE

(a)(1) If the Secretary determines at any time that a person committed under this Act is no longer a sexually violent person, the Secretary shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the Attorney General or the State's Attorney's office that filed the petition under subsection (a) of Section 15 of this Act [725 ILCS 207/15], whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

(2) At a hearing under this subsection, the Attorney General or State's Attorney, whichever filed the original petition, shall represent the State and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act [20 ILCS 4026/1 et seq.] and by an evaluator approved by the Board. The committed person or the State may elect to have the hearing before a jury. The State has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(3) If the court or jury is satisfied that the State has not met its burden of proof under paragraph (a)(2) of this Section, the petitioner shall be discharged from the custody or supervision of the Department. If the court is satisfied that the State has met its burden of proof under paragraph (a)(2), the court may proceed under Section 40 of this Act [725 ILCS 207/40] to determine whether to modify the petitioner's existing commitment order.

(b)(1) A person may petition the committing court for discharge from custody or supervision without the Secretary's approval. At the time of an examination under subsection (a) of Section 55 of this Act [725 ILCS 207/55], the Secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the Secretary's objection. The notice shall contain a waiver of rights. The Secretary shall forward the notice and waiver form to the court with the report of the Department's examination under Section 55 of this Act [725 ILCS 207/55]. If the person does not affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. If a person does not file a petition for discharge, yet fails to waive the right to petition under this Section, then the probable cause hearing consists only of a review of the reexamination reports and arguments on behalf of the parties. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing. The probable cause hearing under this Section must be held within 45 days of the filing of the reexamination report under Section 55 of this Act [725 ILCS 207/55].

(2) If the court determines at the probable cause hearing under paragraph (b)(1) of this

Section that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this Section, the committed person is entitled to be present and to the benefit of the protections afforded to the person under Section 25 of this Act [725 ILCS 207/25]. The committed person or the State may elect to have a hearing under this Section before a jury. A verdict of a jury under this Section is not valid unless it is unanimous. The Attorney General or State's Attorney, whichever filed the original petition, shall represent the State at a hearing under this Section. The State has the right to have the committed person evaluated by experts chosen by the State. The examination shall be conducted in conformance with the standards developed under the Sex Offender Management Board Act [20 ILCS 4026/1 et seq.] and by an evaluator approved by the Board. At the hearing, the State has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(3) If the court or jury is satisfied that the State has not met its burden of proof under paragraph (b)(2) of this Section, the person shall be discharged from the custody or supervision of the Department. If the court or jury is satisfied that the State has met its burden of proof under paragraph (b)(2) of this Section, the court may proceed under Section 40 of this Act [725 ILCS 207/40] to determine whether to modify the person's existing commitment order.

725 ILL. COMP. STAT. ANN. § 207/70 (2010). ADDITIONAL DISCHARGE PETITIONS

In addition to the procedures under Section 65 of this Act [725 ILCS 207/65], a committed person may petition the committing court for discharge at any time, and the court must set the matter for a probable cause hearing; however, if a person has previously filed a petition for discharge without the Secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this Section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing and continue proceedings under paragraph (b)(2) of Section 65 [725 ILCS 207/65], if appropriate. If the person has not previously filed a petition for discharge without the Secretary's approval, the court shall set a probable cause hearing and continue proceedings under paragraph (b)(2) of Section 65 [725 ILCS 207/65], if appropriate.

725 ILL. COMP. STAT. ANN. § 207/75 (2010). NOTICE CONCERNING CONDITIONAL RELEASE, DISCHARGE, ESCAPE, DEATH, OR COURT-ORDERED CHANGE IN THE CUSTODY STATUS OF A DETAINEE OR CIVILLY COMMITTED SEXUALLY VIOLENT PERSON

(a) As used in this Section, the term:

(1) "Act of sexual violence" means an act or attempted act that is a basis for an allegation

made in a petition under paragraph (b)(1) of Section 15 of this Act [725 ILCS 207/15].

(2) "Member of the family" means spouse, child, sibling, parent, or legal guardian.

(3) "Victim" means a person against whom an act of sexual violence has been committed.

(b) If the court places a civilly committed sexually violent person on conditional release under Section 40 or 60 of this Act [725 ILCS 207/40 or 725 ILCS 207/60] or discharges a person under Section 65 [725 ILCS 207/65], or if a detainee or civilly committed sexually violent person escapes, dies, or is subject to any court-ordered change in custody status of the detainee or sexually violent person, the Department shall make a reasonable attempt, if he or she can be found, to notify all of the following who have requested notification under this Act or under the Rights of Crime Victims and Witnesses Act [725 ILCS 120/1 et seq.]:

(1) Whichever of the following persons is appropriate in accordance with the provisions of subsection (a)(3):

(A) The victim of the act of sexual violence.

(B) An adult member of the victim's family, if the victim died as a result of the act of sexual violence.

(C) The victim's parent or legal guardian, if the victim is younger than 18 years old.

(2) The Department of Corrections or the Department of Juvenile Justice.

(c) The notice under subsection (b) of this Section shall inform the Department of Corrections or the Department of Juvenile Justice and the person notified under paragraph (b)(1) of this Section of the name of the person committed under this Act and the date the person is placed on conditional release, discharged, or if a detainee or civilly committed sexually violent person escapes, dies, or is subject to any court-ordered change in the custody status of the detainee or sexually violent person. The Department shall send the notice, postmarked at least 60 days before the date the person committed under this Act is placed on conditional release, discharged, or if a detainee or civilly committed sexually violent person escapes, dies, or is subject to any court-ordered change in the custody status of the detainee or sexually violent person, unless unusual circumstances do not permit advance written notification, to the Department of Corrections or the Department of Juvenile Justice and the last-known address of the person notified under paragraph (b)(1) of this Section.

(d) The Department shall design and prepare cards for persons specified in paragraph (b)(1) of this Section to send to the Department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this Act and any other information the Department determines is necessary. The Department shall provide the cards, without charge, to the Attorney General and State's

Attorneys. The Attorney General and State's Attorneys shall provide the cards, without charge, to persons specified in paragraph (b)(1) of this Section. These persons may send completed cards to the Department. All records or portions of records of the Department that relate to mailing addresses of these persons are not subject to inspection or copying under Section 3 of the Freedom of Information Act [5 ILCS 140/3].

725 ILL. COMP. STAT. ANN. § 207/80 (2010). APPLICABILITY

This Act applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on, or after the effective date of this Act.

725 ILL. COMP. STAT. ANN. § 5/5-2-4 (2010). PROCEEDINGS AFTER ACQUITTAL BY REASON OF INSANITY

(a) After a finding or verdict of not guilty by reason of insanity under Sections 104-25, 115-3 or 115-4 of the Code of Criminal Procedure of 1963 [725 ILCS 5/104-25, 725 ILCS 5/115-3 or 725 ILCS 5/115-4], the defendant shall be ordered to the Department of Human Services for an evaluation as to whether he is in need of mental health services. The order shall specify whether the evaluation shall be conducted on an inpatient or outpatient basis. If the evaluation is to be conducted on an inpatient basis, the defendant shall be placed in a secure setting unless the Court determines that there are compelling reasons why such placement is not necessary. With the court order for evaluation shall be sent a copy of the arrest report, criminal charges, arrest record, jail record, and any report prepared under Section 115-6 of the Code of Criminal Procedure of 1963 [725 ILCS 5/115-6]. After the evaluation and during the period of time required to determine the appropriate placement, the defendant shall remain in jail. Upon completion of the placement process the sheriff shall be notified and shall transport the defendant to the designated facility.

The Department shall provide the Court with a report of its evaluation within 30 days of the date of this order. The Court shall hold a hearing as provided under the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.] to determine if the individual is: (a) in need of mental health services on an inpatient basis; (b) in need of mental health services on an outpatient basis; (c) a person not in need of mental health services. The Court shall enter its findings.

If the defendant is found to be in need of mental health services on an inpatient care basis, the Court shall order the defendant to the Department of Human Services. The defendant shall be placed in a secure setting unless the Court determines that there are compelling reasons why such placement is not necessary. Such defendants placed in a secure setting shall not be permitted outside the facility's housing unit unless escorted or accompanied by personnel of the Department of Human Services or with the prior approval of the Court for unsupervised on-grounds privileges as provided herein. Any defendant placed in a secure setting pursuant to this Section, transported to court hearings or other necessary appointments off facility grounds by personnel of the Department of Human Services, shall be placed in security devices or otherwise secured during the period of transportation to assure secure transport of the defendant and the safety of Department of Human Services personnel and others. These security measures shall not

constitute restraint as defined in the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.]. If the defendant is found to be in need of mental health services, but not on an inpatient care basis, the Court shall conditionally release the defendant, under such conditions as set forth in this Section as will reasonably assure the defendant's satisfactory progress and participation in treatment or rehabilitation and the safety of the defendant and others. If the Court finds the person not in need of mental health services, then the Court shall order the defendant discharged from custody.

(a-1) Definitions. For the purposes of this Section:

(A) (Blank).

(B) "In need of mental health services on an inpatient basis" means: a defendant who has been found not guilty by reason of insanity but who due to mental illness is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care.

(C) "In need of mental health services on an outpatient basis" means: a defendant who has been found not guilty by reason of insanity who is not in need of mental health services on an inpatient basis, but is in need of outpatient care, drug and/or alcohol rehabilitation programs, community adjustment programs, individual, group, or family therapy, or chemotherapy.

(D) "Conditional Release" means: the release from either the custody of the Department of Human Services or the custody of the Court of a person who has been found not guilty by reason of insanity under such conditions as the Court may impose which reasonably assure the defendant's satisfactory progress in treatment or habilitation and the safety of the defendant and others. The Court shall consider such terms and conditions which may include, but need not be limited to, outpatient care, alcoholic and drug rehabilitation programs, community adjustment programs, individual, group, family, and chemotherapy, random testing to ensure the defendant's timely and continuous taking of any medicines prescribed to control or manage his or her conduct or mental state, and periodic checks with the legal authorities and/or the Department of Human Services. The Court may order as a condition of conditional release that the defendant not contact the victim of the offense that resulted in the finding or verdict of not guilty by reason of insanity or any other person. The Court may order the Department of Human Services to provide care to any person conditionally released under this Section. The Department may contract with any public or private agency in order to discharge any responsibilities imposed under this Section. The Department shall monitor the provision of services to persons conditionally released under this Section and provide periodic reports to the Court concerning the services and the condition of the defendant. Whenever a person is conditionally released pursuant to this Section, the State's Attorney for the county in which the hearing is held shall designate in writing the name, telephone number, and address of a person employed by him or her who shall be notified in the event that either the reporting agency or the Department decides that the conditional release of the defendant should be revoked or modified pursuant to subsection (i) of this Section. Such

conditional release shall be for a period of five years. However, the defendant, the person or facility rendering the treatment, therapy, program or outpatient care, the Department, or the State's Attorney may petition the Court for an extension of the conditional release period for an additional 5 years. Upon receipt of such a petition, the Court shall hold a hearing consistent with the provisions of paragraph (a), this paragraph (a-1), and paragraph (f) of this Section, shall determine whether the defendant should continue to be subject to the terms of conditional release, and shall enter an order either extending the defendant's period of conditional release for an additional 5 year period or discharging the defendant. Additional 5-year periods of conditional release may be ordered following a hearing as provided in this Section. However, in no event shall the defendant's period of conditional release continue beyond the maximum period of commitment ordered by the Court pursuant to paragraph (b) of this Section. These provisions for extension of conditional release shall only apply to defendants conditionally released on or after August 8, 2003. However the extension provisions of Public Act 83-1449 apply only to defendants charged with a forcible felony.

(E) "Facility director" means the chief officer of a mental health or developmental disabilities facility or his or her designee or the supervisor of a program of treatment or habilitation or his or her designee. "Designee" may include a physician, clinical psychologist, social worker, nurse, or clinical professional counselor.

(b) If the Court finds the defendant in need of mental health services on an inpatient basis, the admission, detention, care, treatment or habilitation, treatment plans, review proceedings, including review of treatment and treatment plans, and discharge of the defendant after such order shall be under the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.], except that the initial order for admission of a defendant acquitted of a felony by reason of insanity shall be for an indefinite period of time. Such period of commitment shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior as provided in Section 5-4-1 [730 ILCS 5/5-4-1] of the Unified Code of Corrections, before becoming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity. The Court shall determine the maximum period of commitment by an appropriate order. During this period of time, the defendant shall not be permitted to be in the community in any manner, including but not limited to off-grounds privileges, with or without escort by personnel of the Department of Human Services, unsupervised on-grounds privileges, discharge or conditional or temporary release, except by a plan as provided in this Section. In no event shall a defendant's continued unauthorized absence be a basis for discharge. Not more than 30 days after admission and every 60 days thereafter so long as the initial order remains in effect, the facility director shall file a treatment plan report in writing with the court and forward a copy of the treatment plan report to the clerk of the court, the State's Attorney, and the defendant's attorney, if the defendant is represented by counsel, or to a person authorized by the defendant under the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110/1 et seq.] to be sent a copy of the report. The report shall include an opinion as to whether the defendant is currently in need of mental health services on an inpatient basis or in need of mental

health services on an outpatient basis. The report shall also summarize the basis for those findings and provide a current summary of the following items from the treatment plan: (1) an assessment of the defendant's treatment needs, (2) a description of the services recommended for treatment, (3) the goals of each type of element of service, (4) an anticipated timetable for the accomplishment of the goals, and (5) a designation of the qualified professional responsible for the implementation of the plan. The report may also include unsupervised on-grounds privileges, off-grounds privileges (with or without escort by personnel of the Department of Human Services), home visits and participation in work programs, but only where such privileges have been approved by specific court order, which order may include such conditions on the defendant as the Court may deem appropriate and necessary to reasonably assure the defendant's satisfactory progress in treatment and the safety of the defendant and others.

(c) Every defendant acquitted of a felony by reason of insanity and subsequently found to be in need of mental health services shall be represented by counsel in all proceedings under this Section and under the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.].

(1) The Court shall appoint as counsel the public defender or an attorney licensed by this State.

(2) Upon filing with the Court of a verified statement of legal services rendered by the private attorney appointed pursuant to paragraph (1) of this subsection, the Court shall determine a reasonable fee for such services. If the defendant is unable to pay the fee, the Court shall enter an order upon the State to pay the entire fee or such amount as the defendant is unable to pay from funds appropriated by the General Assembly for that purpose.

(d) When the facility director determines that:

(1) the defendant is no longer in need of mental health services on an inpatient basis; and

(2) the defendant may be conditionally released because he or she is still in need of mental health services or that the defendant may be discharged as not in need of any mental health services; or

(3) the defendant no longer requires placement in a secure setting;

the facility director shall give written notice to the Court, State's Attorney and defense attorney. Such notice shall set forth in detail the basis for the recommendation of the facility director, and specify clearly the recommendations, if any, of the facility director, concerning conditional release. Any recommendation for conditional release shall include an evaluation of the defendant's need for psychotropic medication, what provisions should be made, if any, to ensure that the defendant will continue to receive psychotropic medication following discharge, and what provisions should be made to assure the safety of the defendant and others in the event the defendant is no longer receiving psychotropic

medication. Within 30 days of the notification by the facility director, the Court shall set a hearing and make a finding as to whether the defendant is:

(i) (blank); or

(ii) in need of mental health services in the form of inpatient care; or

(iii) in need of mental health services but not subject to inpatient care; or

(iv) no longer in need of mental health services; or

(v) no longer requires placement in a secure setting.

Upon finding by the Court, the Court shall enter its findings and such appropriate order as provided in subsections (a) and (a-1) of this Section.

(e) A defendant admitted pursuant to this Section, or any person on his behalf, may file a petition for treatment plan review, transfer to a non-secure setting within the Department of Human Services or discharge or conditional release under the standards of this Section in the Court which rendered the verdict. Upon receipt of a petition for treatment plan review, transfer to a non-secure setting or discharge or conditional release, the Court shall set a hearing to be held within 120 days. Thereafter, no new petition may be filed for 180 days without leave of the Court.

(f) The Court shall direct that notice of the time and place of the hearing be served upon the defendant, the facility director, the State's Attorney, and the defendant's attorney. If requested by either the State or the defense or if the Court feels it is appropriate, an impartial examination of the defendant by a psychiatrist or clinical psychologist as defined in Section 1-103 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-103] who is not in the employ of the Department of Human Services shall be ordered, and the report considered at the time of the hearing.

(g) The findings of the Court shall be established by clear and convincing evidence. The burden of proof and the burden of going forth with the evidence rest with the defendant or any person on the defendant's behalf when a hearing is held to review a petition filed by or on behalf of the defendant. The evidence shall be presented in open Court with the right of confrontation and cross-examination. Such evidence may include, but is not limited to:

(1) whether the defendant appreciates the harm caused by the defendant to others and the community by his or her prior conduct that resulted in the finding of not guilty by reason of insanity;

(2) Whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;

(3) the current state of the defendant's illness;

(4) what, if any, medications the defendant is taking to control his or her mental illness;

(5) what, if any, adverse physical side effects the medication has on the defendant;

(6) the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;

(7) the defendant's history or potential for alcohol and drug abuse;

(8) the defendant's past criminal history;

(9) any specialized physical or medical needs of the defendant;

(10) any family participation or involvement expected upon release and what is the willingness and ability of the family to participate or be involved;

(11) the defendant's potential to be a danger to himself, herself, or others; and

(12) any other factor or factors the Court deems appropriate.

(h) Before the court orders that the defendant be discharged or conditionally released, it shall order the facility director to establish a discharge plan that includes a plan for the defendant's shelter, support, and medication. If appropriate, the court shall order that the facility director establish a program to train the defendant in self-medication under standards established by the Department of Human Services. If the Court finds, consistent with the provisions of this Section, that the defendant is no longer in need of mental health services it shall order the facility director to discharge the defendant. If the Court finds, consistent with the provisions of this Section, that the defendant is in need of mental health services, and no longer in need of inpatient care, it shall order the facility director to release the defendant under such conditions as the Court deems appropriate and as provided by this Section. Such conditional release shall be imposed for a period of 5 years as provided in paragraph (D) of subsection (a-1) and shall be subject to later modification by the Court as provided by this Section. If the Court finds consistent with the provisions in this Section that the defendant is in need of mental health services on an inpatient basis, it shall order the facility director not to discharge or release the defendant in accordance with paragraph (b) of this Section.

(i) If within the period of the defendant's conditional release the State's Attorney determines that the defendant has not fulfilled the conditions of his or her release, the State's Attorney may petition the Court to revoke or modify the conditional release of the defendant. Upon the filing of such petition the defendant may be remanded to the custody of the Department, or to any other mental health facility designated by the Department, pending the resolution of the petition. Nothing in this Section shall prevent the emergency admission of a defendant pursuant to Article VI of Chapter III of the Mental

Health and Developmental Disabilities Code [405 ILCS 5/3-600 et seq.] or the voluntary admission of the defendant pursuant to Article IV of Chapter III of the Mental Health and Developmental Disabilities Code [405 ILCS 5/3-400 et seq.]. If the Court determines, after hearing evidence, that the defendant has not fulfilled the conditions of release, the Court shall order a hearing to be held consistent with the provisions of paragraph (f) and (g) of this Section. At such hearing, if the Court finds that the defendant is in need of mental health services on an inpatient basis, it shall enter an order remanding him or her to the Department of Human Services or other facility. If the defendant is remanded to the Department of Human Services, he or she shall be placed in a secure setting unless the Court determines that there are compelling reasons that such placement is not necessary. If the Court finds that the defendant continues to be in need of mental health services but not on an inpatient basis, it may modify the conditions of the original release in order to reasonably assure the defendant's satisfactory progress in treatment and his or her safety and the safety of others in accordance with the standards established in paragraph (D) of subsection (a-1). Nothing in this Section shall limit a Court's contempt powers or any other powers of a Court.

(j) An order of admission under this Section does not affect the remedy of habeas corpus.

(k) In the event of a conflict between this Section and the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-103] or the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110/1 et seq.], the provisions of this Section shall govern.

(l) This amendatory Act shall apply to all persons who have been found not guilty by reason of insanity and who are presently committed to the Department of Mental Health and Developmental Disabilities (now the Department of Human Services) [405 ILCS 5/1-103].

(m) The Clerk of the Court shall, after the entry of an order of transfer to a non-secure setting of the Department of Human Services or discharge or conditional release, transmit a certified copy of the order to the Department of Human Services, and the sheriff of the county from which the defendant was admitted. The Clerk of the Court shall also transmit a certified copy of the order of discharge or conditional release to the Illinois Department of State Police, to the proper law enforcement agency for the municipality where the offense took place, and to the sheriff of the county into which the defendant is conditionally discharged. The Illinois Department of State Police shall maintain a centralized record of discharged or conditionally released defendants while they are under court supervision for access and use of appropriate law enforcement agencies.

725 ILL. COMP. STAT. ANN. § 5/5-2-6 (2010). SENTENCING AND TREATMENT OF DEFENDANT FOUND GUILTY BUT MENTALLY ILL

(a) After a plea or verdict of guilty but mentally ill under Sections 115-2, 115-3 or 115-4 of the Code of Criminal Procedure of 1963 [725 ILCS 5/115-2, 725 ILCS 5/115-3 or 725 ILCS 5/115-4], the court shall order a presentence investigation and report pursuant to Sections 5-3-1 and 5-3-2 of this Act [730 ILCS 5/5-3-1 and 730 ILCS 5/5-3-2], and shall

set a date for a sentencing hearing. The court may impose any sentence upon the defendant which could be imposed pursuant to law upon a defendant who had been convicted of the same offense without a finding of mental illness.

(b) If the court imposes a sentence of imprisonment upon a defendant who has been found guilty but mentally ill, the defendant shall be committed to the Department of Corrections, which shall cause periodic inquiry and examination to be made concerning the nature, extent, continuance, and treatment of the defendant's mental illness. The Department of Corrections shall provide such psychiatric, psychological, or other counseling and treatment for the defendant as it determines necessary.

(c) The Department of Corrections may transfer the defendant's custody to the Department of Human Services in accordance with the provisions of Section 3-8-5 of this Act [730 ILCS 5/3-8-5].

(d)(1) The Department of Human Services shall return to the Department of Corrections any person committed to it pursuant to this Section whose sentence has not expired and whom the Department of Human Services deems no longer requires hospitalization for mental treatment, mental retardation, or addiction.

(2) The Department of Corrections shall notify the Secretary of Human Services of the expiration of the sentence of any person transferred to the Department of Human Services under this Section. If the Department of Human Services determines that any such person requires further hospitalization, it shall file an appropriate petition for involuntary commitment pursuant to the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-100 et seq.].

(e)(1) All persons found guilty but mentally ill, whether by plea or by verdict, who are placed on probation or sentenced to a term of periodic imprisonment or a period of conditional discharge shall be required to submit to a course of mental treatment prescribed by the sentencing court.

(2) The course of treatment prescribed by the court shall reasonably assure the defendant's satisfactory progress in treatment or habilitation and for the safety of the defendant and others. The court shall consider terms, conditions and supervision which may include, but need not be limited to, notification and discharge of the person to the custody of his family, community adjustment programs, periodic checks with legal authorities and outpatient care and utilization of local mental health or developmental disabilities facilities.

(3) Failure to continue treatment, except by agreement with the treating person or agency and the court, shall be a basis for the institution of probation revocation proceedings.

(4) The period of probation shall be in accordance with Article 4.5 of Chapter V of this Code [730 ILCS 5/5-4.5-5 et seq.] and shall not be shortened without receipt and

consideration of such psychiatric or psychological report or reports as the court may require.

INDIANA

IND. CODE ANN. § 11-10-4-2 (2010). CARE AND TREATMENT TO BE PROVIDED.

The department shall provide for the care and treatment of every confined offender who is determined to be mentally ill by a psychiatrist employed or retained by the department. To provide that care and treatment, the department may:

(1) establish and operate its own mental health facilities and programs;

(2) transfer offenders to the division of mental health and addiction, subject to the approval of the director of the division of mental health and addiction; or

(3) contract with any city, county, state, or federal authority or with other public or private organizations for the provision of care and treatment.

IND. CODE ANN. § 11-10-4-3 (2010). INVOLUNTARY TRANSFER TO DIVISION OF MENTAL HEALTH AND ADDICTION OR MENTAL HEALTH FACILITY.

(a) A committed offender may be involuntarily transferred to the division of mental health and addiction or to a mental health facility only if:

(1) the offender has been examined by a psychiatrist employed or retained by the department and the psychiatrist reports to the department in writing that, in the psychiatrist's opinion, the offender has a mental illness and is in need of care and treatment by the division of mental health and addiction or in a mental health facility;

(2) the director of mental health approves of the transfer if the offender is to be transferred to the division of mental health and addiction; and

(3) the department affords the offender a hearing to determine the need for the transfer, which hearing must comply with the following minimum standards:

(A) The offender shall be given at least ten (10) days advance written and verbal notice of the date, time, and place of the hearing and the reason for the contemplated transfer. This notice must advise the offender of the rights enumerated in clauses (C) and (D). Notice must also be given to one (1) of the following:

(i) The offender's spouse.

(ii) The offender's parent.

(iii) The offender's attorney.

(iv) The offender's guardian.

(v) The offender's custodian.

(vi) The offender's relative.

(B) A copy of the psychiatrist's report must be given to the offender not later than at the time notice of the hearing is given.

(C) The offender is entitled to appear in person, speak in the offender's own behalf, call witnesses, present documentary evidence, and confront and cross-examine witnesses.

(D) The offender is entitled to be represented by counsel or other representative.

(E) The offender must be given a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken.

(F) A finding that the offender is in need of mental health care and treatment in the division of mental health and addiction or a mental health facility must be based upon clear and convincing evidence.

(b) If the official in charge of the facility or program to which the offender is assigned determines that emergency care and treatment in the division of mental health and addiction or a mental health facility is necessary to control a mentally ill offender who is either gravely disabled or dangerous, that offender may be involuntarily transferred, subject to the approval of the director of the division of mental health and addiction, before holding the hearing described in subsection (a)(3). However, this subsection does not deprive the offender of the offender's right to a hearing.

(c) The official in charge of the division of mental health and addiction or facility to which an offender is transferred under this section must give the offender a semiannual written report, based on a psychiatrist's examination, concerning the offender's mental condition and the need for continued care and treatment in the division of mental health and addiction or facility. If the report states that the offender is still in need of care and treatment in the division of mental health and addiction or a mental health facility, the division of mental health and addiction or facility shall, upon request of the offender or a representative in the offender's behalf, conduct a hearing to review the need for that continued care and treatment. The hearing must comply with the minimum standards established by subsection (a)(3). The division of mental health and addiction or facility to which the offender is transferred under this section may conduct a hearing under this subsection upon its initiative.

(d) If the division of mental health and addiction or facility to which an offender is

transferred under this section determines that the offender no longer needs care and treatment in the division of mental health and addiction or facility, the division of mental health and addiction or facility shall return the offender to the custody of the department of correction, and the department of correction shall reassign the offender to another facility or program.

(e) After an offender has been involuntarily transferred to and accepted by the division of mental health and addiction, the department shall transmit any information required by the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

IND. CODE ANN. § 11-10-4-5 (2010). EFFECT OF TRANSFER ON TERM OF IMPRISONMENT.

A transfer under this chapter does not extend an offender's term of imprisonment or commitment. However, if it is determined that an offender transferred under this chapter will be in need of mental health care and treatment after the offender's term of imprisonment or commitment ends, the division of mental health and addiction or facility to which the offender was transferred may institute commitment proceedings under IC 12-26.

IND. CODE ANN. § 12-23-11-1 (2010). ELIGIBILITY FOR INVOLUNTARY COMMITMENT.

(a) Except as provided in subsection (b), an individual who is:

(1) An alcoholic;

(2) Incapacitated by alcohol; or

(3) A drug abuser;

may be involuntarily committed to the care of the division under IC 12-26.

(b) A drug abuser who is charged with or convicted of an offense that makes the individual ineligible to make an election for treatment under IC 12-23-6 may not be involuntarily committed under subsection (a).

IND. CODE ANN. § 12-26-1-1 (2010). STATUTES APPLICABLE TO INVOLUNTARY DETENTION OR COMMITMENT.

An individual who is mentally ill and either dangerous or gravely disabled may be involuntarily detained or committed under any of the following statutes:

(1) IC 12-26-4 (immediate detention).

(2) IC 12-26-5 (emergency detention).

(3) IC 12-26-6 (temporary commitment).

(4) IC 12-26-7 (regular commitment).

IND. CODE ANN. § 12-26-1-3 (2010). CRIMINAL DEFENDANT FOUND NOT RESPONSIBLE BY REASON OF INSANITY -- COMMITMENT HEARING -- TRANSFER OF JURISDICTION.

A court that conducted the trial has jurisdiction over a hearing required to be held by IC 35-36-2-4. The court retains jurisdiction over the individual held under IC 35-36-2-4 until the completion of the commitment hearing. After completion of the commitment hearing, jurisdiction is transferred to a court having jurisdiction under section 2 [IC 12-26-1-2] of this chapter and all subsequent petitions or motions shall be filed with the court to which the proceeding is transferred. The file of the commitment hearing also shall be transferred from the committing court to the court having probate jurisdiction.

IND. CODE ANN. § 12-26-1-6 (2010). APPLICABILITY OF RULES OF TRIAL PROCEDURE.

Except as otherwise provided, a judicial proceeding under this article shall be conducted as other civil proceedings according to the Indiana Rules of Trial Procedure.

IND. CODE ANN. § 12-26-1-8 (2010). DETENTION UPON FILING OF PETITION FOR COMMITMENT.

Upon the filing of a petition for commitment under IC 12-26-6 or IC 12-26-7 or the filing of a report under IC 12-26-3-5, the individual may be detained in an appropriate facility:

(1) By an order of the court pending a hearing; or

(2) Pending an order of the court under:

(A) IC 12-26-3-6;

(B) IC 12-26-5-10; or

(C) IC 12-26-5-11.

IND. CODE ANN. § 12-26-1-9 (2010). APPEALS FROM INVOLUNTARY DETENTION OR COMMITMENT ORDERS OR JUDGMENTS.

(a) In a proceeding involving involuntary detention or commitment under this article, appeals from the final orders or judgments of the court of original jurisdiction may be taken by any of the following:

(1) The individual who is the subject of the proceeding.

(2) A petitioner in the proceeding.

(3) An aggrieved person.

(b) An appeal must be taken in the same manner as any other civil case according to the Indiana Rules of Trial and Appellate Procedure.

IND. CODE ANN. § 35-36-2-4 (2010). COMMITMENT PROCEEDINGS.

(a) Whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold a commitment hearing under IC 12-26-7.

(b) The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing. The court may take judicial notice of evidence introduced during the trial of the defendant and may call the physicians appointed by the court to testify concerning whether the defendant is currently mentally ill and dangerous or currently mentally ill and gravely disabled, as those terms are defined by IC 12-7-2-96 and IC 12-7-2-130(1). The court may subpoena any other persons with knowledge concerning the issues presented at the hearing.

(c) The defendant has all the rights provided by the provisions of IC 12-26 under which the petition against the defendant was filed. The prosecuting attorney may cross-examine the witnesses and present relevant evidence concerning the issues presented at the hearing.

(d) If a court orders an individual to be committed under IC 12-26-6 or IC 12-26-7 following a verdict of not responsible by reason of insanity at the time of the crime, the superintendent of the facility to which the individual is committed and the attending physician are subject to the requirements of IC 12-26-15-1.

(e) If a defendant is found not responsible by reason of insanity, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

IND. CODE ANN. § 35-36-2-5 (2010). SENTENCING OF DEFENDANT FOUND GUILTY BUT MENTALLY ILL -- EXCEPTION FOR MENTALLY RETARDED INDIVIDUALS.

(a) Except as provided by subsection (e), whenever a defendant is found guilty but mentally ill at the time of the crime or enters a plea to that effect that is accepted by the court, the court shall sentence the defendant in the same manner as a defendant found guilty of the offense.

(b) Before sentencing the defendant under subsection (a), the court shall require the defendant to be evaluated by a physician licensed under IC 25-22.5 who practices

psychiatric medicine, a licensed psychologist, or a community mental health center (as defined in IC 12-7-2-38). However, the court may waive this requirement if the defendant was evaluated by a physician licensed under IC 25-22.5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center and the evaluation is contained in the record of the defendant's trial or plea agreement hearing.

(c) If a defendant who is found guilty but mentally ill at the time of the crime is committed to the department of correction, the defendant shall be further evaluated and then treated in such a manner as is psychiatrically indicated for the defendant's mental illness. Treatment may be provided by:

(1) the department of correction; or

(2) the division of mental health and addiction after transfer under IC 11-10-4.

(d) If a defendant who is found guilty but mentally ill at the time of the crime is placed on probation, the court may, in accordance with IC 35-38-2-2.3, require that the defendant undergo treatment.

(e) As used in this subsection, "individual with mental retardation" has the meaning set forth in IC 35-36-9-2. If a court determines under IC 35-36-9 that a defendant who is charged with a murder for which the state seeks a death sentence is an individual with mental retardation, the court shall sentence the defendant under IC 35-50-2-3(a).

(f) If a defendant is found guilty but mentally ill, the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

IND. CODE ANN. § 35-36-3-1 (2010). ABILITY TO UNDERSTAND AND ASSIST IN PROCEEDINGS -- HEARING -- APPOINTMENT OF MEDICAL EXPERTS -- ADMISSION OF OTHER EVIDENCE -- PROCEDURE ON FINDING OF INABILITY.

(a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists; or

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology.

At least one (1) of the individuals appointed under this subsection must be a psychiatrist. However, none may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed shall examine the

defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:

(1) location where the defendant currently resides; or

(2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

(c) If the court makes a finding under subsection (b), the court shall transmit any information required by the division of state court administration to the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

IND. CODE ANN. § 35-36-3-2 (2010). RESUMPTION OF PROCEEDINGS UPON ATTAINMENT OF ABILITY.

Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense:

(1) the superintendent of the state institution (as defined in IC 12-7-2-184); or

(2) if the division of mental health and addiction entered into a contract for the provision of competency restoration services, the director or medical director of the third party contractor;

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court shall enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to

court of any defendant committed under section 1 [IC 35-36-3-1] of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

IND. CODE ANN. § 35-36-3-3 (2010). SUBSTANTIAL PROBABILITY OF ATTAINING ABILITY WITHIN FORESEEABLE FUTURE -- CERTIFICATION TO COURT -- TEMPORARY RETENTION OF DEFENDANT.

(a) Within ninety (90) days after:

(1) a defendant's admission to a state institution (as defined in IC 12-7-2-184); or

(2) the initiation of competency restoration services to a defendant by a third party contractor;

the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the state institution (as defined in IC 12-7-2-184) or the third party contractor shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the state institution (as defined in IC 12-7-2-184) or third party contractor shall retain the defendant:

(1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's admission to a state institution (as defined in IC 12-7-2-184); or

(B) initiation of competency restoration services by a third party contractor;

whichever first occurs.

IND. CODE ANN. § 35-36-3-4 (2010). INSTITUTION OF REGULAR COMMITMENT PROCEEDINGS.

If a defendant who was found under section 3 [IC 35-36-3-3] of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense has not attained that ability within six (6) months after the date of the:

(1) defendant's admission to a state institution (as defined in IC 12-7-2-184); or

(2) initiation of competency restoration services by a third party contractor;

the state institution (as defined in IC 12-7-2-184) or the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall institute regular commitment proceedings under IC 12-26.

IOWA

IOWA CODE § 229A.1 (2010). LEGISLATIVE FINDINGS.

The general assembly finds that a small but extremely dangerous group of sexually violent predators exists which is made up of persons who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment provisions for mentally ill persons under chapter 229, since that chapter is intended to provide short-term treatment to persons with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 229, sexually violent predators generally have antisocial personality features that are unamenable to existing mental illness treatment modalities and that render them likely to engage in sexually violent behavior. The general assembly finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high and that the existing involuntary commitment procedure under chapter 229 is inadequate to address the risk these sexually violent predators pose to society.

The general assembly further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, because the treatment needs of this population are very long-term, and the treatment modalities for this population are very different from the traditional treatment modalities available in a prison setting or for persons appropriate for commitment under chapter 229. Therefore, the general assembly finds that a civil commitment procedure for the long-term care and treatment of the sexually violent predator is necessary. The procedures regarding sexually violent predators should reflect legitimate public safety concerns, while providing treatment services designed to benefit sexually violent predators who are civilly committed. The procedures should also reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.

IOWA CODE § 229A.7 (2010). TRIAL, DETERMINATION, COMMITMENT PROCEDURE, CHAPTER 28E AGREEMENTS, MISTRIALS.

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to chapter 812, or if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the

court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

2. If a person has been found not guilty by reason of insanity, the court shall determine whether the acts charged were proven as a matter of law. If as a matter of law the finding of not guilty by reason of insanity requires a finding that the underlying elements of the charged offense were proven, then no further fact-finding is required. If as a matter of law the finding of not guilty by reason of insanity does not require a finding that the underlying elements of the charged offense be proven, the case shall proceed in the same manner as if the person were found to be incompetent to stand trial as provided in subsection 1.

3. Within ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The respondent or the attorney for the respondent may waive the ninety-day trial requirement as provided in this section; however, the respondent or the attorney for the respondent may reassert a demand and the trial shall be held within ninety days from the date of filing the demand with the clerk of court. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. In determining what constitutes good cause, the court shall consider the length of the pretrial detention of the respondent.

4. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least ten days prior to trial. If no demand is made, the trial shall be before the court. Except as otherwise provided, the Iowa rules of evidence and the Iowa rules of civil procedure shall apply to all civil commitment proceedings initiated pursuant to this chapter.

5. *a.* At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. If the case is before a jury, the verdict shall be unanimous that the respondent is a sexually violent predator.

b. If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to the custody of the director of the department of human services for control, care, and treatment until such time as the person's mental

abnormality has so changed that the person is safe to be placed in a transitional release program or discharged. The determination may be appealed.

6. If the court or jury determines that the respondent is a sexually violent predator, the court shall order the respondent to submit a DNA sample for DNA profiling pursuant to section 81.4.

7. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times prior to placement in a transitional release program or release with or without supervision, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the custody of the director of the department of corrections pursuant to a chapter 28E agreement and who have not been placed in a transitional release program or released with or without supervision shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

8. If the court makes the determination or the jury determines that the respondent is not a sexually violent predator, the court shall direct the respondent's release. Upon release, the respondent shall comply with any requirements to register as a sex offender as provided in chapter 692A. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued or the ninety days are waived as provided in subsection 3.

IOWA CODE § 229A.8 (2010). ANNUAL EXAMINATIONS AND REVIEW – DISCHARGE OR TRANSITIONAL RELEASE PETITIONS BY PERSONS COMMITTED.

1. Upon civil commitment of a person pursuant to this chapter, a rebuttable presumption exists that the commitment should continue. The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses if discharged, or the committed person is suitable for placement in a transitional release program.

2. A person committed under this chapter shall have a current examination of the person's mental abnormality made once every year. The person may retain, or if the

person is indigent and so requests, the court may appoint a qualified expert or professional person to examine such person, and such expert or professional person shall be given access to all records concerning the person.

3. The annual report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review and, if warranted, set a final hearing on the status of the committed person. The annual review may be based only on written records.

4. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge or placement in a transitional release program at the annual review. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge or placement in a transitional release program without authorization from the director. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

5. The following provisions apply to an annual review:

a. The committed person shall have a right to have an attorney represent the person but the person is not entitled to be present at the hearing, if a hearing is held.

b. The Iowa rules of evidence do not apply.

c. The committed person may waive an annual review or may stipulate that the commitment should continue for another year.

d. The court shall review the annual report of the state and the report of any qualified expert or professional person retained by or appointed for the committed person and may receive arguments from the attorney general and the attorney for the committed person if either requests a hearing. The request for a hearing must be in writing, within thirty days of the notice of annual review being provided to counsel for the committed person, or on motion by the court. Such a hearing may be conducted in writing without any attorneys present.

e. (1) The court shall consider all evidence presented by both parties at the annual review. The burden is on the committed person to prove by a preponderance of the evidence that there is relevant and reliable evidence to rebut the presumption of continued commitment, which would lead a reasonable person to believe a final hearing should be held to determine either of the following:

(a) The mental abnormality of the committed person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged.

(b) The committed person is suitable for placement in a transitional release program pursuant to section 229A.8A.

(2) If the committed person shows by a preponderance of the evidence that a final hearing should be held on either determination under subparagraph (1), subparagraph division (a) or (b), or both, the court shall set a final hearing within sixty days of the determination that a final hearing be held.

f. If at the time for the annual review the committed person has filed a petition for discharge or placement in a transitional release program with authorization from the director of human services, the court shall set a final hearing within ninety days of the authorization by the director, and no annual review shall be held.

g. If the committed person has not filed a petition, or has filed a petition for discharge or for placement in a transitional release program without authorization from the director of human services, the court shall first conduct the annual review as provided in this subsection.

h. Any petition can summarily be dismissed by the court as provided in section 229A.11.

i. If at the time of the annual review the committed person is in a secure facility and not in the transitional release program, the state shall have the right to demand that both determinations in paragraph "e" be submitted to the court or jury.

6. The following provisions shall apply to a final hearing:

a. The committed person shall be entitled to an attorney and is entitled to the benefit of all constitutional protections that were afforded the person at the original commitment proceeding. The committed person shall be entitled to a jury trial, if such a demand is made in writing and filed with the clerk of court at least ten days prior to the final hearing.

b. The committed person shall have the right to have experts evaluate the person on the person's behalf. The court shall appoint an expert if the person is indigent and requests an appointment.

c. The attorney general shall represent the state and shall have a right to demand a jury trial. The jury demand shall be filed, in writing, at least ten days prior to the final hearing.

d. The burden of proof at the final hearing shall be upon the state to prove beyond a reasonable doubt either of the following:

(1) The committed person's mental abnormality remains such that the person is likely to engage in predatory acts that constitute sexually violent offenses if discharged.

(2) The committed person is not suitable for placement in a transitional release program pursuant to section 229A.8A.

e. If the director of human services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director has not authorized the petition or the case is before the court, testimony by a victim of a sexually violent offense committed by the person may be admitted.

f. If a mistrial is declared, the confinement or placement status of the committed person shall not change. After a mistrial has been declared, a new trial must be held within ninety days of the mistrial.

7. The state and the committed person may stipulate to a transfer to a transitional release program if the court approves the stipulation.

IOWA CODE § 229A.9 (2010). DETENTION AND COMMITMENT TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.

The involuntary detention or commitment of persons under this chapter shall conform to constitutional requirements for care and treatment.

IOWA CODE § 232.52 (2010). DISPOSITION OF CHILD FOUND TO HAVE COMMITTED A DELINQUENT ACT.

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child, the child's prior record, or the fact that the child has received a youthful offender deferred sentence under section 907.3A. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested. In the case of a child who has received a youthful offender deferred sentence, the initial duration of the dispositional order shall be until the child reaches the age of eighteen.

2. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order prescribing one or more of the following:

(1) A work assignment of value to the state or to the public.

(2) Restitution consisting of monetary payment or a work assignment of value to the victim.

(3) If the child is fourteen years of age or older, restitution consisting of monetary payment or a work assignment of value to the county or to the public for fees of attorneys appointed to represent the child at public expense pursuant to section 232.11.

(4) (a) The suspension or revocation of the driver's license or operating privilege of the

child, for a period of one year, for the commission of delinquent acts which are a violation of any of the following:

(i) Section 123.46.

(ii) Section 123.47 regarding the purchase or attempt to purchase of alcoholic beverages.

(iii) Chapter 124.

(iv) Section 126.3.

(v) Chapter 453B.

(vi) Two or more violations of section 123.47 regarding the possession of alcoholic beverages.

(vii) Section 708.1, if the assault is committed upon an employee of the school at which the child is enrolled, and the child intended to inflict serious injury upon the school employee or caused bodily injury or mental illness.

(viii) Section 724.4, if the child carried the dangerous weapon on school grounds.

(ix) Section 724.4B.

(b) The child may be issued a temporary restricted license or school license if the child is otherwise eligible.

(5) The suspension of the driver's license or operating privilege of the child for a period not to exceed one year. The order shall state whether a work permit may or shall not be issued to the child.

b. An order placing the child on probation and releasing the child to the child's parent, guardian, or custodian.

c. An order providing special care and treatment required for the physical, emotional, or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to reimburse the county for any costs incurred as provided in section 232.141, subsection 1, or to otherwise pay or provide for such care and treatment.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section 232.54, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child-placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court. The court shall consider ordering placement in family foster care as an alternative to group foster care.

(4) The chief juvenile court officer or the officer's designee for placement in a program under section 232.191, subsection 4. The chief juvenile court officer or the officer's designee may place a child in group foster care for failure to comply with the terms and conditions of the supervised community treatment program for up to seventy-two hours without notice to the court or for more than seventy-two hours if the court is notified of the placement within seventy-two hours of placement, subject to a hearing before the court on the placement within ten days.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction and custody of the court for the purposes of section 232.54, to the director of the department of human services for purposes of placement in the state training school or other facility, provided that the child is at least twelve years of age and the court finds the placement to be in the best interests of the child or necessary for the protection of the public, and that the child has been found to have committed an act which is a forcible felony, as defined in section 702.11, or a felony violation of section 124.401 or chapter 707, or the court finds any three of the following conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter 229.

g. An order placing a child, other than a child who has committed a violation of section 123.47, in secure custody for not more than two days in a facility under section 232.22,

subsection 3, paragraph "a" or "b".

h. In the case of a child adjudicated delinquent for an act which would be a violation of chapter 236 or section 708.2A if committed by an adult, an order requiring the child to attend a batterers' treatment program under section 708.2B.

3. *a.* An order under subsection 2, paragraph "a", may be the sole disposition or may be included as an element in other dispositional orders.

b. A parent or guardian may be required by the juvenile court to participate in educational or treatment programs as part of a probation plan. A parent or guardian who does not participate in the probation plan when required to do so by the court may be held in contempt.

c. Notwithstanding subsection 2, the court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the service area plan for group foster care established pursuant to section 232.143 for the departmental service area in which the court is located.

4. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

5. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department, or institution, the court shall transmit its order, its finding, and a summary of its information concerning the child to such agency, facility, department, or institution.

6. If the court orders the transfer of custody of the child to the department of human services or other agency for placement, the department or agency responsible for the placement of the child shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

7. *a.* When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", "e", or "f", the order shall state that reasonable efforts as defined in section 232.57 have been made. If deemed appropriate by the court, the order may include a determination that continuation of the child in the child's home is contrary to the child's welfare. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used to assist the department in obtaining federal funding for the child's placement. If such a determination is included in the order, unless the court makes a determination that further reasonable efforts are not required, reasonable efforts shall be made to prevent permanent removal of a child from the child's home and to encourage reunification of the child with

the child's parents and family. The reasonable efforts may include but are not limited to early intervention and follow-up programs implemented pursuant to section 232.191.

b. When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", and the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the transfer order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

8. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child in the least restrictive, most family-like, and most appropriate setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

9. If a child has previously been adjudicated as a child in need of assistance, and a social worker or other caseworker from the department of human services has been assigned to work on the child's case, the court may order the department of human services to assign the same social worker or caseworker to work on any matters related to the child arising under this division.

10. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the state training school pursuant to subsection 2, paragraph "e", to a facility which has been designated to be an alternative placement site for the state training school, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a substitute dispositional order under section 232.54.

(2) Immediate removal of the child from the state training school is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a substitute dispositional order under section 232.54 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

11. The court shall order a juvenile adjudicated a delinquent for an offense that requires DNA profiling under section 81.2 to submit a DNA sample for DNA profiling pursuant to section 81.4.

IOWA CODE § 812.3 (2010). MENTAL INCOMPETENCY OF ACCUSED.

1. If at any stage of a criminal proceeding the defendant or the defendant's attorney, upon application to the court, alleges specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend further proceedings and determine if probable cause exists to sustain the allegations. The applicant has the burden of establishing probable cause. The court may on its own motion schedule a hearing to determine probable cause if the defendant or defendant's attorney has failed or refused to make an application under this section and the court finds that there are specific facts showing that a hearing should be held on that question. The defendant shall not be compelled to testify at the hearing and any testimony of the defendant given during the hearing shall not be admissible on the issue of guilt, except such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

2. Upon a finding of probable cause sustaining the allegations, the court shall suspend further criminal proceedings and order the defendant to undergo a psychiatric evaluation to determine whether the defendant is suffering a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense. The order shall also authorize the evaluator to provide treatment necessary and appropriate to facilitate the evaluation. If an evaluation has been conducted within thirty days of the probable cause finding, the court is not required to order a new evaluation and may use the recent evaluation during a hearing under this chapter. Any party is entitled to a separate psychiatric evaluation by a psychiatrist or licensed, doctorate-level psychologist of their own choosing.

IOWA CODE § 812.5 (2010). COMPETENCY HEARING -- FINDINGS.

The court shall receive all relevant and material evidence offered at the hearing and shall not be bound by the formal rules of evidence. The evidence shall include the psychiatric evaluation ordered under section 812.3 or conducted within thirty days of the probable cause finding.

1. If the court finds the defendant is competent to stand trial, the court shall reinstate the criminal proceedings suspended under section 812.3.

2. If the court, by a preponderance of the evidence, finds the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend the criminal proceedings indefinitely and order the defendant to be placed in a treatment program pursuant to section 812.6 and shall make further findings of record as necessary under section 812.6.

IOWA CODE § 812.6 (2010). PLACEMENT AND TREATMENT.

1. If the court finds the defendant does not pose a danger to the public peace and safety, is otherwise qualified for pretrial release, and is willing to cooperate with treatment, the court shall order, as a condition of pretrial release, that the defendant obtain mental health treatment designed to restore the defendant to competency.

2. If the court finds by clear and convincing evidence that the defendant poses a danger to the public peace or safety, or that the defendant is otherwise not qualified for pretrial release, or the defendant refuses to cooperate with treatment, the court shall commit the defendant to an appropriate inpatient treatment facility as provided in paragraph "a" or "b". The defendant shall receive mental health treatment designed to restore the defendant to competency.

a. A defendant who poses a danger to the public peace or safety, or who is otherwise not qualified for pretrial release, shall be committed as a safekeeper to the custody of the director of the department of corrections at the Iowa medical and classification center, or other appropriate treatment facility as designated by the director, for treatment designed to restore the defendant to competency.

b. A defendant who does not pose a danger to the public peace or safety, but is otherwise being held in custody, or who refuses to cooperate with treatment, shall be committed to the custody of the director of human services at a department of human services facility for treatment designed to restore the defendant to competency.

3. A defendant ordered to obtain treatment or committed to a facility under this section may refuse treatment by chemotherapy or other somatic treatment. The defendant's right to refuse chemotherapy treatment or other somatic treatment shall not apply if, in the judgment of the director or the director's designee of the facility where the defendant has been committed, such treatment is necessary to preserve the life of the defendant or to appropriately control behavior of the defendant which is likely to result in physical injury to the defendant or others. If in the judgment of the director of the facility or the director's designee where the defendant has been committed, chemotherapy or other somatic treatments are necessary and appropriate to restore the defendant to competency and the defendant refuses to consent to the use of these treatment modalities, the director of the facility or the director's designee shall request from the district court which ordered the

commitment of the defendant an order authorizing treatment by chemotherapy or other somatic treatments.

IOWA CODE § 812.7 (2010). MENTAL STATUS REPORTS.

The psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant, or the director of the facility where the defendant is being held and treated pursuant to a court order, shall provide a written status report to the court regarding the defendant's mental disorder within thirty days of the defendant's placement pursuant to section 812.6. The report shall also state whether it appears that the defendant can be restored to competency in a reasonable amount of time. Progress reports shall be provided to the court every sixty days or less thereafter until the defendant's competency is restored or the placement of the defendant is terminated.

IOWA CODE § 812.8 (2010). RESTORATION OF MENTAL COMPETENCY.

1. At any time, upon a finding by a psychiatrist or licensed doctorate-level psychologist that there is a substantial probability that the defendant has acquired the ability to appreciate the charge, understand the proceedings, and effectively assist in the defendant's defense, the psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant or the director of the inpatient facility shall immediately notify the court. After receiving notice the court shall proceed as provided in subsection 4.

2. At any time, a treating psychiatrist or licensed doctorate-level psychologist may notify the court that the defendant receiving outpatient treatment will require inpatient services to continue benefiting from treatment or that it is appropriate for a defendant receiving inpatient treatment services to receive outpatient treatment services. Upon receiving notification, the court shall proceed as provided under subsection 4.

3. At any time upon a finding by a treating psychiatrist or licensed doctorate-level psychologist that there is no substantial probability that the defendant will be restored to competency in a reasonable amount of time, the psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant or the director of the inpatient facility shall immediately notify the court. Upon receiving notification, the court shall proceed as provided under subsection 4.

4. Upon receiving a notification under this section, the court shall schedule a hearing to be held within fourteen days. The court shall also issue an order to transport the defendant to the hearing if the defendant is in custody or is being held in an inpatient facility. The defendant shall be transported by the sheriff of the county where the court's motion or the application pursuant to section 812.3 was filed.

5. If the court finds by a preponderance of the evidence that the defendant's competency has been restored, the court shall terminate the placement pursuant to section 812.6, and reinstate the criminal proceedings against the defendant, and may order continued treatment to maintain the competency of the defendant.

6. If the court finds by a preponderance of the evidence that the defendant remains incompetent to stand trial but is making progress in regaining competency, the court shall continue the placement ordered pursuant to section 812.6.

7. The court may change the placement of a defendant and the placement may be more restrictive if necessary for the continued progress of the defendant's treatment as shown by clear and convincing evidence.

8. If the court finds by a preponderance of the evidence that there is no substantial probability the defendant's competency will be restored in a reasonable amount of time, the court shall terminate the commitment under section 812.6 in accordance with the provisions of section 812.9.

IOWA CODE § 812.9 (2010). LENGTH OF PLACEMENT -- OTHER COMMITMENT PROCEEDINGS -- CRIMINAL PROCEEDINGS AFTER TERMINATION OF PLACEMENT.

1. Notwithstanding section 812.8, the defendant shall not remain under placement pursuant to section 812.6 beyond the expiration of the maximum term of confinement for the criminal offense of which the defendant is accused, or eighteen months from the date of the original adjudication of incompetence to stand trial, including time in jail, or the time when the court finds by a preponderance of the evidence that there is no substantial probability that the defendant will be restored to competency in a reasonable amount of time under section 812.8, subsection 8, whichever occurs first. When the defendant's placement in an inpatient facility equals the length of the maximum term of confinement, the complaint for the criminal offense of which the defendant is accused shall be dismissed with prejudice.

2. When the defendant's commitment equals eighteen months, the court shall schedule a hearing to determine whether the defendant is competent to stand trial pursuant to section 812.8, subsection 5. If the defendant is not competent to stand trial after eighteen months, the court shall terminate the placement under section 812.6 in accordance with the provisions of subsection 1.

3. Upon the termination of the defendant's placement pursuant to subsection 1, or pursuant to section 812.8, subsection 8, the state may commence civil commitment proceedings or any other appropriate commitment proceedings.

4. If the defendant's placement is terminated pursuant to subsection 2 or pursuant to section 812.8, subsection 8, and it appears thereafter that the defendant has regained competency, the state may make application to reinstate the prosecution of the defendant and hearing shall be held on the matter in the same manner as if the court has received notice under section 812.8, subsection 4.

KANSAS

KAN. STAT. ANN. § 22-3302 (2009). PROCEEDINGS TO DETERMINE COMPETENCY.

(1) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

(2) If the defendant is charged with a felony, the hearing to determine the competency of the defendant shall be conducted by a district judge.

(3) The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may: (a) If the defendant is charged with a felony, commit the defendant to the state security hospital or any county or private institution for examination and report to the court, or, if the defendant is charged with a misdemeanor, commit the defendant to any appropriate state, county or private institution for examination and report to the court, except that the court shall not commit the defendant to the state security hospital or any other state institution unless, prior to such commitment, the director of a local county or private institution recommends to the court and to the secretary of social and rehabilitation services that examination of the defendant should be performed at a state institution; (b) designate any appropriate psychiatric or psychological clinic, mental health center or other psychiatric or psychological facility to conduct the examination while the defendant is in jail or on pretrial release; or (c) appoint two qualified licensed physicians or licensed psychologists, or one of each, to examine the defendant and report to the court. If the court commits the defendant to an institution for the examination, the commitment shall be for not more than 60 days or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding. Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned not later than five days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county in which the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the five-day period.

(4) If the defendant is found to be competent, the proceedings which have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct

a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

(5) If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303 and amendments thereto.

(6) If proceedings are suspended and a hearing to determine the defendant's competency is ordered after the defendant is in jeopardy, the court may either order a recess or declare a mistrial.

(7) The defendant shall be present personally at all proceedings under this section.

H.B. 2656, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING KAN. STAT. ANN. § 22-3302 (2009). PROCEEDINGS TO DETERMINE COMPETENCY. EFFECTIVE MAY 13, 2010.

* See sections 20 and 225.

…

[*20] Sec. 20. K.S.A. 22-3302 is hereby amended to read as follows:

22-3302. (1) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

(2) If the defendant is charged with a felony, the hearing to determine the competency of the defendant shall be conducted by a district judge.

(3) The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may: (a) If the defendant is charged with a felony, commit the defendant to the state security hospital or any county or private institution for examination and report to the court, or, if the defendant is charged with a misdemeanor, commit the defendant to any appropriate state, county or private institution for examination and report to the court, except that the court shall not commit the defendant to the state security hospital or any other state institution unless, prior to such commitment, the director of a local county or private institution recommends to the court and to the secretary of social and rehabilitation services that examination of the defendant should be performed at a state institution; (b) designate any appropriate psychiatric or psychological clinic, mental health center or other psychiatric or psychological facility to conduct the examination while the defendant is in jail or on pretrial release; or (c) appoint two qualified licensed physicians or licensed psychologists, or one of each, to examine the defendant and report to the court. If the

court commits the defendant to an institution for the examination, the commitment shall be for not more than 60 days or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding. Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned not later than **[D>** five **<D] [A>** SEVEN **<A]** days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county in which the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the **[D>** five **<D] [A>** SEVEN **<A]** -day period.

(4) If the defendant is found to be competent, the proceedings which have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

(5) If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303 **[A>** , **<A]** and amendments thereto.

(6) If proceedings are suspended and a hearing to determine the defendant's competency is ordered after the defendant is in jeopardy, the court may either order a recess or declare a mistrial.

(7) The defendant shall be present personally at all proceedings under this section.

…

[*225] Sec. 225. K.S.A. 8-113a, 21-4311, 21-4623, 21-4624, 21-4634, 21-4718, 22-2408, 22-2516, 22-2807, 22-2901, 22-2902, 22-3208, 22-3212, 22-3302, 22-3305, 22-3428, 22-3428a, 22-3501, 22-3502, 22-3603, 22-3608, 22-3609, 22-3609a, 22-3707, 22-3902, 22-4006, 22-4904, 22-4905, 22-4907, 23-701, 23-4,107, 26-503, 26-510, 59-807, 59-2947, 59-2947, as amended by section 11 of 2010 House Bill No. 2364, 59-29a14, 59-29b47, 59-3052, 59-3052, as amended by section 12 of 2010 House Bill No. 2364, 60-101, 60-102, 60-103, 60-104, 60-201, 60-202, 60-203, 60-204, 60-205, 60-207, 60-208, 60-209, 60-210, 60-211, 60-212, 60-213, 60-214, 60-215, 60-217, 60-218, 60-219, 60-220, 60-221, 60-222, 60-223, 60-223a, 60-223b, 60-224, 60-225, 60-227, 60-228, 60-229, 60-230, 60-231, 60-232, 60-235, 60-236, 60-238, 60-239, 60-240, 60-241, 60-242, 60-243, 60-244, 60-245a, 60-246, 60-247, 60-248, 60-248a, 60-249, 60-249a, 60-250, 60-251, 60-252, 60-252a, 60-252b, 60-254, 60-255, 60-257, 60-258, 60-258a, 60-258b, 60-259, 60-260, 60-261, 60-262, 60-263, 60-264, 60-265, 60-266, 60-267, 60-268, 60-270, 60-271, 60-301, 60-302, 60-304, 60-305, 60-305a, 60-306, 60-307, 60-309, 60-310, 60-311, 60-312, 60-313, 60-612, 60-712, 60-731, 60-735, 60-738, 60-739, 60-740, 60-904, 60-1005, 60-1006, 60-1009, 60-1011, 60-1207, 60-1305, 60-1629, 60-2002, 60-2103, 60-

2103a, 60-2414, 60-2604, 60-2801, 60-2802, 60-2803, 60-3106, 60-31a05, 60-4109, 60-4112, 60-4113, 60-4116, 61-2709, 61-2904, 61-2912, 61-3002, 61-3006, 61-3101, 61-3103, 61-3105, 61-3201, 61-3301, 61-3304, 61-3504, 61-3508, 61-3509, 61-3511, 61-3512, 61-3513, 61-3604, 61-3701, 61-3702, 61-3705, 61-3807, 61-3808, 61-3902, 61-3904 and 61-3905 and K.S.A. 2009 Supp. 8-235, 8-259, 8-1002, 8-1020, 21-4316, 22-3437, 22-3717, 26-505, 26-506, 26-507, 26-508, 38-2229, 38-2229, as amended by section 3 of 2010 House Bill No. 2364, 38-2255, 38-2258, 38-2305, 38-2329, 38-2343, 38-2343, as amended by section 8 of 2010 House Bill No. 2364, 38-2350, 38-2362, 38-2371, 38-2373, 38-2374, 38-2381, 59-2401a, 60-206, 60-206, as amended by section 14 of 2010 House Bill No. 2364, 60-216, 60-226, 60-233, 60-234, 60-237, 60-245, 60-253, 60-256, 60-303, 60-308, 60-736, 60-1007, 60-1505, 60-1607, 60-2102, 60-2409, 60-3503, 60-4107, 61-2707, 61-3703 and 77-503 are hereby repealed.

…

KAN. STAT. ANN. § 22-3303 (2009). COMMITMENT OF INCOMPETENT; LIMITATION; CIVIL COMMITMENT PROCEEDINGS; REGAINED COMPETENCY; CREDIT FOR TIME COMMITTED.

(1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution. Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes

Annotated, and any amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(3) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302 and amendments thereto to determine the person's present mental condition. Reasonable notice of such hearings shall be given to the prosecuting attorney, the defendant and the defendant's attorney of record, if any. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such public institution.

H.B. 2440, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING KAN. STAT. ANN. § 22-3303 (2009). COMMITMENT OF INCOMPETENT; LIMITATION; CIVIL COMMITMENT PROCEEDINGS; REGAINED COMPETENCY; CREDIT FOR TIME COMMITTED.

EFFECTIVE APRIL 6, 2010.

* See sections 2 and 9

…

[*2] Sec. 2. K.S.A. 22-3303 is hereby amended to read as follows:

22-3303. (1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution. **[A>** AT THE TIME OF SUCH COMMITMENT THE INSTITUTION OF COMMITMENT SHALL NOTIFY THE SECRETARY OF CORRECTIONS FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION. **<A]** Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original

commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(3) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302 **[A>** , **<A]** and amendments thereto **[A>** , **<A]** to determine the person's present mental condition. **[A>** SUCH COURT SHALL GIVE **<A]** reasonable notice of such hearings **[D>** shall be given **<D]** to the prosecuting attorney, the defendant **[D>** and **<D] [A>** , **<A]** the defendant's attorney of record, if any **[A>** , AND THE SECRETARY OF CORRECTIONS FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION **<A]** . If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such public institution.

…

[*9] Sec. 9. K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431 and 22-3727 are hereby repealed.

…

KAN. STAT. ANN. § 22-3428 (2009). PERSONS ACQUITTED OR VERDICT OF NOT GUILTY AND JURY ANSWERS AFFIRMATIVE TO SPECIAL QUESTION; COMMITMENT TO STATE SECURITY HOSPITAL; DETERMINATION OF WHETHER PERSON IS A MENTALLY ILL PERSON, NOTICE AND HEARING; PROCEDURE FOR TRANSFER, RELEASE OR DISCHARGE, STANDARDS, NOTICE AND HEARING.

(1) (a) When a defendant is acquitted and the jury answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221 and amendments thereto, the defendant shall be committed to the state security hospital for safekeeping and treatment. A finding of not guilty and the jury answering in the affirmative to the special question asked pursuant to K.S.A. 22-3221 and amendments thereto, shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

(b) Within 90 days of the defendant's admission, the chief medical officer of the state security hospital shall send to the court a written evaluation report. Upon receipt of the report, the court shall set a hearing to determine whether or not the defendant is currently a mentally ill person. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's report.

(c) The court shall give notice of the hearing to the chief medical officer of the state security hospital, the district or county attorney, the defendant and the defendant's attorney. The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq. and amendments thereto. The defendant shall remain at the state security hospital pending the hearing.

(d) At the hearing, the defendant shall have the right to present evidence and cross-examine witnesses. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the defendant is not currently a mentally ill person, the court shall dismiss the criminal proceeding and discharge the defendant, otherwise the court may commit the defendant to the state security hospital for treatment or may place the defendant on conditional release pursuant to subsection (4).

(2) Subject to the provisions of subsection (3):

(a) Whenever it appears to the chief medical officer of the state security hospital that a person committed under subsection (1)(d) is not likely to cause harm to other persons in a less restrictive hospital environment, the officer may transfer the person to any state hospital, subject to the provisions of subsection (3). At any time subsequent thereto during which such person is still committed to a state hospital, if the chief medical officer of that hospital finds that the person may be likely to cause harm or has caused harm, to others, such officer may transfer the person back to the state security hospital.

(b) Any person committed under subsection (1)(d) may be granted conditional release or discharge as an involuntary patient.

(3) Before transfer of a person from the state security hospital pursuant to subsection (2)(a) or conditional release or discharge of a person pursuant to subsection (2)(b), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the patient is ready for proposed conditional release or discharge. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of the defendant's mental illness; (d) recommendations for future treatment, if any; and (e) recommendations regarding conditional release or discharge, if any. Upon receiving notice, the district court shall order that a hearing be held on the proposed transfer, conditional release or discharge. The court shall give notice of the hearing to the state hospital or state security hospital where the patient is under commitment and to the district or county attorney of the county from which the person was originally ordered committed and shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the district or county attorney, the involuntary patient and the patient's attorney at least five days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice. The involuntary patient shall remain in the state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, conditional release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital where the patient is under commitment, and shall determine whether the patient shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the district or county attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if transferred to a less restrictive hospital environment, the court shall order the patient transferred. If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released otherwise, the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court orders the conditional release of the patient in accordance with subsection (4), the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment.

(4) In order to ensure the safety and welfare of a patient who is to be conditionally released and the citizenry of the state, the court may allow the patient to remain in

custody at a facility under the supervision of the secretary of social and rehabilitation services for a period of time not to exceed 30 days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient. The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional release the court shall: (a) Order that the patient be placed under the temporary supervision of district court probation and parole services, community treatment facility or any appropriate private agency; and (b) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b and amendments thereto.

(5) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the county or district attorney of the county in which the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within 15 days of its filing. The court shall give notice of the time for the hearing to the patient and the county or district attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the county or district attorney and the patient, may make orders: (a) For additional conditions of release designed to effect the ends of the reentry program, (b) requiring the county or district attorney to file a petition to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2957 and amendments thereto, or (c) requiring that the patient be committed to the state security hospital or any state hospital. In cases where an application is ordered to be filed, the court shall proceed to hear and determine the application pursuant to the care and treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

(6) In any case in which the defense that the defendant lacked the required mental state pursuant to K.S.A. 22-3220 and amendments thereto is relied on, the court shall instruct the jury on the substance of this section.

(7) As used in this section and K.S.A. 22-3428a and amendments thereto:

(a) "Likely to cause harm to self or others" means that the person is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, or evidenced by behavior causing, attempting or threatening such injury, abuse or neglect.

(b) "Mentally ill person" means any person who:

(A) Is suffering from a severe mental disorder to the extent that such person is in need of treatment; and

(B) is likely to cause harm to self or others.

(c) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

H.B. 2440, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING KAN. STAT. ANN. § 22-3428 (2009). PERSONS ACQUITTED OR VERDICT OF NOT GUILTY AND JURY ANSWERS AFFIRMATIVE TO SPECIAL QUESTION; COMMITMENT TO STATE SECURITY HOSPITAL; DETERMINATION OF WHETHER PERSON IS A MENTALLY ILL PERSON, NOTICE AND HEARING; PROCEDURE FOR TRANSFER, RELEASE OR DISCHARGE, STANDARDS, NOTICE AND HEARING.

EFFECTIVE APRIL 6, 2010.

* See sections 4 and 9

…

[*4] Sec. 4. K.S.A. 22-3428 is hereby amended to read as follows:

22-3428. (1) (a) When a defendant is acquitted and the jury answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221 **[A>** , **<A]** and amendments thereto, the defendant shall be committed to the state security hospital for safekeeping and treatment **[A>** AND THE COURT SHALL NOTIFY THE SECRETARY OF CORRECTIONS FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION **<A]** . A finding of not guilty and the jury answering in the affirmative to the special question asked pursuant to K.S.A. 22-3221 **[A>** , **<A]** and amendments thereto, shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

(b) Within 90 days of the defendant's admission, the chief medical officer of the state security hospital shall send to the court a written evaluation report. Upon receipt of the report, the court shall set a hearing to determine whether or not the defendant is currently a mentally ill person. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's report.

(c) The court shall give notice of the hearing to the chief medical officer of the state

security hospital, the district or county attorney, the defendant **[D>** and **<D] [A>** , **<A]** the defendant's attorney **[A>** AND THE SECRETARY OF CORRECTIONS FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION **<A]** . The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq. **[A>** , **<A]** and amendments thereto. The defendant shall remain at the state security hospital pending the hearing.

(d) At the hearing, the defendant shall have the right to present evidence and cross-examine witnesses. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the defendant is not currently a mentally ill person, the court shall dismiss the criminal proceeding and discharge the defendant, otherwise the court may commit the defendant to the state security hospital for treatment or may place the defendant on conditional release pursuant to subsection (4). **[A>** THE COURT SHALL NOTIFY THE SECRETARY OF CORRECTIONS OF THE OUTCOME OF THE HEARING FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION. **<A]**

(2) Subject to the provisions of subsection (3):

(a) Whenever it appears to the chief medical officer of the state security hospital that a person committed under subsection (1)(d) is not likely to cause harm to other persons in a less restrictive hospital environment, the officer may transfer the person to any state hospital, subject to the provisions of subsection (3). At any time subsequent thereto during which such person is still committed to a state hospital, if the chief medical officer of that hospital finds that the person may be likely to cause harm or has caused harm, to others, such officer may transfer the person back to the state security hospital.

(b) Any person committed under subsection (1)(d) may be granted conditional release or discharge as an involuntary patient.

(3) Before transfer of a person from the state security hospital pursuant to subsection (2)(a) or conditional release or discharge of a person pursuant to subsection (2)(b), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the patient is ready for proposed conditional release or discharge. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of the defendant's mental illness; (d) recommendations for future treatment, if any; and (e) recommendations regarding conditional release or discharge, if any. Upon receiving notice, the district court shall order that a hearing be held on the proposed transfer, conditional release or discharge. The court shall give notice of the hearing to the state hospital or state security hospital where the patient is under commitment **[D>** and **<D] [A>** , **<A]** to the district or county attorney of the county from which the person was originally ordered committed and **[A>** THE SECRETARY OF CORRECTIONS FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION. THE COURT **<A]** shall order the involuntary patient to undergo a mental evaluation by a person designated by

the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the district or county attorney, the involuntary patient and the patient's attorney at least five days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice. The involuntary patient shall remain in the state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, conditional release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital where the patient is under commitment, and shall determine whether the patient shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the district or county attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if transferred to a less restrictive hospital environment, the court shall order the patient transferred. If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released **[A>** ; **<A]** otherwise, the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court orders the conditional release of the patient in accordance with subsection (4), the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment. **[A>** THE COURT SHALL NOTIFY THE SECRETARY OF CORRECTIONS OF THE OUTCOME OF THE HEARING FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION. **<A]**

(4) In order to ensure the safety and welfare of a patient who is to be conditionally released and the citizenry of the state, the court may allow the patient to remain in custody at a facility under the supervision of the secretary of social and rehabilitation services for a period of time not to exceed **[D>** 30 **<D] [A>** 45 **<A]** days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient **[A>** AND ALLOW ADEQUATE TIME FOR THE SECRETARY OF CORRECTIONS TO PROVIDE VICTIM NOTIFICATION **<A]** . The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional release the court shall: (a) Order that the patient be placed under the temporary supervision of district court

probation and parole services, community treatment facility or any appropriate private agency; and (b) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b **[A>** , **<A]** and amendments thereto.

(5) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the county or district attorney of the county in which the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within 15 days of its filing. The court shall give notice of the time for the hearing to the patient and the county or district attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the county or district attorney and the patient, may make orders: (a) For additional conditions of release designed to effect the ends of the reentry program, (b) requiring the county or district attorney to file a petition to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2957 **[A>** , **<A]** and amendments thereto, or (c) requiring that the patient be committed to the state security hospital or any state hospital. In cases where **[D>** an application **<D] [A>** A PETITION **<A]** is ordered to be filed, the court shall proceed to hear and determine the **[D>** application **<D] [A>** PETITION **<A]** pursuant to the care and treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. **[A>** IF A PATIENT IS COMMITTED TO ANY STATE HOSPITAL PURSUANT TO THIS ACT THE SECRETARY OF SOCIAL AND REHABILITATION SERVICES SHALL NOTIFY THE SECRETARY OF CORRECTIONS FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION. **<A]** The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

(6) In any case in which the defense that the defendant lacked the required mental state pursuant to K.S.A. 22-3220 **[A>** , **<A]** and amendments thereto **[A>** , **<A]** is relied on, the court shall instruct the jury on the substance of this section.

(7) As used in this section and K.S.A. 22-3428a **[A>** , **<A]** and amendments thereto:

(a) "Likely to cause harm to self or others" means that the person is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, or evidenced by behavior causing, attempting or threatening such injury, abuse or neglect.

(b) "Mentally ill person" means any person who:

(A) Is suffering from a severe mental disorder to the extent that such person is in need of treatment; and

(B) is likely to cause harm to self or others.

(c) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

…

[*9] Sec. 9. K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431 and 22-3727 are hereby repealed.

…

H.B. 2656, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING KAN. STAT. ANN. § 22-3428 (2009). PERSONS ACQUITTED OR VERDICT OF NOT GUILTY AND JURY ANSWERS AFFIRMATIVE TO SPECIAL QUESTION; COMMITMENT TO STATE SECURITY HOSPITAL; DETERMINATION OF WHETHER PERSON IS A MENTALLY ILL PERSON, NOTICE AND HEARING; PROCEDURE FOR TRANSFER, RELEASE OR DISCHARGE, STANDARDS, NOTICE AND HEARING.

EFFECTIVE MAY 13, 2010.

* See sections 22 and 225

…

[*22] Sec. 22. K.S.A. 22-3428 is hereby amended to read as follows:

22-3428. (1) (a) When a defendant is acquitted and the jury answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221 **[A>** , **<A]** and amendments thereto, the defendant shall be committed to the state security hospital for safekeeping and treatment. A finding of not guilty and the jury answering in the affirmative to the special question asked pursuant to K.S.A. 22-3221 **[A>** , **<A]** and amendments thereto, shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

(b) Within 90 days of the defendant's admission, the chief medical officer of the state security hospital shall send to the court a written evaluation report. Upon receipt of the report, the court shall set a hearing to determine whether or not the defendant is currently a mentally ill person. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's report.

(c) The court shall give notice of the hearing to the chief medical officer of the state security hospital, the district or county attorney, the defendant and the defendant's attorney. The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq. **[A>** , **<A]** and amendments thereto. The defendant shall remain at the state security hospital pending the hearing.

(d) At the hearing, the defendant shall have the right to present evidence and cross-examine witnesses. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the defendant is not currently a mentally ill person, the court shall dismiss the criminal proceeding and discharge the defendant, otherwise the court may commit the defendant to the state security hospital for treatment or may place the defendant on conditional release pursuant to subsection (4).

(2) Subject to the provisions of subsection (3):

(a) Whenever it appears to the chief medical officer of the state security hospital that a person committed under subsection (1)(d) is not likely to cause harm to other persons in a less restrictive hospital environment, the officer may transfer the person to any state hospital, subject to the provisions of subsection (3). At any time subsequent thereto during which such person is still committed to a state hospital, if the chief medical officer of that hospital finds that the person may be likely to cause harm or has caused harm, to others, such officer may transfer the person back to the state security hospital.

(b) Any person committed under subsection (1)(d) may be granted conditional release or discharge as an involuntary patient.

(3) Before transfer of a person from the state security hospital pursuant to subsection (2)(a) or conditional release or discharge of a person pursuant to subsection (2)(b), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the patient is ready for proposed conditional release or discharge. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of the defendant's mental illness; (d) recommendations for future treatment, if any; and (e) recommendations regarding conditional release or discharge, if any. Upon receiving notice, the district court shall order that a hearing be held on the proposed transfer, conditional release or discharge. The court shall give notice of the hearing to the state hospital or state security hospital where the patient is under commitment and to the district or county attorney of the county from which the person was originally ordered committed and shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the district or county attorney, the involuntary patient and the patient's attorney at least **[D>** five **<D] [A>** SEVEN **<A]** days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice. The involuntary patient shall remain in the state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, conditional release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital where the patient is under commitment, and shall determine whether the patient shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally released or

discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the district or county attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if transferred to a less restrictive hospital environment, the court shall order the patient transferred. If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released otherwise, the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court orders the conditional release of the patient in accordance with subsection (4), the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment.

(4) In order to ensure the safety and welfare of a patient who is to be conditionally released and the citizenry of the state, the court may allow the patient to remain in custody at a facility under the supervision of the secretary of social and rehabilitation services for a period of time not to exceed 30 days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient. The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional release the court shall: (a) Order that the patient be placed under the temporary supervision of district court probation and parole services, community treatment facility or any appropriate private agency; and (b) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b **[A>** , **<A]** and amendments thereto.

(5) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the county or district attorney of the county in which the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within **[D>** 15 **<D] [A>** 14 **<A]** days of its filing. The court shall give notice of the time for the hearing to the patient and the county or district attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the county or district attorney and the patient,

may make orders: (a) For additional conditions of release designed to effect the ends of the reentry program, (b) requiring the county or district attorney to file a petition to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2957 **[A>** , **<A]** and amendments thereto, or (c) requiring that the patient be committed to the state security hospital or any state hospital. In cases where an application is ordered to be filed, the court shall proceed to hear and determine the application pursuant to the care and treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

(6) In any case in which the defense that the defendant lacked the required mental state pursuant to K.S.A. 22-3220 **[A>** , **<A]** and amendments thereto **[A>** , **<A]** is relied on, the court shall instruct the jury on the substance of this section.

(7) As used in this section and K.S.A. 22-3428a, and amendments thereto:

(a) "Likely to cause harm to self or others" means that the person is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, or evidenced by behavior causing, attempting or threatening such injury, abuse or neglect.

(b) "Mentally ill person" means any person who:

(A) Is suffering from a severe mental disorder to the extent that such person is in need of treatment; and

(B) is likely to cause harm to self or others.

(c) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

…

[*225] Sec. 225. K.S.A. 8-113a, 21-4311, 21-4623, 21-4624, 21-4634, 21-4718, 22-2408, 22-2516, 22-2807, 22-2901, 22-2902, 22-3208, 22-3212, 22-3302, 22-3305, 22-3428, 22-3428a, 22-3501, 22-3502, 22-3603, 22-3608, 22-3609, 22-3609a, 22-3707, 22-3902, 22-4006, 22-4904, 22-4905, 22-4907, 23-701, 23-4,107, 26-503, 26-510, 59-807, 59-2947, 59-2947, as amended by section 11 of 2010 House Bill No. 2364, 59-29a14, 59-29b47, 59-3052, 59-3052, as amended by section 12 of 2010 House Bill No. 2364, 60-101, 60-102, 60-103, 60-104, 60-201, 60-202, 60-203, 60-204, 60-205, 60-207, 60-208, 60-209, 60-210, 60-211, 60-212, 60-213, 60-214, 60-215, 60-217, 60-218, 60-219, 60-220, 60-221, 60-222, 60-223, 60-223a, 60-223b, 60-224, 60-225, 60-227, 60-228, 60-229, 60-230, 60-231, 60-232, 60-235, 60-236, 60-238, 60-239, 60-240, 60-241, 60-242, 60-243, 60-244, 60-245a, 60-246, 60-247, 60-248, 60-248a, 60-249, 60-249a, 60-250, 60-251, 60-252, 60-252a, 60-252b, 60-254, 60-255, 60-257, 60-258, 60-258a, 60-258b, 60-259, 60-260, 60-261, 60-262, 60-263, 60-264, 60-265, 60-266, 60-267, 60-268, 60-270,

60-271, 60-301, 60-302, 60-304, 60-305, 60-305a, 60-306, 60-307, 60-309, 60-310, 60-311, 60-312, 60-313, 60-612, 60-712, 60-731, 60-735, 60-738, 60-739, 60-740, 60-904, 60-1005, 60-1006, 60-1009, 60-1011, 60-1207, 60-1305, 60-1629, 60-2002, 60-2103, 60-2103a, 60-2414, 60-2604, 60-2801, 60-2802, 60-2803, 60-3106, 60-31a05, 60-4109, 60-4112, 60-4113, 60-4116, 61-2709, 61-2904, 61-2912, 61-3002, 61-3006, 61-3101, 61-3103, 61-3105, 61-3201, 61-3301, 61-3304, 61-3504, 61-3508, 61-3509, 61-3511, 61-3512, 61-3513, 61-3604, 61-3701, 61-3702, 61-3705, 61-3807, 61-3808, 61-3902, 61-3904 and 61-3905 and K.S.A. 2009 Supp. 8-235, 8-259, 8-1002, 8-1020, 21-4316, 22-3437, 22-3717, 26-505, 26-506, 26-507, 26-508, 38-2229, 38-2229, as amended by section 3 of 2010 House Bill No. 2364, 38-2255, 38-2258, 38-2305, 38-2329, 38-2343, 38-2343, as amended by section 8 of 2010 House Bill No. 2364, 38-2350, 38-2362, 38-2371, 38-2373, 38-2374, 38-2381, 59-2401a, 60-206, 60-206, as amended by section 14 of 2010 House Bill No. 2364, 60-216, 60-226, 60-233, 60-234, 60-237, 60-245, 60-253, 60-256, 60-303, 60-308, 60-736, 60-1007, 60-1505, 60-1607, 60-2102, 60-2409, 60-3503, 60-4107, 61-2707, 61-3703 and 77-503 are hereby repealed.

…

KAN. STAT. ANN. § 22-3428A (2009). SAME; ANNUAL HEARING ON CONTINUED COMMITMENT; PROCEDURE, NOTICE AND STANDARDS.

(1) Any person found not guilty, pursuant to K.S.A. 22-3220 and 22-3221, who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428 and amendments thereto shall be entitled annually to request a hearing to determine whether or not the person continues to be a mentally ill person. The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: (a) The county or district attorney of the county in which the person was originally ordered committed, and (b) the chief medical officer of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within 20 days from the date when notice from the court was received. Within 10 days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the court shall transfer the hearing to the district court specified in the motion and send a copy of the court's records of the proceedings to that court.

(2) After the time in which a change of venue may be requested has elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person and the person's counsel. If there is

no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508 and amendments thereto may request a physician or licensed psychologist of the person's own choosing and the court shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least five days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

(3) At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine whether the committed person continues to be a mentally ill person. At the hearing the court may make any order that a court is empowered to make pursuant to subsections (3), (4) and (5) of K.S.A. 22-3428 and amendments thereto. If the court finds by clear and convincing evidence the committed person is not a mentally ill person, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released.

(4) Costs of a hearing held pursuant to this section shall be assessed against and paid by the county in which the person was originally ordered committed.

H.B. 2440, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING Kan. Stat. Ann. § 22-3428a (2009). Same; annual hearing on continued commitment; procedure, notice and standards.

EFFECTIVE APRIL 6, 2010.

* See sections 5 and 9

…

[*5] Sec. 5. K.S.A. 22-3428a is hereby amended to read as follows:

22-3428a. (1) Any person found not guilty, pursuant to K.S.A. 22-3220 and 22-3221 **[A>** , AND AMENDMENTS THERETO **<A]** , who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428 **[A>** , **<A]** and amendments thereto **[A>** , **<A]** shall be entitled annually to request a hearing to determine whether or not the person continues to be a mentally ill person. The request shall be made in writing to the district court of the county where the person is

hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: (a) The county or district attorney of the county in which the person was originally ordered committed, and (b) the chief medical officer of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within 20 days from the date when notice from the court was received. Within 10 days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the court shall transfer the hearing to the district court specified in the motion and send a copy of the court's records of the proceedings to that court.

(2) After the time in which a change of venue may be requested has elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person **[D>** and **<D] [A>** , **<A]** the person's counsel **[A>** AND THE SECRETARY OF CORRECTIONS FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION **<A]** . If there is no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508 **[A>** , **<A]** and amendments thereto **[A>** , **<A]** may request a physician or licensed psychologist of the person's own choosing and the court shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least five days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

(3) At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine

whether the committed person continues to be a mentally ill person. At the hearing the court may make any order that a court is empowered to make pursuant to subsections (3), (4) and (5) of K.S.A. 22-3428 **[A>** , **<A]** and amendments thereto. If the court finds by clear and convincing evidence the committed person is not a mentally ill person, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released. **[A>** THE COURT SHALL NOTIFY THE SECRETARY OF CORRECTIONS OF THE OUTCOME OF THE HEARING FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION. **<A]**

(4) Costs of a hearing held pursuant to this section shall be assessed against and paid by the county in which the person was originally ordered committed.

…

[*9] Sec. 9. K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431 and 22-3727 are hereby repealed.

…

H.B. 2656, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING Kan. Stat. Ann. § 22-3428a (2009). Same; annual hearing on continued commitment; procedure, notice and standards.

Effective May 13, 2010.

* See sections 23 and 225

…

[*23] Sec. 23. K.S.A. 22-3428a is hereby amended to read as follows:

22-3428a. (1) Any person found not guilty, pursuant to K.S.A. 22-3220 and 22-3221, **[A>** AND AMENDMENTS THERETO, **<A]** who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428 **[A>** , **<A]** and amendments thereto **[A>** , **<A]** shall be entitled annually to request a hearing to determine whether or not the person continues to be a mentally ill person. The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: (a) The county or district attorney of the county in which the person was originally ordered committed, and (b) the chief medical officer of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within **[D>** 20 **<D] [A>** 21 **<A]** days from the date when notice from the court was received. Within **[D>** 10 **<D] [A>** 14 **<A]** days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the

court shall transfer the hearing to the district court specified in the motion and send a copy of the court's records of the proceedings to that court.

(2) After the time in which a change of venue may be requested has elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person and the person's counsel. If there is no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508 **[A>** , **<A]** and amendments thereto **[A>** , **<A]** may request a physician or licensed psychologist of the person's own choosing and the court shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least **[D>** five **<D] [A>** SEVEN **<A]** days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

(3) At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine whether the committed person continues to be a mentally ill person. At the hearing the court may make any order that a court is empowered to make pursuant to subsections (3), (4) and (5) of K.S.A. 22-3428 **[A>** , **<A]** and amendments thereto. If the court finds by clear and convincing evidence the committed person is not a mentally ill person, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released.

(4) Costs of a hearing held pursuant to this section shall be assessed against and paid by the county in which the person was originally ordered committed.

…

[*225] Sec. 225. K.S.A. 8-113a, 21-4311, 21-4623, 21-4624, 21-4634, 21-4718, 22-2408, 22-2516, 22-2807, 22-2901, 22-2902, 22-3208, 22-3212, 22-3302, 22-3305, 22-3428, 22-3428a, 22-3501, 22-3502, 22-3603, 22-3608, 22-3609, 22-3609a, 22-3707, 22-3902, 22-4006, 22-4904, 22-4905, 22-4907, 23-701, 23-4,107, 26-503, 26-510, 59-807, 59-2947, 59-2947, as amended by section 11 of 2010 House Bill No. 2364, 59-29a14, 59-29b47, 59-3052, 59-3052, as amended by section 12 of 2010 House Bill No. 2364, 60-101, 60-102, 60-103, 60-104, 60-201, 60-202, 60-203, 60-204, 60-205, 60-207, 60-208, 60-209, 60-210, 60-211, 60-212, 60-213, 60-214, 60-215, 60-217, 60-218, 60-219, 60-

220, 60-221, 60-222, 60-223, 60-223a, 60-223b, 60-224, 60-225, 60-227, 60-228, 60-229, 60-230, 60-231, 60-232, 60-235, 60-236, 60-238, 60-239, 60-240, 60-241, 60-242, 60-243, 60-244, 60-245a, 60-246, 60-247, 60-248, 60-248a, 60-249, 60-249a, 60-250, 60-251, 60-252, 60-252a, 60-252b, 60-254, 60-255, 60-257, 60-258, 60-258a, 60-258b, 60-259, 60-260, 60-261, 60-262, 60-263, 60-264, 60-265, 60-266, 60-267, 60-268, 60-270, 60-271, 60-301, 60-302, 60-304, 60-305, 60-305a, 60-306, 60-307, 60-309, 60-310, 60-311, 60-312, 60-313, 60-612, 60-712, 60-731, 60-735, 60-738, 60-739, 60-740, 60-904, 60-1005, 60-1006, 60-1009, 60-1011, 60-1207, 60-1305, 60-1629, 60-2002, 60-2103, 60-2103a, 60-2414, 60-2604, 60-2801, 60-2802, 60-2803, 60-3106, 60-31a05, 60-4109, 60-4112, 60-4113, 60-4116, 61-2709, 61-2904, 61-2912, 61-3002, 61-3006, 61-3101, 61-3103, 61-3105, 61-3201, 61-3301, 61-3304, 61-3504, 61-3508, 61-3509, 61-3511, 61-3512, 61-3513, 61-3604, 61-3701, 61-3702, 61-3705, 61-3807, 61-3808, 61-3902, 61-3904 and 61-3905 and K.S.A. 2009 Supp. 8-235, 8-259, 8-1002, 8-1020, 21-4316, 22-3437, 22-3717, 26-505, 26-506, 26-507, 26-508, 38-2229, 38-2229, as amended by section 3 of 2010 House Bill No. 2364, 38-2255, 38-2258, 38-2305, 38-2329, 38-2343, 38-2343, as amended by section 8 of 2010 House Bill No. 2364, 38-2350, 38-2362, 38-2371, 38-2373, 38-2374, 38-2381, 59-2401a, 60-206, 60-206, as amended by section 14 of 2010 House Bill No. 2364, 60-216, 60-226, 60-233, 60-234, 60-237, 60-245, 60-253, 60-256, 60-303, 60-308, 60-736, 60-1007, 60-1505, 60-1607, 60-2102, 60-2409, 60-3503, 60-4107, 61-2707, 61-3703 and 77-503 are hereby repealed.

…

KAN. STAT. ANN. § 22-3429 (2009). MENTAL EXAMINATION, EVALUATION AND REPORT AFTER CONVICTION AND PRIOR TO SENTENCE; LIMIT ON COMMITMENT.

After conviction and prior to sentence and as part of the presentence investigation authorized by K.S.A. 21-4604 and amendments thereto or for crimes committed on or after July 1, 1993, a presentence investigation report as provided in K.S.A. 21-4714 and amendments thereto, the trial judge may order the defendant committed for mental examination, evaluation and report. If the defendant is convicted of a felony, the commitment shall be to the state security hospital or any suitable local mental health facility. If the defendant is convicted of a misdemeanor, the commitment shall be to a state hospital or any suitable local mental health facility. If adequate private facilities are available and if the defendant is willing to assume the expense thereof, commitment may be to a private hospital. A report of the examination and evaluation shall be furnished to the judge and shall be made available to the prosecuting attorney and counsel for the defendant. A defendant may not be detained for more than 120 days under a commitment made under this section.

KAN. STAT. ANN. § 22-3430 (2009). COMMITMENT TO CERTAIN INSTITUTIONS AS A RESULT OF A K.S.A. 22-3429 EXAMINATION, WHEN; STANDARDS; COSTS; APPEAL BY DEFENDANT.

(a) If the report of the examination authorized by K.S.A. 22-3429 and amendments thereto shows that the defendant is in need of psychiatric care and treatment, that such treatment may materially aid in the defendant's rehabilitation and that the defendant and

society are not likely to be endangered by permitting the defendant to receive such psychiatric care and treatment, in lieu of confinement or imprisonment, the trial judge shall have power to commit such defendant to: (1) The state security hospital or any county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a felony; or (2) any state or county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a misdemeanor. The court may direct that the defendant be detained in such hospital or institution until further order of the court or until the defendant is discharged under K.S.A. 22-3431 and amendments thereto. No period of detention under this section shall exceed the maximum term provided by law for the crime of which the defendant has been convicted. The cost of care and treatment provided by a state institution shall be assessed in accordance with K.S.A. 59-2006 and amendments thereto.

(b) No defendant committed to the state security hospital pursuant to this section upon conviction of a felony shall be transferred or released from such hospital except on recommendation of the staff of such hospital.

(c) The defendant may appeal from any order of commitment made pursuant to this section in the same manner and with like effect as if sentence to a jail, or to the custody of the secretary of corrections had been imposed.

H.B. 2440, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING KAN. STAT. ANN. § 22-3430 (2009). COMMITMENT TO CERTAIN INSTITUTIONS AS A RESULT OF A K.S.A. 22-3429 EXAMINATION, WHEN; STANDARDS; COSTS; APPEAL BY DEFENDANT.

EFFECTIVE APRIL 6, 2010.

* See sections 6 and 9

…

[*6] Sec. 6. K.S.A. 22-3430 is hereby amended to read as follows:

22-3430. (a) If the report of the examination authorized by K.S.A. 22-3429 and amendments thereto shows that the defendant is in need of psychiatric care and treatment, that such treatment may materially aid in the defendant's rehabilitation and that the defendant and society are not likely to be endangered by permitting the defendant to receive such psychiatric care and treatment, in lieu of confinement or imprisonment, the trial judge shall have power to commit such defendant to: (1) The state security hospital or any county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a felony; or (2) any state or county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a misdemeanor. The court may direct that the defendant be detained in such hospital or institution until further order of the court or until the defendant is discharged under K.S.A. 223431 **[A>** , **<A]** and amendments thereto. **[A>** THE COURT SHALL NOTIFY THE SECRETARY OF CORRECTIONS OF THE OUTCOME OF THE HEARING FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION. **<A]** No period of detention under this section shall exceed

the maximum term provided by law for the crime of which the defendant has been convicted. The cost of care and treatment provided by a state institution shall be assessed in accordance with K.S.A. 59-2006 **[A>** , **<A]** and amendments thereto.

(b) No defendant committed to the state security hospital pursuant to this section upon conviction of a felony shall be transferred or released from such hospital except on recommendation of the staff of such hospital.

(c) The defendant may appeal from any order of commitment made pursuant to this section in the same manner and with like effect as if sentence to a jail, or to the custody of the secretary of corrections had been imposed.

…

[*9] Sec. 9. K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431 and 22-3727 are hereby repealed.

…

KAN. STAT. ANN. § 22-3431 (2009). COMMITMENT TO CERTAIN INSTITUTIONS AS A RESULT OF MENTAL EXAMINATION AND REPORT AFTER CONVICTION AND PRIOR TO SENTENCE; DISPOSITION UPON COMPLETION OF TREATMENT; NOTICE AND HEARING.

(a) Whenever it appears to the chief medical officer of the institution to which a defendant has been committed under K.S.A. 22-3430 and amendments thereto, that the defendant will not be improved by further detention in such institution, the chief medical officer shall give written notice thereof to the district court where the defendant was convicted. Such notice shall include, but not be limited to: (1) Identification of the patient; (2) the course of treatment; (3) a current assessment of the defendant's psychiatric condition; (4) recommendations for future treatment, if any; and (5) recommendations regarding discharge, if any.

(b) Upon receiving such notice, the district court shall order that a hearing be held. The court shall give notice of the hearing to: (1) The state hospital or state security hospital where the defendant is under commitment; (2) the district or county attorney of the county from which the defendant was originally committed; (3) the defendant; and (4) the defendant's attorney. The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq. and amendments thereto. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice.

(c) At the hearing, the defendant shall be sentenced, committed, granted probation, assigned to a community correctional services program, as provided by K.S.A. 75-5291 and amendments thereto, or discharged as the court deems best under the circumstance. The time spent in a state or local institution pursuant to a commitment under K.S.A. 22-3430 and amendments thereto shall be credited against any sentence, confinement or imprisonment imposed on the defendant.

H.B. 2440, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING KAN. STAT. ANN. § 22-3431 (2009). COMMITMENT TO CERTAIN INSTITUTIONS AS A RESULT OF MENTAL EXAMINATION AND REPORT AFTER CONVICTION AND PRIOR TO SENTENCE; DISPOSITION UPON COMPLETION OF TREATMENT; NOTICE AND HEARING.

EFFECTIVE APRIL 6, 2010.

* See sections 7 and 9

…

[*7] Sec. 7. K.S.A. 22-3431 is hereby amended to read as follows:

22-3431. (a) Whenever it appears to the chief medical officer of the institution to which a defendant has been committed under K.S.A. 22-3430 and amendments thereto, that the defendant will not be improved by further detention in such institution, the chief medical officer shall give written notice thereof to the district court where the defendant was convicted. Such notice shall include, but not be limited to: (1) Identification of the patient; (2) the course of treatment; (3) a current assessment of the defendant's psychiatric condition; (4) recommendations for future treatment, if any; and (5) recommendations regarding discharge, if any.

(b) Upon receiving such notice, the district court shall order that a hearing be held. The court shall give notice of the hearing to: (1) The state hospital or state security hospital where the defendant is under commitment; (2) the district or county attorney of the county from which the defendant was originally committed; (3) the defendant; **[D>** and **<D]** (4) the defendant's attorney **[A>** ; AND (5) THE SECRETARY OF CORRECTIONS FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION **<A]** . The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq. **[A>** , **<A]** and amendments thereto. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice.

(c) At the hearing, the defendant shall be sentenced, committed, granted probation, assigned to a community correctional services program, as provided by K.S.A. 75-5291 **[A>** , **<A]** and amendments thereto, or discharged as the court deems best under the circumstance. **[A>** THE COURT SHALL NOTIFY THE SECRETARY OF CORRECTIONS OF THE OUTCOME OF THE HEARING FOR THE PURPOSE OF PROVIDING VICTIM NOTIFICATION. **<A]** The time spent in a state or local institution pursuant to a commitment under K.S.A. 22-3430 **[A>** , **<A]** and amendments thereto shall be credited against any sentence, confinement or imprisonment imposed on the defendant.

…

[*9] Sec. 9. K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431 and 22-3727 are hereby repealed.

…

KAN. STAT. ANN. § 38-2348 (2009). PROCEEDINGS TO DETERMINE COMPETENCY.

(a) For the purpose of this section, a person charged as a juvenile is incompetent for adjudication as a juvenile offender if, because of mental illness or defect, such person is unable to:

(1) Understand the nature and purpose of the proceedings; or

(2) make or assist in making a defense.

Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this code, such words shall refer to the standard for incompetency described in this subsection.

(b) (1) If at any time after such person has been charged as a juvenile there is reason to believe that the juvenile is incompetent for adjudication as a juvenile offender, the proceedings shall be suspended and the court before whom the case is pending shall conduct a hearing to determine the competency of the juvenile. Such a hearing may be held upon the motion of the juvenile's attorney or the prosecuting attorney, or upon the court's own motion.

(2) The court shall determine the issue of competency. To facilitate in this determination, the court may: (A) Appoint a licensed psychiatrist or psychologist to examine the juvenile; or (B) designate a private or public mental health facility to conduct a psychiatric or psychological examination and report to the court. If the examining psychiatrist, psychologist or private or public mental health facility determines that further examination is necessary, the court may commit the juvenile for not more than 60 days to any appropriate public or private institution for examination and report to the court. For good cause shown, the commitment may be extended for another 60 days. No statement made by the juvenile in the course of any examination provided for by this section, whether the examination is with or without the consent of the juvenile, shall be admitted in evidence against the juvenile in any hearing.

(3) Unless the court finds the attendance of the juvenile would be injurious to the juvenile's health, the juvenile shall be present personally at all proceedings under this section.

(c) If the juvenile is found to be competent, the proceedings which have been suspended shall be resumed.

(d) If the juvenile is found to be incompetent, the juvenile shall remain subject to the jurisdiction of the court and shall be committed for evaluation and treatment pursuant to K.S.A. 2009 Supp. 38-2349 and 38-2350, and amendments thereto. One or both parents of the juvenile may be ordered to pay child support pursuant to the Kansas child support guidelines. Upon application of the juvenile and in the discretion of the court, the juvenile may be released to any appropriate private institution upon terms and conditions

prescribed by the court.

(e) If at any time after proceedings have been suspended under this section, there are reasonable grounds to believe that a juvenile who has been adjudged incompetent is now competent, the court in which the case is pending shall conduct a hearing to determine the juvenile's present mental condition. Reasonable notice of the hearings shall be given to the prosecuting attorney, the juvenile and the juvenile's attorney of record, if any. If the court, following the hearing, finds the juvenile to be competent, the pending proceedings shall be resumed.

KAN. STAT. ANN. § 38-2349 (2009). SAME; COMMITMENT OF INCOMPETENT.

(a) A juvenile who is found to be incompetent pursuant to K.S.A. 2009 Supp. 38-2348, and amendments thereto, shall be committed for evaluation and treatment to any appropriate public or private institution for a period not to exceed 90 days. Within 90 days of the juvenile's commitment to the institution, the chief medical officer of the institution shall certify to the court whether the juvenile has a substantial probability of attaining competency for hearing in the foreseeable future.

(b) If the chief medical officer of the institution certifies that a probability of attaining competency does exist, the court shall order the juvenile to remain in an appropriate public or private institution until the juvenile attains competency or for a period of six months from the date of the original commitment, whichever occurs first. If the juvenile does not attain competency within six months from the date of the original commitment, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. If the juvenile appears to have attained competency, the institution shall promptly notify the court in which the case is pending. Upon notice the court shall hold a hearing to determine competency pursuant to subsection (e) of K.S.A. 2009 Supp. 38-2348, and amendments thereto.

(c) If the chief medical officer of the institution certifies that a probability of attaining competency does not exist, the court shall order the county or district attorney to commence proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

KAN. STAT. ANN. § 38-2350 (2009). SAME; JUVENILE NOT MENTALLY ILL PERSON.

(a) If, after proceedings as required by K.S.A. 2009 Supp. 38-2349, and amendments thereto, it is determined that a juvenile who has been found incompetent is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the juvenile shall remain in the institution where committed pursuant to K.S.A. 2009 Supp. 38-2348, and amendments thereto. The secretary of social and rehabilitation services shall promptly notify the court in which the proceedings are pending and the commissioner of the result of the proceedings. The court shall then proceed pursuant to subsection (c).

(b) If a juvenile has been found to be a mentally ill person and committed to a state psychiatric hospital for evaluation and treatment pursuant to K.S.A. 2009 Supp. 38-2349, and amendments thereto, but thereafter is to be discharged because such juvenile is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the treatment facility shall promptly notify the court in which the proceedings are pending that the juvenile is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Unless the court finds pursuant to subsection (c) of K.S.A. 2009 Supp. 38-2348, and amendments thereto, that the proceedings shall be resumed, within five days after receiving notice pursuant to subsection (a) or (b), the court shall order the juvenile to be discharged from commitment and shall dismiss the charges without prejudice. The period of limitation for the prosecution for the crime charged shall not continue to run until the juvenile has been determined to have attained competency pursuant to subsection (e) of K.S.A. 2009 Supp. 38-2348, and amendments thereto.

H.B. 2656, 83RD LEG., 2010 REG. SESS. (KAN. 2010). MODIFYING KAN. STAT. ANN. § 38-2350 (2009). SAME; JUVENILE NOT MENTALLY ILL PERSON.

Effective May 13, 2010.

* See sections 52 and 225

…

[*52] Sec. 52. K.S.A. 2009 Supp. 38-2350 is hereby amended to read as follows:

38-2350. (a) If, after proceedings as required by K.S.A. 2009 Supp. 38-2349, and amendments thereto, it is determined that a juvenile who has been found incompetent is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the juvenile shall remain in the institution where committed pursuant to K.S.A. 2009 Supp. 382348, and amendments thereto. The secretary of social and rehabilitation services shall promptly notify the court in which the proceedings are pending and the commissioner of the result of the proceedings. The court shall then proceed pursuant to subsection (c).

(b) If a juvenile has been found to be a mentally ill person and committed to a state psychiatric hospital for evaluation and treatment pursuant to K.S.A. 2009 Supp. 38-2349, and amendments thereto, but thereafter is to be discharged because such juvenile is not a mentally ill person subject to involuntary commitment for care and treatment as defined in subsection (f) of K.S.A. 59-2946, and amendments thereto, the treatment facility shall promptly notify the court in which the proceedings are pending that the juvenile is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Unless the court finds pursuant to subsection (c) of K.S.A. 2009 Supp. 38-2348, and amendments thereto, that the proceedings shall be resumed, within **[D>** five **<D] [A>** SEVEN **<A]** days after receiving notice pursuant to subsection (a) or (b), the court shall order the juvenile to be discharged from commitment and shall dismiss the charges

without prejudice. The period of limitation for the prosecution for the crime charged shall not continue to run until the juvenile has been determined to have attained competency pursuant to subsection (e) of K.S.A. 2009 Supp. 38-2348, and amendments thereto.
…
[*225] Sec. 225. K.S.A. 8-113a, 21-4311, 21-4623, 21-4624, 21-4634, 21-4718, 22-2408, 22-2516, 22-2807, 22-2901, 22-2902, 22-3208, 22-3212, 22-3302, 22-3305, 22-3428, 22-3428a, 22-3501, 22-3502, 22-3603, 22-3608, 22-3609, 22-3609a, 22-3707, 22-3902, 22-4006, 22-4904, 22-4905, 22-4907, 23-701, 23-4,107, 26-503, 26-510, 59-807, 59-2947, 59-2947, as amended by section 11 of 2010 House Bill No. 2364, 59-29a14, 59-29b47, 59-3052, 59-3052, as amended by section 12 of 2010 House Bill No. 2364, 60-101, 60-102, 60-103, 60-104, 60-201, 60-202, 60-203, 60-204, 60-205, 60-207, 60-208, 60-209, 60-210, 60-211, 60-212, 60-213, 60-214, 60-215, 60-217, 60-218, 60-219, 60-220, 60-221, 60-222, 60-223, 60-223a, 60-223b, 60-224, 60-225, 60-227, 60-228, 60-229, 60-230, 60-231, 60-232, 60-235, 60-236, 60-238, 60-239, 60-240, 60-241, 60-242, 60-243, 60-244, 60-245a, 60-246, 60-247, 60-248, 60-248a, 60-249, 60-249a, 60-250, 60-251, 60-252, 60-252a, 60-252b, 60-254, 60-255, 60-257, 60-258, 60-258a, 60-258b, 60-259, 60-260, 60-261, 60-262, 60-263, 60-264, 60-265, 60-266, 60-267, 60-268, 60-270, 60-271, 60-301, 60-302, 60-304, 60-305, 60-305a, 60-306, 60-307, 60-309, 60-310, 60-311, 60-312, 60-313, 60-612, 60-712, 60-731, 60-735, 60-738, 60-739, 60-740, 60-904, 60-1005, 60-1006, 60-1009, 60-1011, 60-1207, 60-1305, 60-1629, 60-2002, 60-2103, 60-2103a, 60-2414, 60-2604, 60-2801, 60-2802, 60-2803, 60-3106, 60-31a05, 60-4109, 60-4112, 60-4113, 60-4116, 61-2709, 61-2904, 61-2912, 61-3002, 61-3006, 61-3101, 61-3103, 61-3105, 61-3201, 61-3301, 61-3304, 61-3504, 61-3508, 61-3509, 61-3511, 61-3512, 61-3513, 61-3604, 61-3701, 61-3702, 61-3705, 61-3807, 61-3808, 61-3902, 61-3904 and 61-3905 and K.S.A. 2009 Supp. 8-235, 8-259, 8-1002, 8-1020, 21-4316, 22-3437, 22-3717, 26-505, 26-506, 26-507, 26-508, 38-2229, 38-2229, as amended by section 3 of 2010 House Bill No. 2364, 38-2255, 38-2258, 38-2305, 38-2329, 38-2343, 38-2343, as amended by section 8 of 2010 House Bill No. 2364, 38-2350, 38-2362, 38-2371, 38-2373, 38-2374, 38-2381, 59-2401a, 60-206, 60-206, as amended by section 14 of 2010 House Bill No. 2364, 60-216, 60-226, 60-233, 60-234, 60-237, 60-245, 60-253, 60-256, 60-303, 60-308, 60-736, 60-1007, 60-1505, 60-1607, 60-2102, 60-2409, 60-3503, 60-4107, 61-2707, 61-3703 and 77-503 are hereby repealed.
…

KAN. STAT. ANN. § 59-2946 (2009). DEFINITIONS.

When used in the care and treatment act for mentally ill persons:

(a) "Discharge" means the final and complete release from treatment, by either the head of a treatment facility acting pursuant to K.S.A. 59-2950 and amendments thereto or by an order of a court issued pursuant to K.S.A. 59-2973 and amendments thereto.

(b) "Head of a treatment facility" means the administrative director of a treatment facility or such person's designee.

(c) "Law enforcement officer" shall have the meaning ascribed to it in K.S.A. 22-2202, and amendments thereto.

(d) (1) "Mental health center" means any community mental health center organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015 and amendments thereto, or mental health clinic organized pursuant to the provisions of K.S.A. 65-211 through 65-215 and amendments thereto, or a mental health clinic organized as a not-for-profit or a for-profit corporation pursuant to K.S.A. 17-1701 through 17-1775 and amendments thereto or K.S.A. 17-6001 through 17-6010 and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto.

(2) "Participating mental health center" means a mental health center which has entered into a contract with the secretary of social and rehabilitation services pursuant to the provisions of K.S.A. 39-1601 through 39-1612 and amendments thereto.

(e) "Mentally ill person" means any person who is suffering from a mental disorder which is manifested by a clinically significant behavioral or psychological syndrome or pattern and associated with either a painful symptom or an impairment in one or more important areas of functioning, and involving substantial behavioral, psychological or biological dysfunction, to the extent that the person is in need of treatment.

(f) (1) "Mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e), who also lacks capacity to make an informed decision concerning treatment, is likely to cause harm to self or others, and whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; mental retardation; organic personality syndrome; or an organic mental disorder.

(2) "Lacks capacity to make an informed decision concerning treatment" means that the person, by reason of the person's mental disorder, is unable, despite conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment or is unable to engage in a rational decision-making process regarding hospitalization or treatment, as evidenced by an inability to weigh the possible risks and benefits.

(3) "Likely to cause harm to self or others" means that the person, by reason of the person's mental disorder: (a) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty; or (b) is substantially unable, except for reason of indigency, to provide for any of the person's basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person's ability to function on the person's own.

No person who is being treated by prayer in the practice of the religion of any church

which teaches reliance on spiritual means alone through prayer for healing shall be determined to be a mentally ill person subject to involuntary commitment for care and treatment under this act unless substantial evidence is produced upon which the district court finds that the proposed patient is likely in the reasonably foreseeable future to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty.

(g) "Patient" means a person who is a voluntary patient, a proposed patient or an involuntary patient.

(1) "Voluntary patient" means a person who is receiving treatment at a treatment facility pursuant to K.S.A. 59-2949 and amendments thereto.

(2) "Proposed patient" means a person for whom a petition pursuant to K.S.A. 59-2952 or 59-2957 and amendments thereto has been filed.

(3) "Involuntary patient" means a person who is receiving treatment under order of a court or a person admitted and detained by a treatment facility pursuant to an application filed pursuant to subsection (b) or (c) of K.S.A. 59-2954 and amendments thereto.

(h) "Physician" means a person licensed to practice medicine and surgery as provided for in the Kansas healing arts act or a person who is employed by a state psychiatric hospital or by an agency of the United States and who is authorized by law to practice medicine and surgery within that hospital or agency.

(i) "Psychologist" means a licensed psychologist, as defined by K.S.A. 74-5302 and amendments thereto.

(j) "Qualified mental health professional" means a physician or psychologist who is employed by a participating mental health center or who is providing services as a physician or psychologist under a contract with a participating mental health center, a licensed masters level psychologist, a licensed clinical psychotherapist, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, a licensed professional counselor, a licensed clinical professional counselor, a licensed specialist social worker or a licensed master social worker or a registered nurse who has a specialty in psychiatric nursing, who is employed by a participating mental health center and who is acting under the direction of a physician or psychologist who is employed by, or under contract with, a participating mental health center.

(1) "Direction" means monitoring and oversight including regular, periodic evaluation of services.

(2) "Licensed master social worker" means a person licensed as a master social worker by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.

(3) "Licensed specialist social worker" means a person licensed in a social work practice specialty by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.

(4) "Licensed masters level psychologist" means a person licensed as a licensed masters level psychologist by the behavioral sciences regulatory board under K.S.A. 74-5361 through 74-5373 and amendments thereto.

(5) "Registered nurse" means a person licensed as a registered professional nurse by the board of nursing under K.S.A. 65-1113 through 65-1164 and amendments thereto.

(k) "Secretary" means the secretary of social and rehabilitation services.

(l) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility or Topeka state hospital.

(m) "Treatment" means any service intended to promote the mental health of the patient and rendered by a qualified professional, licensed or certified by the state to provide such service as an independent practitioner or under the supervision of such practitioner.

(n) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, state psychiatric hospital, psychologist, physician or other institution or person authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

(o) The terms defined in K.S.A. 59-3051 and amendments thereto shall have the meanings provided by that section.

KAN. STAT. ANN. § 59-29A01 (2009). COMMITMENT OF SEXUALLY VIOLENT PREDATORS; LEGISLATIVE FINDINGS; TIME REQUIREMENTS DIRECTORY.

The legislature finds that there exists an extremely dangerous group of sexually violent predators who have a mental abnormality or personality disorder and who are likely to engage in repeat acts of sexual violence if not treated for their mental abnormality or personality disorder. Because the existing civil commitment procedures under K.S.A. 59-2901 et seq. and amendments thereto are inadequate to address the special needs of sexually violent predators and the risks they present to society, the legislature determines that a separate involuntary civil commitment process for the potentially long-term control, care and treatment of sexually violent predators is necessary. The legislature also determines that because of the nature of the mental abnormalities or personality disorders from which sexually violent predators suffer, and the dangers they present, it is necessary to house involuntarily committed sexually violent predators in an environment separate from persons involuntarily committed under K.S.A. 59-2901 et seq. and amendments

thereto. Notwithstanding any other evidence of legislative intent, it is hereby declared that any time requirements set forth in K.S.A. 59-29a01 et seq., and amendments thereto, either as originally enacted or as amended, are intended to be directory and not mandatory and serve as guidelines for conducting proceedings under K.S.A. 59-29a01 et seq., and amendments thereto.

KAN. STAT. ANN. § 59-29A05 (2009). SAME; DETERMINATION OF PROBABLSE CAUSE, HEARING; EVALUATION; PERSON TAKEN INTO CUSTODY.

(a) Upon filing of a petition under K.S.A. 59-29a04, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be taken into custody.

(b) Within 72 hours after a person is taken into custody pursuant to subsection (a), such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall: (1) Verify the detainer's identity; and (2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) At the probable cause hearing as provided in subsection (b), the detained person shall have the following rights in addition to the rights previously specified: (1) To be represented by counsel; (2) to present evidence on such person's behalf; (3) to cross-examine witnesses who testify against such person; and (4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

KAN. STAT. ANN. § 59-29A06 (2009). SAME; TRIAL; COUNSEL AND EXPERTS; INDIGENT PERSONS; JURY, COMPOSITION, PEREMPTORY CHALLENGES; PROVISIONS NOT JURISDICTIONAL.

(a) Within 60 days after the completion of any hearing held pursuant to K.S.A. 59-29a05 and amendments thereto, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced.

(b) At all stages of the proceedings under K.S.A. 59-29a01 et seq., and amendments thereto, any person subject to K.S.A. 59-29a01 et seq., and amendments thereto, shall be

entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under K.S.A. 59-29a01 et seq., and amendments thereto, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source.

(c) The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. Number and selection of jurors shall be determined as provided in K.S.A. 22-3403, and amendments thereto. If no demand is made, the trial shall be before the court.

(d) A jury shall consist of 12 jurors unless the parties agree in writing with the approval of the court that the jury shall consist of any number of jurors less than 12 jurors. The person and the attorney general shall each have eight peremptory challenges, or in the case of a jury of less than 12 jurors, a proportionally equal number of peremptory challenges.

(e) The provisions of this section are not jurisdictional, and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59-29a01 et seq., and amendments thereto.

KAN. STAT. ANN. § 59-29A07 (2009). SAME; DETERMINATION; COMMITMENT PROCEDURE; INTERAGENCY AGREEMENTS; MISTRIALS; PERSONS COMMITTED AND LATER TAKEN INTO CUSTODY AFTER PAROLE, ARREST OR CONVICTION, PROCEDURE; PERSONS FOUND INCOMPETENT TO STAND TRIAL, PROCEDURE.

(a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the secretary of social and rehabilitation services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the

person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the department of social and rehabilitation services.

(b) At all times, persons committed for control, care and treatment by the department of social and rehabilitation services pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be kept in a secure facility and such persons shall be segregated at all times from any other patient under the supervision of the secretary of social and rehabilitation services and commencing June 1, 1995, such persons committed pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be kept in a facility or building separate from any other patient under the supervision of the secretary. The provisions of this subsection shall apply to any facility or building utilized in any transitional release program or conditional release program.

(c) The department of social and rehabilitation services is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the secretary of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

(d) If any person while committed to the custody of the secretary pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be taken into custody by any law enforcement officer as defined in K.S.A. 21-3110 and amendments thereto pursuant to any parole revocation proceeding or any arrest or conviction for a criminal offense of any nature, upon the person's release from the custody of any law enforcement officer, the person shall be returned to the custody of the secretary for further treatment pursuant to K.S.A. 59-29a01 et seq., and amendments thereto. During any such period of time a person is not in the actual custody or supervision of the secretary, the secretary shall be excused from the provisions of K.S.A. 59-29a08 and amendments thereto, with regard to providing that person an annual examination, annual notice and annual report to the court, except that the secretary shall give notice to the court as soon as reasonably possible after the taking of the person into custody that the person is no longer in treatment pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, and notice to the court when the person is returned to the custody of the secretary for further treatment.

(e) If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(f) Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in K.S.A. 59-29a06 and amendments thereto.

(g) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released pursuant to K.S.A. 22-3305 and amendments

thereto, and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

KAN. STAT. ANN. § 59-29A08 (2009). SAME; ANNUAL EXAMINATIONS; DISCHARGE PETITIONS BY PERSONS COMMITTED UNDER THIS ACT OVER THE SECRETARY'S OBJECTION AT TIME OF ANNUAL EXAMINATION, NOTICE TO COMMITTED PERSON OF RIGHT, PROCEDURE; HEARING; TRANSITIONAL RELEASE; VIOLATING CONDITIONS OF RELEASE.

(a) Each person committed under K.S.A. 59-29a01 et seq., and amendments thereto, shall have a current examination of the person's mental condition made once every year. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person under K.S.A. 59-29a01 et seq., and amendments thereto. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The court that committed the person under K.S.A. 59-29a01 et seq., and amendments thereto, shall then conduct an annual review of the status of the committed person's mental condition. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

(b) Nothing contained in K.S.A. 59-29a01 et seq., and amendments thereto, shall prohibit the person from otherwise petitioning the court for discharge at this hearing.

(c) (1) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue.

(2) The court may order and hold a hearing when: (A) There is current evidence from an expert or professional person that an identified physiological change to the committed person, such as paralysis, stroke or dementia, that renders the committed person unable to

commit a sexually violent offense and this change is permanent; and

(B) the evidence presents a change in condition since the person's last hearing.

(3) At either hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at either hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(e) If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the transitional release program. The secretary may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

(f) At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(g) Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment

facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

H.B. 2195, 83RD LEG. 2010 REG. SESS. (KAN 2010). MODIFYING KAN. STAT. ANN. § 59-29A08 (2009). SAME; ANNUAL EXAMINATIONS; DISCHARGE PETITIONS BY PERSONS COMMITTED UNDER THIS ACT OVER THE SECRETARY'S OBJECTION AT TIME OF ANNUAL EXAMINATION, NOTICE TO COMMITTED PERSON OF RIGHT, PROCEDURE; HEARING; TRANSITIONAL RELEASE; VIOLATING CONDITIONS OF RELEASE. EFFECTIVE MARCH 1, 2010.

* See sections 5 and 11

…

[*5] Sec. 5. K.S.A. 2009 Supp. 59-29a08 is hereby amended to read as follows:

59-29a08. (a) Each person committed under K.S.A. 59-29a01 et seq., and amendments thereto, shall have a current examination of the person's mental condition made once every year. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person under K.S.A. 59-29a01 et seq., and amendments thereto. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The court that committed the person under K.S.A. 59-29a01 et seq., and amendments thereto, shall then conduct an annual review of the status of the committed person's mental condition. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

(b) Nothing contained in K.S.A. 59-29a01 et seq., and amendments thereto, shall prohibit the person from otherwise petitioning the court for discharge at this hearing.

(c) (1) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue.

(2) The court may order and hold a hearing when: (A) There is current evidence from an expert or professional person that an identified physiological change to the committed person, such as paralysis, stroke or dementia, that renders the committed person unable to commit a sexually violent offense and this change is permanent; and

(B) the evidence presents a change in condition since the person's last hearing.

(3) At either hearing, the committed person shall be entitled to be present and entitled to

the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at either hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(e) If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the transitional release program. The secretary may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

(f) At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written **[D>** or **<D] [A>** , **<A]** facsimile **[A>** OR ELECTRONIC **<A]** form delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(g) Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

…

[*11] Sec. 11. K.S.A. 45-406, 59-2967, 59-29a19, 59-29b67 and 75-3519 and K.S.A. 2009 Supp. 38-2305, 59-2971, 59-29a08 and 59-29b71 are hereby repealed.
…

KAN. STAT. ANN. § 59-29A09 (2009). DETENTION AND COMMITMENT TO CONFORM TO CONSTITUTIONAL REQUIREMENTS.

The involuntary detention or commitment of persons under this act shall conform to constitutional requirements for care and treatment.

KENTUCKY

KY. REV. STAT. ANN. § 202A.026 (2010). CRITERIA FOR INVOLUNTARY HOSPITALIZATION.

No person shall be involuntarily hospitalized unless such person is a mentally ill person:

(1) Who presents a danger or threat of danger to self, family or others as a result of the mental illness;

(2) Who can reasonably benefit from treatment; and

(3) For whom hospitalization is the least restrictive alternative mode of treatment presently available.

KY. REV. STAT. ANN. § 202A.201 (2010). MENTALLY ILL INMATES.

(1) When an inmate of any penal and correctional institution is reported by the staff of that institution to the Department of Corrections as being so mentally ill that he cannot be properly treated with the facilities at the disposal of the staff, the Department of Corrections shall have an examination conducted on the inmate by a mental health professional.

(2) If this examination reveals that the inmate is mentally ill and appropriate treatment cannot be properly carried out in the institution in which he is incarcerated or within the facilities at the disposal of the Department of Corrections, the commissioner of the Department of Corrections may then request of the secretary of the Cabinet for Health and Family Services the inmate's transfer to a hospital or forensic psychiatric facility. If the secretary of the Cabinet for Health and Family Services agrees that a transfer is necessary, the person shall be transferred to a Cabinet for Health and Family Services facility designated by the secretary of the Cabinet for Health and Family Services, where the person shall remain until the staff of the facility which received him advises the commissioner of the Department of Corrections that the person's condition is such that he may be returned to the institution from which he came. No transfer shall be made to a correctional facility located on the grounds of a state mental hospital. The commissioner of the Department of Corrections shall then authorize his return. If the prisoner's sentence

expires during his stay in the facility and he is still in need of involuntary hospitalization, the staff of the facility shall petition the applicable District Court for further involuntary hospitalization of the patient under provisions of this chapter.

(3) Prior to the issuance of an order of transfer and unless the prisoner voluntarily agrees to the transfer, the commissioner shall:

(a) Send written notice to the prisoner that a transfer to a hospital or forensic psychiatric facility is being considered in sufficient time to permit the prisoner to prepare for the hearing;

(b) Hold a hearing at which time the prisoner is made aware of the evidence being relied upon for the transfer and at which an opportunity to be heard in person and to present documentary evidence is given;

(c) Provide an opportunity at the hearing to the prisoner to present testimony of witnesses and to confront and cross-examine witnesses called by the Department of Corrections, except upon a finding, not arbitrarily made, of good cause for not permitting the presentation;

(d) Provide an independent decision maker who has not participated in the request for transfer to a hospital or forensic psychiatric facility;

(e) Issue a written statement by the fact finder as to the evidence relied on and the reasons for transferring the prisoner; and

(f) Provide effective and timely notice of all the foregoing rights.

(4) During the time of the prisoner's stay in a facility, his legal status as a prisoner shall remain unchanged until the termination of his sentence. The facility staff shall have no authority to parole, grant permission to visit relatives or friends outside the facility, or discharge the individual unless otherwise agreed to by the Department of Corrections. The time the prisoner spends in the facility shall be counted as a part of the prisoner's sentence.

KY. REV. STAT. ANN. § 202A.202 (2010). TRANSFER OF MENTALLY ILL OR MENTALLY RETARDED PATIENTS BETWEEN FACILITIES.

(1) The cabinet may transfer mentally ill or mentally retarded patients between hospitals, between hospitals and forensic psychiatric facilities, between hospitals and mental retardation residential treatment centers, between mental retardation residential treatment centers, and between mental retardation residential treatment centers and forensic psychiatric facilities. A transfer shall be made upon the mutual agreement of the administrative officer, the officer's designated representative or an authorized staff physician of each facility, if the agreement is based upon one (1) of the following findings by the officers, representatives or physicians:

(a) That the transfer will improve the opportunities of the patient to receive care and treatment most likely to be of benefit to the patient;

(b) That the transfer will permit the patient to receive care and treatment in the least restrictive alternative mode of treatment, considering the degree of danger or threat of danger to self or others which the patient presents; or

(c) That the transfer is part of an individual treatment plan which has been reviewed and approved by a court.

(2) The patient or his guardian or designated family member prior to transfer, shall receive notice of said proposed transfer and shall be allowed to challenge the transfer as part of his individual treatment plan under the provisions of KRS 202A.191, 202A.196, and KRS 210.270.

(3) In an emergency situation where the patient presents a danger of serious injury or death to self or others within the institution so as to require immediate transfer to a more secure facility and which condition cannot be treated or resolved within a reasonable period of time in the present facility, the secretary may immediately transfer the patient to a more secure facility while the appeal provisions described in subsection (2) of this section are being carried out. In this event counsel shall be provided to the patient within three (3) days.

KY. REV. STAT. ANN. § 504.030 (2010). DISPOSITION OF PERSON FOUND NOT GUILTY BY REASON OF INSANITY.

(1) When a defendant is found not guilty by reason of insanity, the court shall conduct an involuntary hospitalization proceeding under KRS Chapter 202A or 202B.

(2) To facilitate the procedure established in subsection (1) of this section, the court may order the detention of the defendant for a period of ten (10) days to allow for proceedings to be initiated against the defendant for examination and possible detention pursuant to the provisions of KRS Chapter 202A or 202B.

KY. REV. STAT. ANN. § 504.060 (2010). DEFINITIONS FOR CHAPTER.

As used in this chapter, unless the context otherwise requires:

(1) "Department" means the Department of Corrections;

(2) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary of the Cabinet for Health and Family Services for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill or mentally retarded persons who have been charged with or convicted of a felony;

(3) "Foreseeable future" means not more than three hundred sixty (360) days;

(4) "Incompetency to stand trial" means, as a result of mental condition, lack of

capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one's own defense;

(5) "Insanity" means, as a result of mental condition, lack of substantial capacity either to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law;

(6) "Mental illness" means substantially impaired capacity to use self-control, judgment, or discretion in the conduct of one's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;

(7) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period and is a condition which may exist concurrently with mental illness or insanity;

(8) "Psychiatrist" means a physician licensed pursuant to KRS Chapter 311 who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(9) "Psychologist" means a person licensed at the doctoral level pursuant to KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to perform examinations;

(10) "Treatment" means medication or counseling, therapy, psychotherapy, and other professional services provided by or at the direction of psychologists or psychiatrists. "Treatment" shall not include electroshock therapy or psychosurgery; and

(11) "Treatment facility" means an institution or part thereof, approved by the Cabinet for Health and Family Services, which provides evaluation, care, and treatment for insane, mentally ill, or mentally retarded persons on an inpatient or outpatient basis, or both.

KY. REV. STAT. ANN. § 504.080 (2010). COMMITMENT TO FACILITY FOR EXAMINATION -- PERSONS TO BE PRESENT AT HEARING -- TERMINATION OF CRIMINAL PROCEEDINGS NOT BAR TO CIVIL PROCEEDINGS.

(1) A court may commit a defendant to a treatment facility or forensic psychiatric facility for up to thirty (30) days so that a psychologist or psychiatrist can examine, treat, and report on the defendant's mental condition, except that if the defendant is charged with a felony and it is determined that inpatient examination or treatment is required, the defendant shall be committed to a forensic psychiatric facility unless the secretary of the Cabinet for Health and Family Services or the secretary's designee determines that the defendant shall be examined and treated in another Cabinet for Health and Family Services facility.

(2) Reports on a defendant's mental condition prepared under this chapter shall be filed within ten (10) days of the examination.

(3) The defendant shall be present at any hearing on his mental condition unless he waives his right to be present.

(4) The examining psychologist or psychiatrist shall appear at any hearing on defendant's mental condition unless the defendant waives his right to have him appear.

(5) A psychologist or psychiatrist retained by the defendant shall be permitted to participate in any examination under this chapter.

(6) The Cabinet for Health and Family Services, if the cabinet or its agent or employee does not provide the examination, shall pay a reasonable fee to any psychologist or psychiatrist ordered to examine, treat, and report on a defendant's mental condition.

(7) The termination of criminal proceedings under this chapter is not a bar to the institution of civil commitment proceedings.

KY. REV. STAT. ANN. § 504.110 (2010). ALTERNATIVE HANDLING OF DEFENDANT DEPENDING ON WHETHER HE IS COMPETENT OR INCOMPETENT TO STAND TRIAL.

(1) If the court finds the defendant incompetent to stand trial but there is a substantial probability he will attain competency in the foreseeable future, it shall commit the defendant to a treatment facility or a forensic psychiatric facility and order him to submit to treatment for sixty (60) days or until the psychologist or psychiatrist treating him finds him competent, whichever occurs first, except that if the defendant is charged with a felony, he shall be committed to a forensic psychiatric facility unless the secretary of the Cabinet for Health and Family Services or the secretary's designee determines that the defendant shall be treated in another Cabinet for Health and Family Services facility. Within ten (10) days of that time, the court shall hold another hearing to determine whether or not the defendant is competent to stand trial.

(2) If the court finds the defendant incompetent to stand trial but there is no substantial probability he will attain competency in the foreseeable future, it shall conduct an involuntary hospitalization proceeding under KRS Chapter 202A or 202B.

(3) If the court finds the defendant competent to stand trial, the court shall continue the proceedings against the defendant.

KY. REV. STAT. ANN. § 504.150 (2010). SENTENCE FOR PERSON FOUND GUILTY BUT MENTALLY ILL.

(1) The court shall sentence a defendant found guilty but mentally ill at the time of the offense to the local jail or to the Department of Corrections in the same manner as a defendant found guilty. If the defendant is found guilty but mentally ill, treatment shall be

provided the defendant until the treating professional determines that the treatment is no longer necessary or until expiration of his sentence, whichever occurs first.

(2) Treatment shall be a condition of probation, shock probation, conditional discharge, parole, or conditional release so long as the defendant requires treatment for his mental illness in the opinion of his treating professional.

LOUISIANA

LA. REV. STAT. ANN. § 28:2 (2010). DEFINITIONS

Whenever used in this Title, the masculine shall include the feminine, the singular shall include the plural, and the following definitions shall apply:

(1) "Conditional discharge" means the physical release of a judicially committed person from a treatment facility by the director or by the court. The patient may be required to report for outpatient treatment as a condition of his release. The judicial commitment of such persons shall remain in effect for a period of up to one hundred twenty days and during this time the person may be hospitalized involuntarily for appropriate medical reasons upon court order.

(2) "Court" means any duly constituted district court or court having family or juvenile jurisdiction. "Court" does not include a city court, which shall have no jurisdiction to commit persons to mental health treatment facilities in civil or criminal proceedings, except when exercising juvenile jurisdiction.

(3) "Dangerous to others" means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.

(4) "Dangerous to self" means the condition of a person whose behavior, significant threats or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.

(5) "Diagnosis" means the art and science of determining the presence of disease in an individual and distinguishing one disease from another.

(6) "Director" or "superintendent" means a person in charge of a treatment facility or his deputy.

(7) "Discharge" means the full or conditional release from a treatment facility of any person admitted or otherwise detained under this Chapter.

(8) "Department" means the Department of Health and Hospitals.

(9) "Formal voluntary admission" means the admission of a person suffering from mental illness or substance abuse desiring admission to a treatment facility for diagnosis and/or treatment of such condition who may be formally admitted upon his written request. Such persons may be detained following a request for discharge pursuant to R.S. 28:52.2.

(10) "Gravely disabled" means the condition of a person who is unable to provide for his own basic physical needs, such as essential food, clothing, medical care, and shelter, as a result of serious mental illness or substance abuse and is unable to survive safely in freedom or protect himself from serious harm; the term also includes incapacitation by alcohol, which means the condition of a person who, as a result of the use of alcohol, is unconscious or whose judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(11) "Informal voluntary admission" means the admission of a person suffering from mental illness or substance abuse, desiring admission to a treatment facility for diagnosis and/or treatment of such condition who may be admitted upon his request without making formal application.

(12) "Major surgical procedure" means an invasive procedure of a serious nature with incision upon the body or parts thereof under general, local or spinal anesthesia, utilizing surgical instruments, for the purpose of diagnosis or treatment of a medical condition. Diagnostic procedures, including, but not limited to, the following, shall not be considered as major surgical procedures:

(a) Endoscopy through natural body openings, such as the mouth, anus, or urethra, to view the trachea, bronchi, esophagus, stomach, pancreas, small or large intestine, urethra, urinary bladder, or ureters, and to obtain from such organs specimens of fluids or tissues for chemical or microscopic analysis.

(b) Sub-cutaneous percutaneous liver biopsy.

(c) Punch biopsy of skeletal muscles.

(d) Bone marrow biopsy.

(e) Lumbar puncture.

(f) Myelogram.

(g) Thoracocentesis.

(h) Abdominocentesis.

(i) Conization of the uterine cervix.

(j) Renal angiography.

(k) Femoral angiography.

(l) Carotid angiography.

(m) Vertebral angiography.

(12.1) "Medical psychologist" means a psychologist who has undergone specialized training in clinical psychopharmacology and has passed a national proficiency examination in psychopharmacology approved by the Louisiana State Board of Medical Examiners and who holds a current and valid license from the Louisiana State Board of Medical Examiners. For the purposes of this Chapter a medical psychologist shall have at least three years training, primary experience, or both, in diagnosis and treatment of mental illness.

(13) "Mental health advocacy service" means a service established by the state of Louisiana for the purpose of providing legal counsel and representation for mentally disabled persons and for children and to ensure that their legal rights are protected.

(14) "Mentally ill person" means any person with a psychiatric disorder which has substantial adverse effects on his ability to function and who requires care and treatment. It does not refer to a person suffering solely from mental retardation, epilepsy, alcoholism, or drug abuse.

(15) "Minor" means a person under eighteen years of age.

(16) "Parent" means a person who is the biological mother or father of an individual or the legally adoptive mother or father of an individual.

(17) "Patient" means any person detained and taken care of as a mentally ill person or person suffering from substance abuse.

(18) "Peace officer" means any sheriff, police officer, or other person deputized by proper authority to serve as a peace officer.

(19) "Person of legal age" means any person eighteen years of age or older.

(20) "Petition" means a written civil complaint filed by a person of legal age alleging that a person is mentally ill or suffering from substance abuse and requires judicial commitment to a treatment facility.

(21) "Physician" means an individual licensed to practice medicine by the Louisiana State Board of Medical Examiners in active practice or an individual in a post-graduate medical training program of an accredited medical school in Louisiana or a medical officer similarly qualified by the government of the United States while in the state in the

performance of his official duties.

(21.1) "Primary care provider" means the principal, treating health care professional, excluding a physician, or psychiatrist, rendering mental health care services to a person including a psychologist, medical psychologist, or psychiatric mental health nurse practitioner.

(21.2) "Psychiatric mental health nurse practitioner" means an advanced practice registered nurse licensed to practice as a nurse practitioner or clinical nurse specialist by the Louisiana State Board of Nursing, in accordance with the provisions of R.S. 37:911, et seq., who focuses clinical practice on individuals, families, or populations across the life span at risk for developing or having a diagnosis of psychiatric disorders, mental health problems, or both. A psychiatric mental health nurse practitioner means a specialist who provides primary mental health care to patients seeking mental health services in a wide range of settings. Primary mental health care provided by a psychiatric mental health nurse practitioner involves the continuous and comprehensive services necessary for the promotion of optimal mental health, prevention and treatment of psychiatric disorders, and health maintenance. Such primary health care includes the assessment, diagnosis, and management of mental health problems and psychiatric disorders. A psychiatric mental health nurse practitioner means a provider of direct mental health care services who synthesizes theoretical, scientific, and clinical knowledge for the assessment and management of both health and illness states and who is licensed to practice as a nurse practitioner in Louisiana, in accordance with R.S. 37:911, et seq. For purposes of this Chapter, a psychiatric mental health nurse practitioner shall have at least two years training, primary experience, or both, in diagnosis and treatment of mental illness. For purposes of this Chapter, a psychiatric mental health nurse practitioner shall also have authority from the Louisiana State Board of Nursing to prescribe legend and certain controlled drugs, in accordance with the provisions of R.S. 37:913(3)(b), (8), and (9).

(22) (a) "Psychiatrist" means a physician who has at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.

(b) "Psychologist" means an individual licensed to practice psychology in Louisiana in accordance with R.S. 37:2351 et seq., or licensed to practice medical psychology in Louisiana in accordance with R.S. 37:1360.51 et seq., and who has been engaged in the practice of a clinical specialty for not less than three years.

(23) "Respondent" means a person alleged to be mentally ill or suffering from substance abuse and for whom an application for commitment to a treatment facility has been filed.

(24) "Restraint" means the partial or total immobilization of any or all of the extremities or the torso by mechanical means for psychiatric indications. Restraint does not include the use of mechanisms usually and customarily used during medical or surgical procedures, including but not limited to body immobilization during surgery and

arm immobilization during intravenous administration. Restraint does not include orthopedic appliances used to posturally support the patient, such as posies.

(25) "Seclusion" means the involuntary confinement of a patient alone in a room where the patient is physically prevented from leaving for any period of time, except that seclusion does not include the placement of a patient alone in a room or other area for no more than thirty minutes at a time and no more than three hours in any twenty-four-hour period pursuant to behavior-shaping techniques, such as "time-out".

(26) "Substance abuse" means the condition of a person who uses narcotic, stimulant, depressant, soporific, tranquilizing, or hallucinogenic drugs or alcohol to the extent that it renders the person dangerous to himself or others or renders the person gravely disabled.

(27) "Transfer" means the removal of a patient from one mental institution to another without any procedure for admission other than is prescribed by the department.

(28) "Treatment" means an active effort to accomplish an improvement in the mental condition or behavior of a patient or to prevent deterioration in his condition or behavior. Treatment includes but is not limited to hospitalization, partial hospitalization, outpatient services, examination, diagnosis, training, the use of pharmaceuticals, and other services provided for patients by a treatment facility.

(29) (a) "Treatment facility" means any public or private hospital, retreat, institution, mental health center, or facility licensed by the state in which any mentally ill person or person suffering from substance abuse is received or detained as a patient. The term includes Veterans Administration and public health hospitals and forensic facilities. "Treatment facility" includes but is not limited to the following, and shall be selected with consideration of first, medical suitability; second, least restriction of the person's liberty; third, nearness to the patient's usual residence; and fourth, financial or other status of the patient, except that such considerations shall not apply to forensic facilities:

(i) Community mental health centers.

(ii) Private clinics.

(iii) Public or private halfway houses.

(iv) Public or private nursing homes.

(v) Public or private general hospitals.

(vi) Public or private mental hospitals.

(vii) Detoxification centers.

(viii) Substance abuse clinics.

(ix) Substance abuse in-patient facility.

(x) Forensic facilities.

(b) Patients involuntarily hospitalized by emergency certificate or mental health treatment shall not be admitted to the facilities listed in Items (ii), (iii), (iv), (viii), or (x) of Subparagraph (a), except that patients in custody of the Department of Public Safety and Corrections may be admitted to forensic facilities by emergency certificate provided that judicial commitment proceedings are initiated during the period of treatment at the forensic facility authorized by emergency certificate. Patients involuntarily hospitalized by emergency certificate for substance abuse treatment shall not be admitted to the facilities listed in Items (ii), (iii), (iv), or (x) of Subparagraph (a). Judicial commitments, however, may be made to any of the above facilities except forensic facilities. However, in the case of any involuntary hospitalization as a result of such emergency certificate for substance abuse or in the case of any judicial commitment as the result of substance abuse, such commitment or hospitalization may be made to any of the above facilities, except forensic facilities, provided that such facility has a substance abuse in-patient operation maintained separate and apart from any mental health in-patient operation at such facility.

(c) "Treatment facility" shall not include a jail or prison of any kind, or any facility under the control or supervision of the Department of Public Safety and Corrections unless the facility has been designated by the Department of Health and Hospitals and the Department of Public Safety and Corrections as a treatment facility pursuant to R.S. 15:830.1(B); however, a jail or prison shall not be construed as a forensic facility. Only adult inmates sentenced to the Department of Public Safety and Corrections may be admitted to a treatment facility designated pursuant to R.S. 15:830.1(B).

LA. REV. STAT. ANN. § 28:58 (2010). R.S. 15:267 NOT AFFECTED

Whenever it appears that a person against whom an indictment has been found or information filed in any court in this state is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense, or whenever the existence of insanity or mental defect on the part of the defendant at the time of the alleged commission of the offense charged becomes an issue in the cause, all proceedings to determine the fact of the insanity or mental defect shall be in accordance with the provisions of R.S. 15:267 (Article 267 of the Code of Criminal Procedure).

LA. REV. STAT. ANN. § 28:59 (2010). COMMITMENT OF PRISONERS

A. Any person acquitted of a crime or misdemeanor by reason of insanity or mental defect may be committed to the proper institution in accordance with Code of Criminal Procedure Arts. 654 et seq.

B. Any person who is determined to lack the capacity to proceed, who will not attain the capacity to proceed with his trial in the foreseeable future, and who is not a danger to himself or others, shall be discharged in accordance with Code of Criminal Procedure

Arts. 648 et seq. However, this release is without prejudice to any right the state may have to institute civil commitment proceedings pursuant to R.S. 28:53 or R.S. 28:54. Furthermore, this person may be held in a treatment facility for a reasonable time period pending the judicial commitment hearing. If judicial commitment proceedings are necessary, they shall be instituted within seventy-two hours after a determination that the person will not attain the capacity to proceed with his trial.

C. Any person serving sentence who becomes mentally ill may be committed to the proper institution in the manner provided for judicial commitment by the district court of the place of incarceration and contradictorily with the superintendent of the place of incarceration or with the sheriff of that parish. The period of commitment shall be credited against the sentence imposed by the court.

D. The department shall designate institutions for the care of mental patients committed in accordance with this Section.

LA. CHILD. CODE. ANN. ART. 1452 (2010). MANDATORY REVIEW OF COMMITMENTS

A. All judicial commitments, except those for alcoholism, shall be reviewed by the court issuing the order for commitment every ninety days.

B. A commitment for alcoholism shall expire after forty-five days and the minor patient, if not converted to a voluntary status, shall be discharged, unless the court, upon application by the director of the treatment facility, finds that continued involuntary treatment is necessary and orders the minor patient recommitted for a period not to exceed sixty days; provided, that not more than two such sixty-day recommitments may be ordered in connection with the same continuous confinement.

C. All judicial commitments involving a minor patient who has been found not guilty by reason of insanity or who has been found to lack the capacity to proceed, shall be reviewed in the manner as set forth in Title VIII.

LA. CODE CRIM. PROC. ANN. ART. 270 (2010). COMMITMENT TO AWAIT EXTRADITION

A. The judge shall commit the accused for thirty days if it appears, after a hearing in open court pursuant to Article 271, that there is reasonable ground to hold him awaiting extradition. The order of commitment shall recite the accusation. The accused shall be imprisoned in the parish jail until the term of his commitment expires or he is otherwise legally discharged, unless he gives bail as provided in Article 271.

B. The judge may extend the commitment of the accused for an additional period, not to exceed sixty days, if such additional period of commitment is for the purpose of awaiting receipt of the extradition requisition or other necessary or proper papers needed for the extradition of the accused.

LA. CODE CRIM. PROC. ANN. ART. 648 (2010). PROCEDURE AFTER DETERMINATION OF MENTAL CAPACITY OR INCAPACITY AND START HERE AGAIN

A. The criminal prosecution shall be resumed unless the court determines by 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:

(1) If the court determines that the defendant's mental capacity is likely to be restored within ninety days by outpatient care and treatment at an institution as defined by R.S. 28:2(29) while remaining in the custody of the criminal authorities, and if the person is not charged with a felony or a misdemeanor classified as an offense against the person and is considered by the court to be unlikely to commit crimes of violence, then the court may order outpatient care and treatment at any institution as defined by R.S. 28:2(29).

(2) (a) Except as otherwise provided for in Subsubparagraph (b) of this Subparagraph, if the person is charged with a felony, or with a misdemeanor violation of R.S. 14:35.3, and is considered by the court to be likely to commit crimes of violence, and the court determines that his mental capacity is likely to be restored within ninety days as a result of treatment, the court may order immediate jail-based treatment by the Department of Health and Hospitals not to exceed ninety days. Otherwise, if his capacity cannot be restored within ninety days and inpatient treatment is recommended, the court shall commit the defendant to the Feliciana Forensic Facility.

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

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

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

(e) 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 (d) of this

Subparagraph, the court shall order a contradictory hearing to determine whether to release the defendant or to order the appropriate authorities to institute civil commitment proceedings pursuant to R.S. 28:54. The defendant shall remain in custody pending such civil commitment proceedings. If the defendant is civilly committed to a treatment facility pursuant to Title 28 of the Louisiana Revised Statutes of 1950, the director of the institution designated for the patient's treatment shall, in writing, notify the court and the district attorney when the patient is to be discharged or conditionally discharged, as long as the charges are pending.

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

(2) Repealed by Acts 2008, No. 861, § 2, effective July 9, 2008.

(3) If, after the hearing, the court determines that the incompetent defendant is unlikely in the foreseeable future to be capable of standing trial, the court shall order the defendant released or remanded to the custody of the Department of Health and Hospitals which, within ten days exclusive of weekends and holidays, may institute civil commitment proceedings pursuant to Title 28 of the Louisiana Revised Statutes of 1950, or release the defendant. The defendant shall remain in custody pending such civil commitment proceedings. If the defendant is committed to a treatment facility pursuant to Title 28 of the Louisiana Revised Statutes of 1950, the director of the institution designated for the patient's treatment shall, in writing, notify the court and the district attorney when the patient is to be discharged or conditionally discharged, as long as the charges are pending. If not dismissed without prejudice at an earlier trial, charges against an unrestorable incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner, except for the following charges:

(a) Charges of a crime of violence as defined in R.S. 14:2(B).

(b) 14:46 (false imprisonment).

(c) 14:46.1 (false imprisonment; offender armed with dangerous weapon).

(d) 14:52 (simple arson).

(e) 14:62 (simple burglary).

(f) 14:62.3 (unauthorized entry of an inhabited dwelling).

(g) 14:78 (incest).

(h) 14:78.1 (aggravated incest).

(i) 14:801 (carnal knowledge of a juvenile).

(j) 14:81 (indecent behavior with juveniles).

(k) 14:81.1 (pornography involving juveniles).

(l) 14:81.2 (molestation of a juvenile).

(m) 14:92 (contributing to the delinquency of juveniles).

(n) 14:92.1 (encouraging or contributing to child delinquency, dependency, or neglect).

(o) 14:93 (cruelty to juveniles).

(p) 14:93.2.3 (second degree cruelty to juveniles).

(q) 14:93.3 (cruelty to the infirmed).

(r) 14:93.4 (exploitation of the infirmed).

(s) 14:93.5 (sexual battery of the infirm).

(t) 14:102 (cruelty to animals).

(u) 14:106 (obscenity).

(v) 14:283 (video voyeurism).

(w) 14:284 (Peeping Tom).

(x) Charges against a defendant who has been convicted of a felony offense within ten years prior to the date on which he was charged for the current offense.

C. The superintendent of the forensic unit of the Feliciana Forensic Facility shall admit only those persons specified in R.S. 28:25.1 and those persons found not guilty by reason of insanity on conditional release who have a physician's emergency certificate or who seek voluntary admission pursuant to Article 658(B)(4).

LA. CODE CRIM. PROC. ANN. ART. 654 (2010). LEGAL EFFECT OF ACQUITTAL ON GROUND OF INSANITY; COMMITMENT

When a verdict of not guilty by reason of insanity is returned in a capital case, the court shall commit the defendant to a proper state mental institution or to a private mental institution approved by the court for custody, care, and treatment.

When a defendant is found not guilty by reason of insanity in any other felony case, the court shall remand him to the parish jail or to a private mental institution approved by the court and shall promptly hold a contradictory hearing at which the defendant shall have the burden of proof, to determine whether the defendant can be discharged or can be released on probation, without danger to others or to himself. If the court determines that the defendant cannot be released without danger to others or to himself, it shall order him committed to a proper state mental institution or to a private mental institution approved by the court for custody, care, and treatment. If the court determines that the defendant can be discharged or released on probation without danger to others or to himself, the court shall either order his discharge, or order his release on probation subject to specified conditions for a fixed or an indeterminate period. The court shall assign written findings of fact and conclusions of law; however, the assignment of reasons shall not delay the implementation of judgment.

LA. CODE CRIM. PROC. ANN. ART. 654.1 (2010). INFORMATION REQUIRED PRIOR TO ADMISSION

No superintendent of a mental institution shall admit a defendant found not guilty by reason of insanity pursuant to Article 654 unless the court furnishes the following information:

(1) The defendant's commitment order specifying not guilty by reason of insanity.

(2) A copy of the defendant's criminal history record.

(3) A police report concerning the charged offense.

(4) Victim and witness statements, if any.

(5) The name, address, and telephone number of the district attorney who prosecuted the defendant.

LA. CODE CRIM. PROC. ANN. ART. 655 (2010). APPLICATION FOR DISCHARGE OR RELEASE ON PROBATION; REVIEW PANEL

A. When the superintendent of a mental institution is of the opinion that a person committed pursuant to Article 654 can be discharged or can be released on probation, without danger to others or to himself, he shall recommend the discharge or release of the person in a report to a review panel comprised of the person's treating physician, the clinical director of the facility to which the person is committed, and a physician or psychologist who served on the sanity commission which recommended commitment of

the person. If any member of the panel is unable to serve, a physician or a psychologist engaged in the practice of clinical or counseling psychology with at least three years' experience in the field of mental health shall be appointed by the remaining members. The panel shall review all reports received promptly. After review, the panel shall make a recommendation to the court by which the person was committed as to the person's mental condition and whether he can be discharged, conditionally or unconditionally, or placed on probation, without being a danger to others or himself. If the review panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation, the court shall conduct a contradictory hearing following notice to the district attorney.

B. A person committed pursuant to Article 654 may make application to the review panel for discharge or for release on probation. Such application by a committed person may not be filed until the committed person has been confined for a period of at least six months after the original commitment. If the review panel recommends to the court that the person be discharged, conditionally or unconditionally, or placed on probation, the court shall conduct a hearing following notice to the district attorney. If the recommendation of the review panel or the court is adverse, the applicant shall not be permitted to file another application until one year has elapsed from the date of determination.

C. The superintendent of the mental institution shall, under both Paragraphs A and B of this article, transmit a copy of this report and recommendation to the person committed or his attorney and to the district attorney of the parish from which the person was committed.

LA. CODE CRIM. PROC. ANN. ART. 656 (2010). ADDITIONAL MENTAL EXAMINATIONS

A. Upon receipt of the superintendent's report, filed in conformity with Article 655, the review panel may examine the committed person and report, to the court promptly, whether he can be safely discharged, conditionally or unconditionally, or be safely released on probation, without danger to others or to himself.

B. The committed person or the district attorney may also retain a physician to examine the committed person for the same purpose. The physician's report shall be filed with the court.

C. Upon receipt by the superintendent of the state hospital or other treatment facility to which the person has been committed of the recommendation of the hospital-based treatment team that the person is appropriate for probated outpatient status as set forth in this Chapter, the superintendent shall immediately forward such recommendation to the administrator of the conditional release program, together with the proposed aftercare plans. The administrator or a designee shall submit to the review panel a recommended plan, if appropriate, for outpatient supervision and monitoring. The plan shall set forth any additional terms and conditions to be followed during outpatient status, if recommended.

LA. CODE CRIM. PROC. ANN. ART. 657 (2010). DISCHARGE OR RELEASE; HEARING

After considering the report or reports filed pursuant to Articles 655 and 656, the court may either continue the commitment or hold a contradictory hearing to determine whether the committed person is no longer mentally ill as defined by R.S. 28:2(14) and can be discharged, or can be released on probation, without danger to others or to himself as defined by R.S. 28:2(3) and (4). At the hearing the burden shall be upon the state to seek continuance of the confinement by proving by clear and convincing evidence that the committed person is currently both mentally ill and dangerous. After the hearing, and upon filing written findings of fact and conclusions of law, the court may order the committed person discharged, released on probation subject to specified conditions for a fixed or an indeterminate period, or recommitted to the state mental institution. A copy of the judgment and order containing the written findings of fact and conclusions of law shall be forwarded to the administrator of the forensic facility. Notice to the counsel for the committed person and the district attorney of the contradictory hearing shall be given at least thirty days prior to the hearing.

LA. CODE CRIM. PROC. ANN. ART. 657.1 (2010). CONDITIONAL RELEASE; CRITERIA

A. At any time the court considers a recommendation from the hospital-based review panel that the person may be discharged or released on probation, it may place the insanity acquittee on conditional release if it finds the following:

(1) Based on the factors which the court shall consider pursuant to Article 657, he does not need inpatient hospitalization but needs outpatient treatment, supervision, and monitoring to prevent his condition from deteriorating to a degree that he would likely become dangerous to self and others.

(2) Appropriate outpatient treatment, supervision, and monitoring are reasonably available.

(3) There is significant reason to believe that the insanity acquittee, if conditionally released, would comply with the conditions specified.

(4) Conditional release will not present an undue risk of danger to others or self, as defined in R.S. 28:2(3) and (4).

B. The court shall subject a conditionally released insanity acquittee to such orders and conditions it deems will best meet the acquittee's need for treatment, supervision, and monitoring and will best serve the interests of justice and society.

C. These provisions for conditional release may also be applied to discharges of pretrial defendants found unrestorably incompetent to proceed pursuant to Article 648(B).

LA. CODE CRIM. PROC. ANN. ART. 657.2 (2010). CONDITIONAL RELEASE; ADDITIONAL REQUIREMENTS

A. Upon an application for conditional release of a person, who has been committed to a state hospital or other treatment facility pursuant to this Chapter upon the grounds that the adverse effects of a mental illness are in remission, and if after a hearing the court determines that the applicant will not likely be a danger to others or himself, as defined in R.S. 28:2(3) and (4), if he is under supervision and his treatment is monitored in the community, the court shall not consider the applicant to be in stable remission from the adverse effects of a mental illness until the applicant is placed with an appropriate forensic conditional release program for at least one year but not more than five years.

B. For good cause shown, placement in a conditional release program may be extended after five years in one-year increments at a yearly contradictory hearing with the state.

C. All or a substantial portion of the program shall include outpatient treatment, supervision, and monitoring.

D. At the termination of conditional release, the person may continue to receive appropriate treatment services, if recommended by the treating psychiatrist, from public or private mental health agencies, with inactive supervision provided by the division of probation and parole of the Department of Public Safety and Corrections.

LA. CODE CRIM. PROC. ANN. ART. 658 (2010). PROBATION; CONDITIONAL RELEASE; REPORTING

A. When the committed person is released on probation, which shall also be known as conditional release, the clerk of court shall deliver to him a certificate setting forth the period and the conditions of his probation. It shall be a condition of every such probation that the person released shall be recommitted if he becomes dangerous to others or to himself for reasons of mental illness, substance abuse, or mental retardation. The probationer shall be required to agree in writing to the conditions of his probation.

B. (1) The probationer shall be under the supervision of the division of probation and parole. When the probationer violates or is about to violate the conditions of his probation, he may be arrested and detained in conformity with the applicable provisions of Article 899.

(2) The Department of Health and Hospitals shall be responsible for the community treatment and monitoring of persons placed on outpatient status under this Chapter. These services shall be available on a parish or regional basis. The department may provide treatment services directly or through contracts with private providers or local jurisdictions.

(3) The department shall designate for each parish or for each region comprised of two or more parishes a conditional release program coordinator, who shall be responsible for the provisions specified in this Chapter. The coordinator shall monitor the forensic aftercare provider's implementation of the conditional release order and the forensic

aftercare provider's submission to the court of written reports on the acquittee's progress, adjustment in the community, and compliance with the order no less frequently than ninety days after admission to the program and every one hundred eighty days thereafter.

(4) If a person on conditional release or otherwise probated under this Chapter is in need of acute, i.e. short-term, hospitalization and is not charged with a new criminal offense, he may be voluntarily admitted pursuant to R.S. 28:52 or admitted by emergency certificate pursuant to R.S. 28:53 to the Feliciana Forensic Facility or to another suitable treatment facility, with subsequent notice to the court. Transportation to and from the receiving hospital may be effected by the Feliciana Forensic Facility or the sheriff of the parish of incarceration. Hospital discharge of the person under this provision shall be at the discretion of the clinical director of the facility and a hospital admission pursuant to this provision will not be grounds for revocation or recommitment under Subparagraph C(4) of this Article. However, the discharge of a person based on the need for indefinite hospitalization or noncompliance with treatment recommendations shall be grounds for revocation or recommitment.

(5) The division of probation and parole or the Department of Health and Hospitals through the conditional release program coordinator or a designee shall immediately notify the court of any substantive violations or imminent violations of the conditions of a person's probated release and shall present recommendations to the court regarding whether the court should revoke the probation and recommit the probationer to a state mental institution or other recommendations as may be appropriate.

(6) The court, on its own motion or that of the district attorney or probation officer, or upon receiving a report recommending revocation or other disposition from the conditional release program coordinator, may cause the person to be arrested, if he is not already in custody, and shall immediately hold a hearing to consider the violations listed or transfer the case to the parish of commitment, if different from that of the arrest, at which place the hearing should be held as soon as possible.

C. If the court determines that there has been a violation or that the probationer was about to violate the conditions of release or probation it may do any of the following:

(1) Reprimand and warn the probationer.

(2) Order that supervision be intensified.

(3) Modify or add additional conditions to the probation.

(4) Revoke the probation and recommit the probationer to a state mental institution, subject to consideration for discharge or release on probation only after one year has elapsed from the date of revocation and in accordance with the procedure prescribed in Articles 655 through 657 for a first application and hearing. If the probation is revoked and the probationer recommitted, the court shall provide the hospital with the report of the probation officer or forensic aftercare provider regarding the details of the violations

involved.

D. The court may completely discharge the probationer after the expiration of one year in a supervised conditional release program only on recommendation of the director of the division of probation and parole or the administrator of the conditional release program or on other proper evidence of expected outpatient compliance with any continued treatment recommendations, and after a contradictory hearing with the district attorney.

E. No person who is on outpatient conditional release status pursuant to this Chapter shall leave this state without first obtaining written approval to do so from the director of the division of probation and parole and the administrator of the conditional release program. Any person who violates the provisions of this Paragraph may be fined not more than one thousand dollars or imprisoned with or without hard labor for not more than one year, or both.

MAINE

ME. REV. STAT. ANN. TIT. 15, § 101-D (2010). MENTAL EXAMINATION OF PERSONS ACCUSED OF CRIME

1. COMPETENCY TO PROCEED. The court may for cause shown order that the defendant be examined to evaluate the defendant's competency to proceed as provided in this subsection.

A. Upon motion by the defendant or by the State, or upon its own motion, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's competency to proceed. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and report its initial determination regarding the defendant's competency to proceed to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's competency to proceed, the report must so state and must set forth recommendations as to the nature and scope of any further examination. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State.

B. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 21 days of the court's order, and the report of that examination must be filed within 30 days of the court's order. If further examination is ordered pursuant to paragraph C, the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an

extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate any party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination will be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

C. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. Any order for further evaluation may designate the specialty of the person to perform the evaluation. In addition, if at any time during a criminal proceeding an issue of competency to proceed arises with respect to a defendant initially determined to be competent, the court may order such further examination by the State Forensic Service as the court finds necessary and appropriate. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State.

2. INSANITY; ABNORMAL CONDITION OF THE MIND. The court may for cause shown order that the defendant be evaluated with reference to insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's mental state at the time of the crime with reference to criminal responsibility under Title 17-A, section 39 and abnormal condition of the mind under Title 17-A, section 38.

1) When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances of the crime and provide a report of its evaluation to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's mental state at the time of the crime, the report must so state and must set forth

recommendations as to the nature and scope of any further examination.

2) The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination or unless the attorney for the State has agreed that the report need not be forwarded to the State except as set forth in subparagraph (3), to the attorney for the State.

3) If the court orders an examination under this paragraph over the objection of the defendant, any report filed by the State Forensic Service may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Criminal Procedure, Rule 16A(a).

B. If the defendant enters a plea of not criminally responsible by reason of insanity, the court shall order evaluation under paragraph A.

C. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If further examination is ordered pursuant to paragraph D, the report of that examination must be filed within 90 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

D. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. An order for further evaluation may designate the specialty of the person to perform the evaluation. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination, to the attorney for the State.

The court may order an examination under this paragraph over the objection of the defendant, but any report filed by the State Forensic Service must be impounded and may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Criminal Procedure, Rule 16A(a).

3. MENTAL CONDITION RELEVANT TO OTHER ISSUES. The court may for good cause shown order that the defendant be examined to evaluate the defendant's mental condition with reference to issues other than competency, insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State or upon its own motion a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation with respect to any issue necessary for determination in the case, including the appropriate sentence. The court's order shall set forth the issue or issues to be addressed by the State Forensic Service. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances relevant to the issues identified in the court's order and report to the court regarding the defendant's mental condition as it pertains to those issues. Prior to a verdict or finding of guilty or prior to acceptance of a plea of guilty or nolo contendere, the court may not order examination under this subsection over the objection of the defendant unless the defendant has asserted, or intends to assert, the defendant's mental condition as a basis for an objection, a defense or for mitigation at sentencing. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State.

B. If the defendant is incarcerated the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant an extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

4. COMMITMENT FOR OBSERVATION. The court may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or mental retardation as set forth in this subsection.

A. If the State Forensic Service determines that observation of the defendant in an appropriate institution for the care of people with mental illness or mental retardation will materially enhance its ability to perform an evaluation ordered pursuant to subsection 1, 2, 3 or 9 the State Forensic Service shall so advise the court. The State Forensic Service may make this determination based upon consultation with the defendant's attorney and the attorney for the State and the court and upon such other information as it determines appropriate. In addition, the State Forensic Service may include such a determination in a report to the court that recommends further evaluation of the defendant.

B. Upon a determination by the State Forensic Service under paragraph A, a court having jurisdiction in a criminal case may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or mental retardation for observation for a period not to exceed 60 days. If the State Forensic Service requires additional time for observation, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension

should be granted and may extend the commitment for up to an additional 90 days. Unless the defendant objects, an order under this paragraph must authorize the institution where the defendant is placed by the Commissioner of Health and Human Services to provide treatment to the defendant. When further observation of the defendant is determined no longer necessary by the State Forensic Service, the commissioner shall report that determination to the court and the court shall terminate the commitment.

C. If the court has provided for remand to a correctional facility following the commitment under paragraph B, the correctional facility shall execute the remand order upon advice from the Commissioner of Health and Human Services that commitment is determined no longer necessary.

5. FINDING OF INCOMPETENCE; CUSTODY; BAIL. If, after hearing upon motion of the attorney for the defendant or upon the court's own motion, the court finds that any defendant is incompetent to stand trial, the court shall continue the case until such time as the defendant is determined by the court to be competent to stand trial and may either:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of people with mental illness or mental retardation for observation, care and treatment. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and one year, the State Forensic Service shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of people with mental illness or mental retardation for observation, care and treatment. When a person who has been evaluated on behalf of the court by the State Forensic Service is committed into the custody of the Commissioner of the Department of Human Services under this paragraph, the court shall order that the State Forensic Service share any information that it has collected or generated with respect to the person with the institution in which the person is placed. If the defendant is charged with an offense

under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and order the Commissioner of Health and Human Services to commence involuntary commitment proceedings pursuant to Title 34-B, chapter 3, subchapter 4 or chapter 5, subchapter 3. If the defendant is charged with offenses not listed in the previous sentence and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and notify the appropriate authorities who may institute civil commitment procedures for the individual; or

B. Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at a state mental hospital or mental health facility approved by the Department of Health and Human Services or by arrangement with a private psychiatrist or licensed clinical psychologist and treatment when it is determined appropriate by the State Forensic Service. When outpatient observation and treatment is ordered an examination must take place within 45 days of the court's order and the State Forensic Service shall file its report of that examination within 60 days of the court's order. The State Forensic Service's report to the court must contain the opinion of the State Forensic Service concerning the defendant's competency to stand trial and its reasons. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial, which must be held pursuant to and consistent with the standards set out in paragraph A.

6. EXAMINERS. Evaluation of a defendant by the State Forensic Service pursuant to this section must be performed by a licensed psychologist or a psychiatrist. The State Forensic Service may determine whether an examination will be performed by a licensed psychologist or a psychiatrist unless the court has designated the specialty of the examiner in its order.

7. COMPETENCE; PROCEEDINGS. Upon a determination that the defendant is competent to stand trial, proceedings with respect to the defendant must be in accordance with the rules of criminal procedure.

8. NO RELEASE DURING COMMITMENT PERIOD; VIOLATION. A person ordered or committed for examination, observation, care or treatment pursuant to this section may not be released from the designated institution during the period of examination. An individual responsible for or permitting the release of a person ordered

committed pursuant to this section for examination, observation, care or treatment from the designated institution commits a civil violation for which a fine of not more than $ 1,000 may be adjudged.

9. EXAMINATION AFTER SENTENCING. If the issue of insanity, competency, abnormal condition of mind or any other issue involving the mental condition of the defendant is raised after sentencing, the court may for cause shown order the convicted person to be examined by the State Forensic Service. If at the time an examination order is entered by the court the sentenced person is in execution of a sentence of imprisonment imposed for any criminal conduct, the time limits and bail provisions of this section do not apply.

ME. REV. STAT. ANN. TIT. 15, § 103 (2010). COMMITMENT FOLLOWING ACCEPTANCE OF NEGOTIATED INSANITY PLEA OR FOLLOWING VERDICT OR FINDING OF INSANITY

When a court accepts a negotiated plea of not criminally responsible by reason of insanity or when a defendant is found not criminally responsible by reason of insanity by jury verdict or court finding, the judgment must so state. In those cases the court shall order the person committed to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of persons with mental illness or mental retardation for care and treatment. Upon placement in the appropriate institution and in the event of transfer from one institution to another of persons committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court.

When a person who has been evaluated on behalf of a court by the State Forensic Service is committed into the custody of the Commissioner of Health and Human Services pursuant to this section, the court shall order that the State Forensic Service share any information it has collected or generated with respect to the person with the institution in which the person is placed.

As used in this section, "not criminally responsible by reason of insanity" has the same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or verdict in this State under former section 102; under a former version of Title 17-A, section 39; under former Title 17-A, section 58; or under former section 17-B, chapter 149 of the Revised Statutes of 1954.

ME. REV. STAT. ANN. TIT. 15, §103-A (2010). COMMITMENT AFFECTED BY CERTAIN SENTENCES

1. INTERRUPTION OF COMMITMENT. When a person while in the custody of the Commissioner of Health and Human Services pursuant to a commitment order under section 103 is found by a court to be in violation of the person's conditional release for a Maine conviction and new institutional confinement is ordered, or a person commits a Maine crime for which the person is subsequently convicted and the sentence imposed includes a straight term of imprisonment or a split sentence, the person must be placed in execution of that punishment, and custody pursuant to the commitment order under

section 103 must automatically be interrupted thereby. In the event execution of that punishment is stayed pending appeal, the commitment under section 103 continues for the stay's duration. The person must be returned to the custody of the Commissioner of Health and Human Services pursuant to the commitment order under section 103 when the new institutional confinement ordered or the straight term of imprisonment or the unsuspended portion of the split sentence imposed has been fully served.

ME. REV. STAT. ANN. TIT. 15, § 2211-A (2010). PERSONS CONFINED; HOSPITALIZATION FOR MENTAL ILLNESS

1. PROHIBITION. A person with serious mental illness may not be detained or confined solely because of that mental illness in any jail, prison or other detention or correctional facility unless that person is being detained or serving a sentence for commission of a crime.

2. APPLICATION FOR HOSPITALIZATION REQUIRED. A sheriff or other person responsible for any county or local detention or correctional facility who believes that a person confined in that facility is mentally ill and requires hospitalization shall apply, in writing, for the admission of that person to a hospital for the mentally ill, giving the reasons for requesting the admission. The application and certification must be in accordance with the requirements of Title 34-B, section 3863.

3. TERMS OF ADMISSION. A person with respect to whom application and certification are made may be admitted to a hospital for the mentally ill. Except as otherwise specifically provided in this section, Title 34-B, chapter 3, subchapter IV, articles I and III, except section 3868, are applicable to a person admitted under this section as if the admission were applied for under Title 34-B, section 3863.

3-A. AUTHORIZATION OF HOSPITALIZATION. When a person who is hospitalized in a psychiatric hospital under the provisions of Title 34-B, chapter 3 is sentenced to serve a straight term of imprisonment or a split sentence in a county jail, the person must remain hospitalized as long as continued hospitalization is appropriate under Title 34-B, chapter 3. The sheriff shall promptly process the person to initiate execution of the sentence in a manner that disrupts the person's hospitalization as little as possible. The provisions of this section apply as if the person had been transferred to the hospital after beginning serving the sentence at the county jail.

4. NO EFFECT ON SENTENCE; JURISDICTION RETAINED. Admission of a person to a hospital under this section has no effect on a sentence then being served, on an existing commitment on civil process or on detention pending any stage of a criminal proceeding in which that person is the defendant, and the court having jurisdiction retains its jurisdiction. The sentence continues to run and any commitment or detention remains in force unless terminated in accordance with law.

5. DISPOSITION OF APPLICATION AND CERTIFICATION. A copy of the document by which a person is held in confinement, attested by the sheriff or other person responsible for any county or local detention or correctional facility, must

accompany the application for admission. Following that person's admission to a hospital for the mentally ill under this section, a copy of the application and certification similarly attested must be filed with the court having jurisdiction over any civil or criminal case in which that person is the defendant. If a criminal proceeding is pending against the person admitted, the clerk of the court shall forward a copy of the application and certification to the attorney for the defendant and the attorney for the State.

6. DISCHARGE FROM HOSPITAL. If the sentence being served at the time of admission has not expired or commitment on civil process or detention has not been terminated in accordance with law at the time the person is ready for discharge from hospitalization, that person must be returned by the sheriff or deputy sheriff of the county from which the person was admitted to the facility from which the person was admitted.

7. TRANSPORTATION EXPENSES. The county where the incarceration originated shall pay all expenses incident to transportation of a person between the hospital and the detention or correctional facility pursuant to this section.

8. COMPETENCY HEARING. Admission to a hospital under this section may not be used to examine or observe a person for the purpose of a criminal proceeding pending in court. Before the trial of a defendant admitted for hospitalization under this section, the court may, at any time upon motion of the defendant's attorney or the attorney for the State or upon the court's own motion, hold a hearing with respect to the competence of that person to stand trial as provided in section 101-D and appropriate disposition may be made. The court's order following a hearing may terminate an admission effected under this section.

9. ALTERNATIVE; VOLUNTARY COMMITMENT. If hospitalization is recommended by a licensed physician or licensed psychologist, a person confined in a county or local detention or correctional facility may apply for informal admission to a hospital for the mentally ill under Title 34-B, sections 3831 and 3832, in which case all other provisions of this section as to notice of status as an inmate of a county or local detention or correctional facility, notice to the court and counsel, transportation and expenses and the continuation and termination of sentence, commitment or detention apply. Except as otherwise provided in this section, the provisions of law applicable to persons admitted to a hospital for the mentally ill under Title 34-B, sections 3831 and 3832 apply to a person confined and admitted to a hospital for the mentally ill under those sections.

10. REINCARCERATION PLANNING. For each person hospitalized pursuant to this section, the Department of Health and Human Services, in consultation with the sheriff or other person responsible for the local or county correctional facility and before the person is transferred back to the correctional facility, shall develop a written treatment plan describing the recommended treatment to be provided to the person.

ME. REV. STAT. ANN. TIT. 15, § 3318 (2010). MENTALLY ILL OR INCAPACITATED JUVENILES

1. SUSPENSION OF PROCEEDINGS. If it appears that a juvenile may be a mentally ill person, as defined in Title 34-B, section 3801, subsection 5, or an incapacitated person, as defined in Title 34-B, section 5001, subsection 2, the court shall suspend the proceedings on the petition and shall either:

A. Initiate proceedings for voluntary or involuntary commitments as provided in Title 34-B, sections 3831 and 3863; or

B. Order that the juvenile be examined by a physician or psychologist and refer the juvenile to a suitable facility or program for the purpose of examination, the costs of that examination to be paid by the court. If the report of that examination is that the juvenile is mentally ill or incapacitated to the extent that short-term or long-term hospitalization or institutional confinement is required, the Juvenile Court shall initiate proceedings for voluntary or involuntary commitment as provided in section 101-D and in Title 34-B, chapter 3, subchapter 4. The court shall continue the proceedings when a juvenile is voluntarily or involuntarily committed.

2. RESUMPTION OF PROCEEDINGS. The court shall set a time for resuming the proceeding when:

A. The report of the examination made pursuant to subsection 1, paragraph B states that the child is not mentally ill or incapacitated to the extent that short-term or long-term hospitalization or institutional confinement is required; or

B. The child is not found by the appropriate court to be a mentally ill person or an incapacitated person as defined in section 101-D and in Title 34-B, section 5001.

ME. REV. STAT. ANN. TIT. 34-B, § 3861-A (2010). NOTIFICATION OF HOSPITALIZATION

When a person who is hospitalized in a psychiatric hospital under the provisions of this chapter is sentenced to serve a straight term of imprisonment or a split sentence in a county jail, the chief administrative officer of the hospital shall notify the sheriff of the county jail so that, in accordance with the provisions of Title 15, section 2211-A, the sheriff may process the person to serve the sentence while hospitalized and the person may remain in the hospital until ready for discharge.

MARYLAND

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-14 (2010). TAKING CHILD INTO CUSTODY

(a) Methods. -- A child may be taken into custody under this subtitle by any of the following methods:

(1) Pursuant to an order of the court;

(2) By a law enforcement officer pursuant to the law of arrest;

(3) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary for the child's protection; or

(4) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child has run away from the child's parents, guardian, or legal custodian.

(b) Notice. -- If a law enforcement officer takes a child into custody, the officer shall immediately notify, or cause to be notified, the child's parents, guardian, or custodian of the action. After making every reasonable effort to give notice, the law enforcement officer shall with all reasonable speed:

(1) Release the child to the child's parents, guardian, or custodian or to any other person designated by the court, upon their written promise to bring the child before the court when requested by the court, and such security for the child's appearance as the court may reasonably require, unless the child's placement in detention or shelter care is permitted and appears required by § 3-8A-15 of this subtitle; or

(2) Deliver the child to the court or a place of detention or shelter care designated by the court.

(c) Failure to bring child before court. -- If a parent, guardian, or custodian fails to bring the child before the court when requested, the court may issue a writ of attachment directing that the child be taken into custody and brought before the court. The court may proceed against the parent, guardian, or custodian for contempt.

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-15 (2010). DETENTION AND SHELTER CARE PRIOR TO HEARING

(a) Authorization. -- Only the court or an intake officer may authorize detention, community detention, or shelter care for a child who may be in need of supervision or delinquent.

(b) Child in custody -- Detention. -- If a child is taken into custody under this subtitle, the child may be placed in detention or community detention prior to a hearing if:

(1) Such action is required to protect the child or others; or

(2) The child is likely to leave the jurisdiction of the court.

(c) Child in custody -- Shelter care. -- A child taken into custody under this subtitle may be placed in emergency shelter care or community detention prior to a hearing if:

(1) (i) Such action is required to protect the child or person and property of others;

(ii) The child is likely to leave the jurisdiction of the court; or

(iii) There is no parent, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required; and

(2) (i) 1. Continuation of the child in the child's home is contrary to the welfare of the child; and

2. Removal of the child from the child's home is reasonable under the circumstances due to an alleged emergency situation and in order to provide for the safety of the child; or

(ii) 1. Reasonable but unsuccessful efforts have been made to prevent or eliminate the need for removal from the child's home; and

2. As appropriate, reasonable efforts are being made to return the child to the child's home.

(d) Continuation of detention or shelter care -- Petition, hearing, notice, duration. --

(1) If the child is not released, the intake officer or the official who authorized detention, community detention, or shelter care under this section shall immediately file a petition to authorize continued detention, community detention, or shelter care.

(2) A hearing on the petition shall be held not later than the next court day, unless extended for no more than 5 days by the court upon good cause shown.

(3) Reasonable notice, oral or written, stating the time, place, and purpose of the hearing, shall be given to the child and, if they can be found, the child's parents, guardian, or custodian.

(4) Except as provided in paragraph (5) of this subsection, shelter care may not be ordered for a period of more than 30 days unless an adjudicatory or waiver hearing is held.

(5) For a child in need of supervision or a delinquent child, shelter care may be extended for an additional period of not more than 30 days if the court finds after a hearing held as part of the adjudication that continued shelter care is consistent with the circumstances stated in subsections (b) and (c) of this section.

(6) (i) An adjudicatory or waiver hearing shall be held no later than 30 days after the date a petition for detention or community detention is granted.

(ii) If a child is detained or placed in community detention after an adjudicatory hearing, a disposition hearing shall be held no later than 14 days after the adjudicatory hearing.

(iii) Detention or community detention time may be extended in increments of not more than 14 days where the petition charges the child with a delinquent act and where the court finds, after a subsequent hearing, that extended detention or community detention is necessary either:

1. For the protection of the child; or

2. For the protection of the community.

(e) Grounds for continuation of detention. --

(1) Detention or community detention may not be continued beyond emergency detention or community detention unless, upon an order of court after a hearing, the court has found that one or more of the circumstances stated in subsection (b) of this section exist.

(2) A court order under this paragraph shall:

(i) Contain a written determination of whether or not the criteria contained in subsection (c)(1) and (2) of this section have been met; and

(ii) Specify which of the circumstances stated in subsection (b) of this section exist.

(3) (i) If the court has not specifically prohibited community detention, the Department of Juvenile Services may release the child from detention into community detention and place the child in:

1. Shelter care; or

2. The custody of the child's parent, guardian, custodian, or other person able to provide supervision and care for the child and to return the child to court when required.

(ii) If a child who has been released by the Department of Juvenile Services or the

court into community detention violates the conditions of community detention, and it is necessary to protect the child or others, an intake officer may authorize the detention of the child.

(iii) The Department of Juvenile Services shall promptly notify the court of:

1. The release of a child from detention under subparagraph (i) of this paragraph; or

2. The return to detention of a child under subparagraph (ii) of this paragraph.

(f) Grounds for continuation of shelter care; efforts to prevent removal. -- Shelter care may only be continued beyond emergency shelter care if the court has found that:

(1) Continuation of the child in the child's home is contrary to the welfare of the child; and

(2) (i) Removal of the child from the child's home is necessary due to an alleged emergency situation and in order to provide for the safety of the child; or

(ii) Reasonable but unsuccessful efforts were made to prevent or eliminate the need for removal of the child from the home.

(3) (i) If the court continues shelter care on the basis of an alleged emergency, the court shall assess whether the absence of efforts to prevent removal was reasonable.

(ii) If the court finds that the absence of efforts to prevent removal was not reasonable, the court shall make a written determination so stating.

(4) The court shall make a determination as to whether reasonable efforts are being made to make it possible to return the child to the child's home or whether the absence of such efforts is reasonable.

(g) Placement of child alleged to be delinquent. -- A child alleged to be delinquent may not be detained in a jail or other facility for the detention of adults.

(h) Placement of child alleged to be in need of supervision; regulations. --

(1) A child alleged to be in need of supervision may not be placed in:

(i) Detention or community detention;

(ii) A State mental health facility; or

(iii) A shelter care facility that is not operating in compliance with applicable State licensing laws.

(2) Subject to paragraph (1)(iii) of this subsection, a child alleged to be in need of supervision may be placed in shelter care facilities maintained or approved by the Social Services Administration or the Department of Juvenile Services or in a private home or shelter care facility approved by the court.

(3) The Secretary of Human Resources and the Secretary of Juvenile Services together, when appropriate, with the Secretary of Health and Mental Hygiene shall jointly adopt regulations to ensure that any child placed in shelter care pursuant to a petition filed under subsection (d) of this section be provided appropriate services, including:

(i) Health care services;

(ii) Counseling services;

(iii) Education services;

(iv) Social work services; and

(v) Drug and alcohol abuse assessment or treatment services.

(4) In addition to any other provision, the regulations shall require:

(i) The Department of Juvenile Services to develop a plan within 45 days of placement of a child in a shelter care facility to assess the child's treatment needs; and

(ii) The plan to be submitted to all parties to the petition and their counsel.

(i) Notice of authorization of detention or shelter care. -- The intake officer or the official who authorized detention, community detention, or shelter care under this subtitle shall immediately give written notice of the authorization for detention, community detention, or shelter care to the child's parent, guardian, or custodian and to the court. The notice shall be accompanied by a statement of the reasons for taking the child into custody and placing him in detention, community detention, or shelter care. This notice may be combined with the notice required under subsection (d) of this section.

(j) Protection of victim. --

(1) If a child is alleged to have committed a delinquent act, the court or a juvenile intake officer shall consider including, as a condition of releasing the child pending an adjudicatory or disposition hearing, reasonable protections for the safety of the alleged victim.

(2) If a victim has requested reasonable protections for safety, the court or juvenile intake officer shall consider including, as a condition of releasing the child pending an adjudicatory or disposition hearing, provisions regarding no contact with the alleged victim or the alleged victim's premises or place of employment.

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-17.1 (2010). EVALUATION OF CHILD'S MENTAL CONDITION

(a) In general. --

(1) At any time after a petition alleging that a child has committed a delinquent act is filed with the court under this subtitle, the court on its own motion, or on motion of the child's counsel or the State's Attorney, shall stay all proceedings and order that the Department of Health and Mental Hygiene or any other qualified expert conduct an evaluation of the child's competency to proceed if the court finds that:

(i) There is probable cause to believe that the child has committed the delinquent act; and

(ii) There is reason to believe that the child may be incompetent to proceed with a waiver hearing under § 3-8A-06 of this subtitle, an adjudicatory hearing under § 3-8A-18 of this subtitle, a disposition hearing under § 3-8A-19 of this subtitle, or a violation of probation hearing.

(2) An evaluation ordered under paragraph (1) of this subsection shall be performed by a qualified expert.

(3) This subsection may not be construed to prohibit the State or the child from calling other expert witnesses to testify at a competency hearing.

(b) Service of notice of motion. -- Any motion questioning the child's competency to proceed, and any subsequent legal pleading relating to the child's competency to proceed, shall be served on the child's counsel, the State's Attorney, the Department of Juvenile Services, and the Department of Health and Mental Hygiene.

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-17.2 (2010). EVALUATION OF CHILD'S MENTAL CONDITION -- SCOPE

(a) Conditions. -- The court shall set and may change the conditions under which the examination is to be conducted.

(b) Outpatient basis. -- On consideration of the nature of the petition, the court may require the examination to be conducted on an outpatient basis if the child was previously detained under § 3-8A-15 of this subtitle and shall require the examination to be conducted on an outpatient basis if the child was not previously detained under § 3-8A-15 of this subtitle.

(c) Detention. --

(1) If a child was previously detained under § 3-8A-15 of this subtitle, the court may order the child to continue to be detained beyond any period specified in § 3-8A-15 of this subtitle until the examination is completed.

(2) If the court finds it appropriate for the health or safety of the child, or for the safety of others, the court may order confinement of the juvenile, pending the examination, in a medical facility that the Department of Health and Mental Hygiene designates as appropriate.

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-17.6 (2010). COMPETENCY HEARING -- FINDING OF INCOMPETENCY -- COMPETENCY ATTAINMENT

(a) Finding of probability of competency attainment; order of services. -- At a competency hearing, if the court determines that the child is incompetent to proceed, but that there is a substantial probability that the child may be able to attain competency in the foreseeable future and that services are necessary to attain competency, the court may order the Department of Health and Mental Hygiene to provide competency attainment services for the child for an initial period of not more than 90 days.

(b) Least restrictive environment. -- Any competency attainment services shall be provided in the least restrictive environment.

(c) Placement in facility for children. -- Subject to subsection (d) of this section, the court may order a child to be placed in a facility for children if:

(1) The child is detained under § 3-8A-15 of this subtitle at the time of the competency hearing; and

(2) The court finds after a hearing on the issue that:

(i) Placement in a facility is necessary to protect the child or others, or the child is likely to leave the jurisdiction of the court; and

(ii) No less restrictive alternative placement is available that will protect the child or the community or prevent the child from leaving the jurisdiction of the court.

(d) Restrictions. -- A child may not be:

(1) Unless the child's individualized treatment plan developed under § 10-706 of the Health - General Article otherwise indicates, provided services in any group with persons who are at least 18 years old;

(2) Placed in a detention facility; or

(3) Placed in a psychiatric hospital, except in accordance with Title 10, Subtitle 6 of the Health - General Article.

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-17.7 (2010). COMPETENCY HEARING -- FINDING OF INCOMPETENCY -- EVALUATIONS OR DISMISSAL

(a) Emergency evaluation. -- At a competency hearing, if the court determines that the child is incompetent to proceed, is unlikely to attain competency in the foreseeable future, has a mental disorder, as defined in § 10-620 of the Health - General Article, and is a danger to the life or safety of the child or others, the court may order a petition for emergency evaluation under § 10-622 of the Health - General Article.

(b) Evaluation by Developmental Disabilities Administration. -- At a competency hearing, if the court determines that the child is incompetent to proceed, is unlikely to attain competency in the foreseeable future, and has a developmental disability, as defined in § 7-101 of the Health - General Article, the court may order the Developmental Disabilities Administration to evaluate the child within 30 days to determine the child's eligibility for services under Title 7 of the Health - General Article.

(c) Dismissal. -- At a competency hearing, if the court determines that the child is incompetent to proceed and is unlikely to attain competency in the foreseeable future, the court:

(1) May dismiss the delinquency petition or violation of probation petition; and

(2) After the expiration of the time periods for dismissal specified in § 3-8A-17.9 of this subtitle, shall dismiss the delinquency petition or violation of probation petition.

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-17.8 (2010). COMPETENCY ATTAINMENT SERVICES AND REPORTING

(a) Report. -- If the court orders the Department of Health and Mental Hygiene to provide competency attainment services under § 3-8A-17.6 of this subtitle, the Department of Health and Mental Hygiene shall file a written report with the court, with notice to counsel of the submission of the report, within 90 days after the court order, stating whether, in the opinion of the Department, the child:

(1) Has attained competency;

(2) Remains incompetent to proceed, but may be able to attain competency in the foreseeable future; or

(3) Remains incompetent to proceed, and is unlikely to attain competency in the foreseeable future.

(b) Hearing. --

(1) The court shall hold a competency hearing in accordance with § 3-8A-17.4 of this subtitle within 15 days after the court receives the report described in subsection (a) of this section.

(2) For good cause shown, the hearing date may be continued for a reasonable period of time.

(c) Procedure on finding of competency, expectation of competency, or incompetency. --

(1) At the competency hearing, if the court determines that the child is competent, the court shall proceed in accordance with § 3-8A-17.5 of this subtitle.

(2) Case management and supervision of the child shall be transferred to the Department of Juvenile Services to continue proceedings under this subtitle.

(3) (i) Subject to the time periods for dismissal of the case specified in § 3-8A-17.9 of this subtitle, if the court determines that the child remains incompetent to proceed, but may be able to attain competency in the foreseeable future, the court may order that services be continued in increments of not more than 6 months.

(ii) Within 6 months after the court orders additional services under subparagraph (i) of this paragraph, the Department of Health and Mental Hygiene shall file a written report as described in subsection (a) of this section.

(iii) 1. The court shall hold a competency hearing in accordance with § 3-8A-17.4 of this subtitle within 15 days after the court receives the report described in subparagraph (ii) of this paragraph.

2. For good cause shown, the hearing date may be continued for a reasonable period of time.

(4) If the court determines that the child remains incompetent to proceed and is unlikely to attain competency in the foreseeable future, the court shall proceed in accordance with § 3-8A-17.7 of this subtitle.

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-19 (2010). DISPOSITION; COSTS [AMENDMENT SUBJECT TO ABROGATION]

(a) Applicability of section. -- The provisions of this section do not apply to a peace order request or a peace order proceeding.

(b) Disposition hearing; time. --

(1) After an adjudicatory hearing the court shall hold a separate disposition hearing, unless the petition or citation is dismissed or unless such hearing is waived in writing by all of the parties.

(2) A disposition hearing may be held on the same day as the adjudicatory hearing if notice of the disposition hearing, as prescribed by the Maryland Rules, is waived on the record by all of the parties.

(c) Priorities in making disposition. -- The priorities in making a disposition are consistent with the purposes specified in § 3-8A-02 of this subtitle.

(d) Permitted dispositions on petition. --

(1) In making a disposition on a petition under this subtitle, the court may:

(i) Place the child on probation or under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate, including community detention;

(ii) Subject to the provisions of paragraph (2) of this subsection, commit the child to the custody or under the guardianship of the Department of Juvenile Services, the Department of Health and Mental Hygiene, or a public or licensed private agency on terms that the court considers appropriate to meet the priorities set forth in § 3-8A-02 of this subtitle, including designation of the type of facility where the child is to be accommodated, until custody or guardianship is terminated with approval of the court or as required under § 3-8A-24 of this subtitle;

(iii) Order the child, parents, guardian, or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family; or

(iv) In any county that has established a juvenile justice alternative education program, order the child to attend that program if the child has been suspended, expelled, or identified as a candidate for suspension or expulsion from school.

(2) In addition to the provisions of paragraph (1) of this subsection, in making a disposition on a petition, the court may adopt a treatment service plan, as defined in § 3-8A-20.1 of this subtitle.

(3) A child committed under paragraph (1)(ii) of this subsection may not be accommodated in a facility that has reached budgeted capacity if a bed is available in another comparable facility in the State, unless the placement to the facility that has reached budgeted capacity has been recommended by the Department of Juvenile Services.

(4) The court shall consider any oral address made in accordance with § 11-403 of the Criminal Procedure Article or any victim impact statement, as described in § 11-402 of the Criminal Procedure Article, in determining an appropriate disposition on a petition.

(5) (i) If the court finds that a child enrolled in a public elementary or secondary school is delinquent or in need of supervision and commits the child to the custody or under the guardianship of the Department of Juvenile Services, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent of the fact that the child has been found to be delinquent or in need of supervision and has been committed to the custody or under the guardianship of the Department of Juvenile Services.

(ii) If the court rescinds the commitment order for a child enrolled in a public elementary or secondary school, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent of the fact that the child is no longer committed to the custody of the Department of Juvenile Services.

(iii) The notice authorized under subparagraphs (i) and (ii) of this paragraph may not include any order or pleading related to the delinquency or child in need of supervision case.

(e) Permitted dispositions on finding that child committed violation specified in citation; second and subsequent violations. --

(1) (i) Subject to the provisions of subparagraphs (iii) and (iv) of this paragraph, in making a disposition on a finding that the child has committed the violation specified in a citation, the court may order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(ii) In this paragraph, "driver's license" means a license or permit to drive a motor vehicle that is issued under the laws of this State or any other jurisdiction.

(iii) In making a disposition on a finding that the child has committed a violation of § 10-113 of the Criminal Law Article specified in a citation that involved the use of a driver's license or a document purporting to be a driver's license, the court may order the Motor Vehicle Administration to initiate an action under the Maryland Vehicle Law to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration:

1. For a first offense, for 6 months; and

2. For a second or subsequent offense, until the child is 21 years old.

(iv) In making a disposition on a finding that the child has committed a violation under § 26-103 of the Education Article, the court shall order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(v) If a child subject to a suspension under this subsection does not hold a license to operate a motor vehicle on the date of the disposition, the suspension shall commence:

1. If the child is at least 16 years of age on the date of the disposition, on the date of the disposition; or

2. If the child is younger than 16 years of age on the date of the disposition, on the date the child reaches the child's 16th birthday.

(2) In addition to the dispositions under paragraph (1) of this subsection, the court also may:

(i) Counsel the child or the parent or both, or order the child to participate in an alcohol education or rehabilitation program that is in the best interest of the child;

(ii) Impose a civil fine of not more than $ 25 for the first violation and a civil fine of not more than $ 100 for the second and subsequent violations; or

(iii) Order the child to participate in a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for the second and subsequent violations.

(3) (i) The provisions of paragraphs (1) and (2) of this subsection do not apply to a child found to have committed a violation of § 10-108 of the Criminal Law Article.

(ii) In making a disposition on a finding that the child has committed a violation of § 10-108 of the Criminal Law Article, the court may:

1. Counsel the child or the parent or both, or order the child to participate in a smoking cessation clinic, or other suitable presentation of the hazards associated with tobacco use that is in the best interest of the child;

2. Impose a civil fine of not more than $ 25 for the first violation and a civil fine of not more than $ 100 for a second or subsequent violation; or

3. Order the child to participate in a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for a second or subsequent violation.

(4) (i) In making a disposition on a finding that the child has committed a violation of Title 4, Subtitle 5 or § 9-504 or § 9-505 of the Criminal Law Article, the court may order the Motor Vehicle Administration to initiate an action, under the Maryland Vehicle Law, to suspend the driving privilege of a child for a specified period not to exceed:

1. For a first offense, 6 months; and

2. For a second or subsequent offense, 1 year or until the person is 21 years old, whichever is longer.

(ii) If a child subject to a suspension under this paragraph does not possess the privilege to drive on the date of the disposition, the suspension shall commence:

1. If the child is at an age that is eligible to obtain the privilege to drive on the date of the disposition, on the date of the disposition; or

2. If the child is younger than an age that is eligible to obtain the privilege to drive on the date of the disposition, on the date the child is eligible to obtain driving privileges.

(5) (i) In making a disposition on a finding that the child has committed a violation under § 21-1128 of the Transportation Article, the court shall order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(ii) If a child subject to a suspension under this paragraph does not possess the privilege to drive on the date of the disposition, the suspension shall commence:

1. If, on the date of the disposition, the child is at an age that makes a child eligible to obtain the privilege to drive, on the date of the disposition; or

2. If, on the date of the disposition, the child is younger than an age that makes a child eligible to obtain the privilege to drive, on the date the child is eligible to obtain driving privileges.

(f) Court authorizes control of property. -- A guardian appointed under this section has no control over the property of the child unless he receives that express authority from the court.

(g) Costs. -- The court may impose reasonable court costs against a respondent, or the respondent's parent, guardian, or custodian, against whom a finding of delinquency has been entered under the provisions of this section.

(h) Placement in emergency facility. -- A child may be placed in an emergency facility on an emergency basis under Title 10, Subtitle 6, Part IV of the Health - General Article.

(i) Commitment to custody of Department of Health and Mental Hygiene -- State mental hospital. -- The court may not commit a child to the custody of the Department of Health and Mental Hygiene under this section for inpatient care and treatment in a State mental hospital unless the court finds on the record based upon clear and convincing evidence that:

(1) The child has a mental disorder;

(2) The child needs inpatient medical care or treatment for the protection of himself or others;

(3) The child is unable or unwilling to be voluntarily admitted to such facility; and

(4) There is no less restrictive form of intervention available which is consistent with the child's condition and welfare.

(j) Commitment to custody of Department of Health and Mental Hygiene -- State mental retardation facility. -- The court may not commit a child to the custody of the Department of Health and Mental Hygiene under this section for inpatient care and treatment in a State mental retardation facility unless the court finds on the record based upon clear and convincing evidence that:

(1) The child is mentally retarded;

(2) The condition is of such a nature that for the adequate care or protection of the child or others, the child needs in-residence care or treatment; and

(3) There is no less restrictive form of care and treatment available which is consistent with the child's welfare and safety.

(k) Commitment to custody of Department of Health and Mental Hygiene -- Progress reports; hearings to review commitment order. --

(1) Any commitment order issued under subsection (i) or (j) of this section shall require the Department of Health and Mental Hygiene to file progress reports with the court at intervals no greater than every 6 months during the life of the order. The Department of Health and Mental Hygiene shall provide the child's attorney of record with a copy of each report. The court shall review each report promptly and consider whether the commitment order should be modified or vacated. After the first 6 months of the commitment and at 6-month intervals thereafter upon the request of any party, the Department or facility, the court shall grant a hearing for the purpose of determining if the standards specified in subsection (i) or (j) of this section continue to be met.

(2) If, at any time after the commitment of the child to a State mental hospital under this section, the individualized treatment plan developed under § 10-706 of the Health - General Article recommends that a child no longer meets the standards specified in subsection (i) of this section, then the court shall grant a hearing to review the commitment order. The court may grant a hearing at any other time for the purpose of determining if the standards specified in subsection (i) of this section continue to be met.

(3) If, at any time after the commitment of the child to a State mental retardation facility under this section, the individualized plan of habilitation developed under § 7-1006 of the Health - General Article recommends that a child no longer meets the standards specified in subsection (j) of this section, then the court shall grant a hearing to review the commitment order. The court may grant a hearing at any other time for the purpose of determining if the standards specified in subsection (j) of this section continue to be met.

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-19 (2010). DISPOSITION; COSTS [ABROGATION OF AMENDMENT EFFECTIVE JUNE 30, 2012.]

(a) Applicability of section. -- The provisions of this section do not apply to a peace order request or a peace order proceeding.

(b) Disposition hearing; time. --

(1) After an adjudicatory hearing the court shall hold a separate disposition hearing, unless the petition or citation is dismissed or unless such hearing is waived in writing by all of the parties.

(2) A disposition hearing may be held on the same day as the adjudicatory hearing if notice of the disposition hearing, as prescribed by the Maryland Rules, is waived on the record by all of the parties.

(c) Priorities in making disposition. -- The priorities in making a disposition are consistent with the purposes specified in § 3-8A-02 of this subtitle.

(d) Permitted dispositions on petition. --

(1) In making a disposition on a petition under this subtitle, the court may:

(i) Place the child on probation or under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate, including community detention;

(ii) Subject to the provisions of paragraph (2) of this subsection, commit the child to the custody or under the guardianship of the Department of Juvenile Services, the Department of Health and Mental Hygiene, or a public or licensed private agency on terms that the court considers appropriate to meet the priorities set forth in § 3-8A-02 of this subtitle, including designation of the type of facility where the child is to be accommodated, until custody or guardianship is terminated with approval of the court or as required under § 3-8A-24 of this subtitle; or

(iii) Order the child, parents, guardian, or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family.

(2) In addition to the provisions of paragraph (1) of this subsection, in making a disposition on a petition, the court may adopt a treatment service plan, as defined in § 3-8A-20.1 of this subtitle.

(3) A child committed under paragraph (1)(ii) of this subsection may not be accommodated in a facility that has reached budgeted capacity if a bed is available in another comparable facility in the State, unless the placement to the facility that has reached budgeted capacity has been recommended by the Department of Juvenile Services.

(4) The court shall consider any oral address made in accordance with § 11-403 of the Criminal Procedure Article or any victim impact statement, as described in § 11-402 of the Criminal Procedure Article, in determining an appropriate disposition on a petition.

(5) (i) If the court finds that a child enrolled in a public elementary or secondary school is delinquent or in need of supervision and commits the child to the custody or under the guardianship of the Department of Juvenile Services, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent of the fact that the child has been found to be delinquent or in need of supervision and has been committed to the custody or under the guardianship of the Department of Juvenile Services.

(ii) If the court rescinds the commitment order for a child enrolled in a public elementary or secondary school, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent of the fact that the child is no longer committed to the custody of the Department of Juvenile Services.

(iii) The notice authorized under subparagraphs (i) and (ii) of this paragraph may not include any order or pleading related to the delinquency or child in need of supervision case.

(e) Permitted dispositions on finding that child committed violation specified in citation; second and subsequent violations. --

(1) (i) Subject to the provisions of subparagraphs (iii) and (iv) of this paragraph, in making a disposition on a finding that the child has committed the violation specified in a citation, the court may order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(ii) In this paragraph, "driver's license" means a license or permit to drive a motor vehicle that is issued under the laws of this State or any other jurisdiction.

(iii) In making a disposition on a finding that the child has committed a violation of § 10-113 of the Criminal Law Article specified in a citation that involved the use of a driver's license or a document purporting to be a driver's license, the court may order the Motor Vehicle Administration to initiate an action under the Maryland Vehicle Law to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration:

1. For a first offense, for 6 months; and

2. For a second or subsequent offense, until the child is 21 years old.

(iv) In making a disposition on a finding that the child has committed a violation under § 26-103 of the Education Article, the court shall order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(v) If a child subject to a suspension under this subsection does not hold a license to operate a motor vehicle on the date of the disposition, the suspension shall commence:

1. If the child is at least 16 years of age on the date of the disposition, on the date of the disposition; or

2. If the child is younger than 16 years of age on the date of the disposition, on the date the child reaches the child's 16th birthday.

(2) In addition to the dispositions under paragraph (1) of this subsection, the court also may:

(i) Counsel the child or the parent or both, or order the child to participate in an alcohol education or rehabilitation program that is in the best interest of the child;

(ii) Impose a civil fine of not more than $ 25 for the first violation and a civil fine of not more than $ 100 for the second and subsequent violations; or

(iii) Order the child to participate in a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for the second and subsequent violations.

(3) (i) The provisions of paragraphs (1) and (2) of this subsection do not apply to a child found to have committed a violation of § 10-108 of the Criminal Law Article.

(ii) In making a disposition on a finding that the child has committed a violation of § 10-108 of the Criminal Law Article, the court may:

1. Counsel the child or the parent or both, or order the child to participate in a smoking cessation clinic, or other suitable presentation of the hazards associated with tobacco use that is in the best interest of the child;

2. Impose a civil fine of not more than $ 25 for the first violation and a civil fine of not more than $ 100 for a second or subsequent violation; or

3. Order the child to participate in a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for a second or subsequent violation.

(4) (i) In making a disposition on a finding that the child has committed a violation of Title 4, Subtitle 5 or § 9-504 or § 9-505 of the Criminal Law Article, the court may order the Motor Vehicle Administration to initiate an action, under the Maryland Vehicle Law, to suspend the driving privilege of a child for a specified period not to exceed:

1. For a first offense, 6 months; and

2. For a second or subsequent offense, 1 year or until the person is 21 years old, whichever is longer.

(ii) If a child subject to a suspension under this paragraph does not possess the privilege to drive on the date of the disposition, the suspension shall commence:

1. If the child is at an age that is eligible to obtain the privilege to drive on the date of the disposition, on the date of the disposition; or

2. If the child is younger than an age that is eligible to obtain the privilege to drive on the date of the disposition, on the date the child is eligible to obtain driving privileges.

(5) (i) In making a disposition on a finding that the child has committed a violation under § 21-1128 of the Transportation Article, the court shall order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(ii) If a child subject to a suspension under this paragraph does not possess the privilege to drive on the date of the disposition, the suspension shall commence:

1. If, on the date of the disposition, the child is at an age that makes a child eligible to obtain the privilege to drive, on the date of the disposition; or

2. If, on the date of the disposition, the child is younger than an age that makes a child eligible to obtain the privilege to drive, on the date the child is eligible to obtain driving privileges.

(f) Court authorizes control of property. -- A guardian appointed under this section has no control over the property of the child unless he receives that express authority from the court.

(g) Costs. -- The court may impose reasonable court costs against a respondent, or the respondent's parent, guardian, or custodian, against whom a finding of delinquency has been entered under the provisions of this section.

(h) Placement in emergency facility. -- A child may be placed in an emergency facility on an emergency basis under Title 10, Subtitle 6, Part IV of the Health - General Article.

(i) Commitment to custody of Department of Health and Mental Hygiene -- State mental hospital. -- The court may not commit a child to the custody of the Department of Health and Mental Hygiene under this section for inpatient care and treatment in a State mental hospital unless the court finds on the record based upon clear and convincing evidence that:

(1) The child has a mental disorder;

(2) The child needs inpatient medical care or treatment for the protection of himself or others;

(3) The child is unable or unwilling to be voluntarily admitted to such facility; and

(4) There is no less restrictive form of intervention available which is consistent with the child's condition and welfare.

(j) Commitment to custody of Department of Health and Mental Hygiene -- State mental retardation facility. -- The court may not commit a child to the custody of the Department of Health and Mental Hygiene under this section for inpatient care and treatment in a State mental retardation facility unless the court finds on the record based upon clear and convincing evidence that:

(1) The child is mentally retarded;

(2) The condition is of such a nature that for the adequate care or protection of the child or others, the child needs in-residence care or treatment; and

(3) There is no less restrictive form of care and treatment available which is consistent with the child's welfare and safety.

(k) Commitment to custody of Department of Health and Mental Hygiene -- Progress reports; hearings to review commitment order. --

(1) Any commitment order issued under subsection (i) or (j) of this section shall require the Department of Health and Mental Hygiene to file progress reports with the court at intervals no greater than every 6 months during the life of the order. The Department of Health and Mental Hygiene shall provide the child's attorney of record with a copy of each report. The court shall review each report promptly and consider whether the commitment order should be modified or vacated. After the first 6 months of the commitment and at 6-month intervals thereafter upon the request of any party, the Department or facility, the court shall grant a hearing for the purpose of determining if the standards specified in subsection (i) or (j) of this section continue to be met.

(2) If, at any time after the commitment of the child to a State mental hospital under this section, the individualized treatment plan developed under § 10-706 of the Health - General Article recommends that a child no longer meets the standards specified in

subsection (i) of this section, then the court shall grant a hearing to review the commitment order. The court may grant a hearing at any other time for the purpose of determining if the standards specified in subsection (i) of this section continue to be met.

(3) If, at any time after the commitment of the child to a State mental retardation facility under this section, the individualized plan of habilitation developed under § 7-1006 of the Health - General Article recommends that a child no longer meets the standards specified in subsection (j) of this section, then the court shall grant a hearing to review the commitment order. The court may grant a hearing at any other time for the purpose of determining if the standards specified in subsection (j) of this section continue to be met.

MD. CODE ANN., CRIM. PROC. § 3-106 (2010). FINDING OF INCOMPETENCY

(a) Release. -- Except in a capital case, if, after a hearing, the court finds that the defendant is incompetent to stand trial but is not dangerous, as a result of a mental disorder or mental retardation, to self or the person or property of others, the court may set bail for the defendant or authorize release of the defendant on recognizance.

(b) Commitment. --

(1) If, after a hearing, the court finds that the defendant is incompetent to stand trial and, because of mental retardation or a mental disorder, is a danger to self or the person or property of another, the court may order the defendant committed to the facility that the Health Department designates until the court finds that:

(i) the defendant no longer is incompetent to stand trial;

(ii) the defendant no longer is, because of mental retardation or a mental disorder, a danger to self or the person or property of others; or

(iii) there is not a substantial likelihood that the defendant will become competent to stand trial in the foreseeable future.

(2) If a court commits the defendant because of mental retardation, the Health Department shall require the Developmental Disabilities Administration to provide the care or treatment that the defendant needs.

(c) Reconsideration. --

(1) To determine whether the defendant continues to meet the criteria for commitment set forth in subsection (b) of this section, the court shall hold a hearing:

(i) every year from the date of commitment;

(ii) within 30 days after the filing of a motion by the State's Attorney or counsel for the defendant setting forth new facts or circumstances relevant to the determination; and

(iii) within 30 days after receiving a report from the Health Department stating opinions, facts, or circumstances that have not been previously presented to the court and are relevant to the determination.

(2) At any time, and on its own initiative, the court may hold a conference or a hearing on the record with the State's Attorney and the counsel of record for the defendant to review the status of the case.

(d) Reconsideration -- Finding defendant not likely to become competent. -- At a competency hearing under subsection (c) of this section, if the court finds that the defendant is incompetent and is not likely to become competent in the foreseeable future, the court shall:

(1) civilly commit the defendant as an inpatient in a medical facility that the Health Department designates provided the court finds by clear and convincing evidence that:

(i) the defendant has a mental disorder;

(ii) inpatient care is necessary for the defendant;

(iii) the defendant presents a danger to the life or safety of self or others;

(iv) the defendant is unable or unwilling to be voluntarily committed to a medical facility; and

(v) there is no less restrictive form of intervention that is consistent with the welfare and safety of the defendant; or

(2) order the confinement of the defendant for 21 days as a resident in a Developmental Disabilities Administration facility for the initiation of admission proceedings under § 7-503 of the Health - General Article provided the court finds that the defendant, because of mental retardation, is a danger to self or others.

(e) Applicability of Title 10 of the Health - General Article to civil commitment. -- The provisions under Title 10 of the Health - General Article shall apply to the continued retention of a defendant civilly committed under subsection (d) of this section.

(f) Periodic hearings where defendant found incompetent to stand trial but not dangerous. --

(1) For a defendant who has been found incompetent to stand trial but not dangerous, as a result of a mental disorder or mental retardation, to self or the person or property of others, and released on bail or on recognizance, the court:

(i) shall hold a hearing annually from the date of release;

(ii) may hold a hearing, at any time, on its own initiative; or

(iii) shall hold a hearing, at any time, upon motion of the State's Attorney or the counsel for the defendant.

(2) At a hearing under paragraph (1) of this subsection, the court shall reconsider whether the defendant remains incompetent to stand trial or a danger to self or the person or property of another because of mental retardation or a mental disorder.

(3) At a hearing under paragraph (1) of this subsection, the court may modify or impose additional conditions of release on the defendant.

(4) If the court finds, at a hearing under paragraph (1) of this subsection, that the defendant is incompetent and is not likely to become competent in the foreseeable future and is a danger to self or the person or property of another because of mental retardation or a mental disorder, the court shall revoke the pretrial release of the defendant and:

(i) civilly commit the defendant in accordance with paragraph (1) of subsection (d) of this section; or

(ii) order confinement of the defendant in accordance with subsection (d)(2) of this section.

(g) Other legal questions. -- If the defendant is found incompetent to stand trial, defense counsel may make any legal objection to the prosecution that may be determined fairly before trial and without the personal participation of the defendant.

(h) Inclusion in Central Repository. -- The court shall notify the Criminal Justice Information System Central Repository of any commitment ordered or release authorized under this section and of any determination that a defendant is no longer incompetent to stand trial.

MD. CODE ANN., CRIM. PROC. § 3-109 (2010). TEST FOR CRIMINAL RESPONSIBILITY

(a) In general. -- A defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or mental retardation, lacks substantial capacity to:

(1) appreciate the criminality of that conduct; or

(2) conform that conduct to the requirements of law.

(b) Exclusions. -- For purposes of this section, "mental disorder" does not include an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct.

MD. CODE ANN., CRIM. PROC. § 3-111 (2010). NOT CRIMINALLY RESPONSIBLE -- EXAMINATION

(a) In general. -- If a defendant has entered a plea of not criminally responsible, the court may order the Health Department to examine the defendant to determine whether the defendant was not criminally responsible under § 3-109 of this title and whether the defendant is competent to stand trial.

(b) Confinement. --

(1) If a defendant is to be held in custody for examination under this section, the defendant shall be confined in a correctional facility until the Health Department can do the examination. If the court finds it appropriate for the health or safety of the defendant, the court may order confinement:

(i) in a medical wing or other isolated and secure unit of the correctional facility; or

(ii) if a medical wing or other secure unit is not available, in a medical facility that the Secretary of the Health Department designates as appropriate.

(2) (i) When the Health Department can do the examination, a court unit shall take the defendant to the evaluation facility that the Health Department designates.

(ii) After the examination, unless the Health Department retains the defendant, a court unit shall return the defendant to the place of confinement.

(c) Report. -- If a court orders an examination under this section:

(1) the Health Department shall:

(i) examine the defendant; and

(ii) send a report of its opinions to the court, the State's Attorney, the defendant, and the defense counsel;

(2) the defendant is entitled to have the report within 60 days after the court orders the examination. However, failure of the Health Department to send the complete report within that time is not, of itself, grounds for dismissal of the charges; and

(3) for good cause shown, the court may extend the time for examination or order an additional examination.

MD. CODE ANN., CRIM. PROC. § 3-112 (2010). NOT CRIMINALLY RESPONSIBLE -- COMMITMENT

(a) In general. -- Except as provided in subsection (c) of this section, after a verdict of not criminally responsible, the court immediately shall commit the defendant to the Health Department for institutional inpatient care or treatment.

(b) Defendant with mental retardation. -- If the court commits a defendant who was found not criminally responsible primarily because of mental retardation, the Health Department shall designate a facility for mentally retarded persons for care and treatment of the committed person.

(c) Release. -- After a verdict of not criminally responsible, a court may order that a person be released, with or without conditions, instead of committed to the Health Department, but only if:

(1) the court has available an evaluation report within 90 days preceding the verdict made by an evaluating facility designated by the Health Department;

(2) the report indicates that the person would not be a danger, as a result of mental retardation or mental disorder, to self or to the person or property of others if released, with or without conditions; and

(3) the person and the State's Attorney agree to the release and to any conditions for release that the court imposes.

(d) Notification of Central Repository. -- The court shall notify the Criminal Justice Information System Central Repository of each person it orders committed under this section.

MD. CODE ANN., CRIM. PROC. § 3-113 (2010). REPORT ON COMMITTED PERSONS

(a) In general. --

(1) Within 10 days after commitment of a person under § 3-112 of this title, the facility that receives the committed person shall send to the Health Department an admission report on the committed person.

(2) The report shall contain the information and be on the form that the Health Department requires.

(b) Notification of movement. --

(1) The facility of the Health Department that has charge of the committed person shall notify the State's Attorney any time a committed person:

(i) is transferred;

(ii) is approved for temporary leaves of more than 24 hours; or

(iii) is absent without authorization.

(2) For information purposes, a copy of this notice shall be sent for inclusion in the court file and to counsel for the committed person.

(c) Notification of Central Repository. -- The facility of the Health Department that has charge of a committed person shall notify the Criminal Justice Information System Central Repository if the committed person escapes.

MD. CODE ANN., CRIM. PROC. § 3-114 (2010). ELIGIBILITY FOR RELEASE

(a) In general. -- A committed person may be released under the provisions of this section and §§ 3-115 through 3-122 of this title.

(b) Discharge. -- A committed person is eligible for discharge from commitment only if that person would not be a danger, as a result of mental disorder or mental retardation, to self or to the person or property of others if discharged.

(c) Conditional release. -- A committed person is eligible for conditional release from commitment only if that person would not be a danger, as a result of mental disorder or mental retardation, to self or to the person or property of others if released from confinement with conditions imposed by the court.

(d) Burden of proof. -- To be released, a committed person has the burden to establish by a preponderance of the evidence eligibility for discharge or eligibility for conditional release.

MD. CODE ANN., CRIM. PROC. § 3-115 (2010). RELEASE HEARING

(a) When required. -- Within 50 days after commitment to the Health Department under § 3-112 of this title, a hearing officer of the Health Department shall hold a hearing to consider any relevant information that will enable the hearing officer to make recommendations to the court as to whether the committed person is eligible for release under § 3-114 of this title.

(b) Postponement or waiver. --

(1) The release hearing may be postponed for good cause or by agreement of the committed person and the Health Department.

(2) The committed person may waive the release hearing.

(c) Evaluation and report. --

(1) Unless the Health Department has completed an examination and report during the 90 days preceding the release hearing, at least 7 days before the release hearing is scheduled, the Health Department shall complete an examination and evaluation of the committed person.

(2) Whether or not the release hearing is waived, the Health Department shall send a

copy of the evaluation report:

(i) to the committed person;

(ii) to counsel for the committed person;

(iii) to the State's Attorney; and

(iv) to the Office of Administrative Hearings.

(d) Notice. --

(1) The Health Department shall send notice of the release hearing to:

(i) the committed person;

(ii) counsel for the committed person; and

(iii) the State's Attorney.

(2) The Office shall issue any appropriate subpoena for any person or evidence. The court may compel obedience to the subpoena.

(e) Conduct of hearing. --

(1) Formal rules of evidence do not apply to the release hearing, and the Office may admit and consider any relevant evidence.

(2) The hearing shall be recorded, but the recording need not be transcribed unless requested. The requesting party shall pay the costs of the transcript and, if exceptions have been filed, provide copies to other parties and the court. If the court orders a transcript, the court shall pay the costs of the transcript.

(3) Any record that relates to evaluation or treatment of the committed person by this State shall be made available, on request, to the committed person or counsel for the committed person.

(4) The Health Department shall present the evaluation report on the committed person and any other relevant evidence.

(5) At the release hearing, the committed person is entitled:

(i) to be present, to offer evidence, and to cross-examine adverse witnesses; and

(ii) to be represented by counsel, including, if the committed person is indigent, the Public Defender or a designee of the Public Defender.

(6) At the release hearing, the State's Attorney and the Health Department are entitled to be present, to offer evidence, and to cross-examine witnesses.

MD. CODE ANN., CRIM. PROC. § 3-118 (2010). COURT ACTION ON REPORT OF OFFICE

(a) In general. -- Within 15 days after a judicial hearing ends or is waived, the court shall determine whether the evidence indicates that the committed person proved by a preponderance of the evidence eligibility for release, with or without conditions, in accordance with § 3-114 of this title, and enter an appropriate order containing a concise statement of the findings of the court, the reasons for those findings, and ordering:

(1) continued commitment;

(2) conditional release; or

(3) discharge from commitment.

(b) Order without hearing. --

(1) If timely exceptions are not filed, and, on review of the report of recommendations from the Office, the court determines that the recommendations are supported by the evidence and a judicial hearing is not necessary, the court shall enter an order in accordance with the recommendations within 30 days after receiving the report from the Office.

(2) A court may not enter an order that is not in accordance with the recommendations from the Office unless the court holds a hearing or the hearing is waived.

(c) Limitation on conditions of release. -- Unless the conditional release is extended under § 3-122 of this title, the court may not continue the conditions of a conditional release for more than 5 years.

(d) Notification of Central Repository. -- The court shall notify the Criminal Justice Information System Central Repository whenever it orders conditional release or discharge of a committed person.

(e) Appeals. --

(1) An appeal from a District Court order shall be on the record in the circuit court.

(2) An appeal from a circuit court order shall be by application for leave to appeal to the Court of Special Appeals.

MD. CODE ANN., CRIM. PROC. § 3-120 (2010). CONDITIONAL RELEASE REQUEST BY HEALTH DEPARTMENT

(a) In general. --

(1) If at any time the Health Department considers that a committed person is eligible for conditional release, the Health Department may apply for the conditional release to the court that committed the person.

(2) The Health Department shall send a copy of the application for conditional release:

(i) to the committed person;

(ii) to counsel for the committed person; and

(iii) to the State's Attorney, by certified mail, return receipt requested.

(b) Court action. -- Within 30 days after receipt of the application from the Health Department, the court shall issue an order that is in accordance with § 3-114 of this title for:

(1) continued commitment; or

(2) conditional release under the conditions it imposes after giving consideration to the recommendations of specific conditions from the Health Department.

(c) Application for change in conditional release. -- If the court orders a conditional release of the committed person under this section, the committed person, the State's Attorney, or the Health Department may apply for a revocation, change, or extension under § 3-122 of this title.

(d) Appeals. --

(1) An appeal from a District Court order shall be on the record in circuit court.

(2) An appeal from a circuit court order shall be by application for leave to appeal to the Court of Special Appeals.

MD. CODE ANN., CRIM. PROC. § 3-121 (2010). ALLEGATIONS OF VIOLATIONS OF CONDITIONAL RELEASE

(a) Determination of factual basis by State's Attorney. --

(1) If the State's Attorney receives a report that alleges that a committed person has violated a condition of a conditional release, or if the State's Attorney is notified by the court or Health Department under subsection (b) of this section, the State's Attorney shall determine whether there is a factual basis for the complaint.

(2) If the State's Attorney determines that there is no factual basis for the complaint, the State's Attorney shall notify the person who made the report and take no further action.

(3) If the State's Attorney determines that there is a factual basis to believe that the committed person has violated the terms of a conditional release and believes further action by the court is necessary, the State's Attorney promptly shall:

(i) notify the Health Department of the alleged violation; and

(ii) file with the court a petition for revocation or modification of conditional release and send a copy of the petition to the Health Department.

(b) Action by court and Health Department. --

(1) If a court receives a report that alleges that a committed person has violated a condition of a conditional release, the court promptly shall:

(i) notify the Health Department; and

(ii) notify the State's Attorney and provide the name, address, and telephone number of the person who reported the violation and a copy of the order for conditional release.

(2) If the Health Department receives a report that alleges that a committed person has violated conditional release, the Department shall:

(i) notify the court and the State's Attorney; and

(ii) provide the State's Attorney with the name, address, and telephone number of the person who reported the violation and a copy of the order for conditional release.

(c) Petition for revocation or modification. -- The petition for revocation or modification of a conditional release shall contain:

(1) a statement that the committed person has violated a term of a conditional release and that there is therefore reason to believe that the committed person no longer meets the criteria for eligibility for conditional release;

(2) a statement of the conditions violated;

(3) the factual basis for the statements in items (1) and (2) of this subsection;

(4) the most recent evaluation report on the committed person; and

(5) the designation by the Health Department of the facility to receive the returned committed person.

(d) Determination of no probable cause. -- If the court's review of the petition determines that there is no probable cause to believe that the committed person has violated a

conditional release, the court shall:

(1) note the determination on the petition and file it in the court file on the committed person; and

(2) notify the State's Attorney, the Health Department, and the person who reported the violation.

(e) Determination of probable cause. -- If the court's review of the petition determines that there is probable cause to believe that the committed person has violated a conditional release, the court promptly shall:

(1) issue a hospital warrant for the committed person and direct that on execution the committed person shall be transported to the facility designated by the Health Department; and

(2) send a copy of the hospital warrant and the petition to:

(i) the State's Attorney;

(ii) the Public Defender;

(iii) the counsel of record for the committed person;

(iv) the person who reported the violation;

(v) the Office; and

(vi) the Health Department.

(f) Revocation hearing required. -- Within 10 days after the committed person is returned to the Health Department in accordance with the hospital warrant, the Office shall hold a hearing unless:

(1) the hearing is postponed or waived by agreement of the parties; or

(2) the Office postpones the hearing for good cause shown.

(g) Hearing procedures. -- At the hearing on revocation or modification:

(1) the committed person is entitled to be represented by counsel including, if the committed person is indigent, the Public Defender or designee of the Public Defender;

(2) the committed person, Health Department, and State's Attorney are entitled to offer evidence, to cross-examine adverse witnesses, and to exercise any other rights that the Office considers necessary for a fair hearing; and

(3) the Office shall find:

(i) whether, by a preponderance of the evidence, the State has proved that the committed person violated conditional release; and

(ii) whether, by a preponderance of the evidence, the committed person nevertheless has proved eligibility for conditional release.

(h) Report and exceptions. --

(1) The Office promptly shall:

(i) send a report of the hearing and determination to the court; and

(ii) send copies of the report to the committed person, counsel for the committed person, the State's Attorney, and the Health Department.

(2) Within 5 days after receipt of the report of the Office, the committed person, the State's Attorney, or the Health Department may file exceptions to the determination of the Office.

(i) Court action. -- After the court considers the report of the Office, the evidence, and any exceptions filed, within 10 days after the court receives the report, the court shall:

(1) revoke the conditional release and order the committed person returned to the facility designated by the Health Department;

(2) modify the conditional release as required by the evidence;

(3) continue the present conditions of release; or

(4) extend the conditional release by an additional term of 5 years.

(j) Notification of Central Repository. -- The court shall notify the Criminal Justice Information System Central Repository of the issuance of any hospital warrant and any revocation it orders under this section.

(k) Appeals. --

(1) An appeal from a District Court order shall be on the record in circuit court.

(2) An appeal from a circuit court order shall be by application for leave to appeal to the Court of Special Appeals.

MD. CODE ANN., CRIM. PROC. § 3-122 (2010). APPLICATION FOR CHANGE IN CONDITIONAL RELEASE

(a) In general. --

(1) An application to the court for a change in conditional release of a committed person may be made by:

(i) the Health Department or the State's Attorney at any time; or

(ii) the committed person not earlier than 6 months after the court ordered the conditional release, unless the court for good cause permits an earlier application.

(2) The applicant for a change in conditional release shall notify the court and other parties, in writing, of the application and the reasons for the requested change.

(b) Burden of proof. -- The burden of proof of any issue raised by the application for change in conditional release rests with the applicant.

(c) Court action. -- After the court considers the application for change in conditional release and the evidence, in accordance with § 3-114 of this title, the court shall:

(1) change the conditions;

(2) impose appropriate additional conditions;

(3) revoke the conditional release;

(4) continue the present conditions of release; or

(5) extend the conditional release by an additional term of 5 years.

(d) Reapplication. --

(1) Not earlier than 1 year after the court action on the application for change filed by the committed person, and not more than once a year thereafter, a committed person may reapply for a change in conditional release.

(2) Notwithstanding the time restrictions in paragraph (1) of this subsection, a committed person may apply for a change in conditional release at any time if the application is accompanied by an affidavit of a physician or licensed psychologist that states an improvement in the mental condition of the committed person.

MASSACHUSETTS

MASS. ANN. LAWS CH. 119 § 33B (2010). PLACEMENT OF CHILD ADJUDICATED FOR SEXUAL OFFENSE, ARSON OR OTHER VIOLENT OFFENSE.

At the time of placing a child in family home care, but in any event no later that five working days following such placement, the department or any other child-care agency shall determine whether the child has been adjudicated delinquent for a sexual offense or the commission of arson, or has admitted to such behavior, or is the subject of a documented or substantiated report of such behavior. If the department or other agency determines that the child has been so adjudicated, admitted, or found to have engaged in such behavior, it shall immediately refer the child to a qualified diagnostician for evaluation and assessment, including a risk management assessment of the child and a recommendation as to the type of appropriate and safe placement for the child. Such evaluation and assessment shall be completed within not more than ten working days from referral by the department or agency. No delay beyond the time periods in this section by the department shall in itself give rise to any claim of negligence or any other claim for damages. For the purposes of this section, a qualified diagnostician shall mean an individual who possesses specialized training and experience in the evaluation and treatment of sexually abusive youth or arsonists, as appropriate. Pending completion of such evaluation, the department or agency may place the child in an interim setting that is able to provide appropriate safety and security in light of the known risks posed by the child. Such risks shall be disclosed to the caretaker, including an interim safety plan to be implemented by the caretaker.

If the diagnostician recommends that the placement, including situations in which the child remains at home, should have adequate sex offender or arson specific risk management procedures, the department or agency responsible for placing the child shall prepare and implement a plan to address the safety of the child and other children in the home or residence, and to address the safety of the children in the immediate neighborhood. Such plan must include notification to all adults responsible for supervising the child in the home or residence of the child's behavioral history, including adjudications, if any, and education of all persons living in the home or residence about the known risks attendant to the child's behavior and methods of preventing such behavior, and provision for appropriate treatment for the child who is being placed. Where the department or agency makes a referral of such child to a foster home, residential facility, other agencies or organizations, or individuals for the purpose of receiving custodial services, the department or agency shall disclose the child's behavioral history, including adjudications, if any, to the designated recipient of the referral, prior to placement or at referral.

MASS. ANN. LAWS CH. 119 § 39G (2010). HEARINGS TO DETERMINE IF CHILD IN NEED OF SERVICES; ADJUDICATION; ORDERS OF DISPOSITION.

At any hearing to determine whether a child is in need of services, said child and his attorney shall be present. If the court finds the allegations in the petition have been proved at the hearing beyond a reasonable doubt, it may adjudge the child named in such petition to be in need of services. Upon making such adjudication the court, taking into consideration the physical and emotional welfare of the child, may make any of the

following orders of disposition:

(a) subject to any conditions and limitations the court may prescribe, including provision for medical, psychological, psychiatric, educational, occupational and social services, and for supervision by a court clinic or by any public or private organization providing counseling or guidance services, permit the child to remain with his parents;

(b) subject to such conditions and limitations as the court may prescribe, including, but not limited to provisions for those services described in clause (a), place the child in the care of any of the following:

(1) a relative, probation officer, or other adult individual who, after inquiry by the probation officer or other person or agency designated by the court, is found to be qualified to receive and care for the child; (2) a private charitable or childcare agency or other private organization, licensed or otherwise authorized by law to receive and provide care for such children; or (3) a private organization which, after inquiry by the probation officer or other person or agency designated by the court, is found to be qualified to receive and care for the child; or

(c) subject to the provisions of sections 32 and 33 and with such conditions and limitations as the court may recommend, commit the child to the department of children and families. At the same time, the court shall consider the provisions of section 29C and shall make the written certification and determinations required by said section 29C. The department shall give due consideration to the recommendations of the court. The department may not refuse out-of-home placement of a child if the placement is recommended by the court provided that the court has made the written certification and determinations required by said section 29C. The department shall direct the type and length of such out-of-home placement. The department shall give due consideration to the requests of the child that the child be placed outside the home of a parent or guardian where there is a history of abuse and neglect in the home by the parent or guardian.

A child found to be in need of services shall not be committed to any county training school. A child found to be in need of services shall not be committed to an institution designated or operated for juveniles adjudicated delinquent. However, such child may be committed to a facility which operates as a group home to provide therapeutic care for juveniles regardless of whether juveniles adjudicated delinquent are also provided care in such facility and may, in addition, be referred to the department of youth services for placement in individual foster care.

Any order of disposition pursuant to this section shall continue in force for not more than six months; provided, however, that the court which entered the order may, after a hearing, extend its duration for additional periods, each such period not to exceed six months if the court finds that the purposes of the order have not been accomplished and that such extension would be reasonably likely to further those purposes.

No order shall continue in effect after the eighteenth birthday of a child named in a

petition authorized to be filed by a parent or a legal guardian having custody, or a police officer, under the provisions of the second paragraph of section thirty-nine E, or after the sixteenth birthday of a child named in a petition authorized to be filed by a supervisor of attendance under the provisions of the third paragraph of said section thirty-nine E.

MASS. ANN. LAWS CH. 123 § 15 (2010). DETERMINATION OF COMPETENCY OF DEFENDANT TO STAND TRIAL; EXAMINATION; COMMITMENT.

(a) Whenever a court of competent jurisdiction doubts whether a defendant in a criminal case is competent to stand trial or is criminally responsible by reason of mental illness or mental defect, it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians or one or more qualified psychologists. Whenever practicable, examinations shall be conducted at the court house or place of detention where the person is being held. When an examination is ordered, the court shall instruct the examining physician or psychologist in the law for determining mental competence to stand trial and criminal responsibility.

(b) After the examination described in paragraph (a), the court may order that the person be hospitalized at a facility or, if such person is a male and appears to require strict security, at the Bridgewater state hospital, for a period not to exceed twenty days for observation and further examination, if the court has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged. Copies of the complaints or indictments and the physician's or psychologist's report under paragraph (a) shall be delivered to the facility or said hospital with the person. If, before the expiration of such twenty day period, an examining qualified physician or an examining qualified psychologist believes that observation for more than twenty days is necessary, he shall so notify the court and shall request in writing an extension of the twenty day period, specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court may extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of hospitalization; provided, however, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

(c) At the conclusion of the examination or the observation period, the examining physician or psychologist shall forthwith give to the court written signed reports of their findings, including the clinical findings bearing on the issue of competence to stand trial or criminal responsibility. Such reports shall also contain an opinion, supported by clinical findings, as to whether the defendant is in need of treatment and care offered by the department.

(d) If on the basis of such reports the court is satisfied that the defendant is competent to

stand trial, the case shall continue according to the usual course of criminal proceedings; otherwise the court shall hold a hearing on whether the defendant is competent to stand trial; provided that at any time before trial any party to the case may request a hearing on whether the defendant is competent to stand trial. A finding of incompetency shall require a preponderance of the evidence. If the defendant is found incompetent to stand trial, trial of the case shall be stayed until such time as the defendant becomes competent to stand trial, unless the case is dismissed.

(e) After a finding of guilty on a criminal charge, and prior to sentencing, the court may order a psychiatric or other clinical examination and, after such examination, it may also order a period of observation in a facility, or at the Bridgewater state hospital if the court determines that strict security is required and if such person is male. The purpose of such observation or examination shall be to aid the court in sentencing. Such period of observation or examination shall not exceed forty days. During such period of observation, the superintendent or medical director may petition the court for commitment of such person. The court, after imposing sentence on said person, may hear the petition as provided in section eighteen, and if the court makes necessary findings as set forth in section eight, it may in its discretion commit the person to a facility or the Bridgewater state hospital. Such order of commitment shall be valid for a period of six months. All subsequent proceedings for commitment shall take place under the provisions of said section eighteen in the district court which has jurisdiction of the facility or hospital. A person committed to a facility or Bridgewater state hospital pursuant to this section shall have said time credited against the sentence imposed as provided in paragraph (c) of said section eighteen.

(f) In like manner to the proceedings under paragraphs (a), (b), (c), and (e) of this section, a court may order a psychiatric or psychological examination or a period of observation for an alleged delinquent in a facility to aid the court in its disposition. Such period shall not exceed forty days.

MASS. ANN. LAWS CH. 123 § 16 (2010). HOSPITALIZATION OF DEFENDANTS FOUND INCOMPETENT TO STAND TRIAL OR NOT GUILTY BY REASON OF MENTAL ILLNESS; NOTICE TO DISTRICT ATTORNEY; RESTRICTIONS IMPOSED ON PERSONS COMMITTED; DISMISSAL OF CRIMINAL CHARGES.

(a) The court having jurisdiction over the criminal proceedings may order that a person who has been found incompetent to stand trial or not guilty by reason of mental illness or mental defect in such proceedings be hospitalized at a facility for a period of forty days for observation and examination; provided that, if the defendant is a male and if the court determines that the failure to retain him in strict security would create a likelihood of serious harm by reason of mental illness, or other mental defect, it may order such hospitalization at the Bridgewater state hospital; and provided, further, that the combined periods of hospitalization under the provisions of this section and paragraph (b) of section fifteen shall not exceed fifty days.

(b) During the period of observation of a person believed to be incompetent to stand trial or within sixty days after a person is found to be incompetent to stand trial or not guilty

of any crime by reason of mental illness or other mental defect, the district attorney, the superintendent of a facility or the medical director of the Bridgewater state hospital may petition the court having jurisdiction of the criminal case for the commitment of the person to a facility or to the Bridgewater state hospital. However, the petition for the commitment of an untried defendant shall be heard only if the defendant is found incompetent to stand trial, or if the criminal charges are dismissed after commitment. If the court makes the findings required by paragraph (a) of section eight it shall order the person committed to a facility; if the court makes the findings required by paragraph (b) of section eight, it shall order the commitment of the person to the Bridgewater state hospital; otherwise the petition shall be dismissed and the person discharged. An order of commitment under the provisions of this paragraph shall be valid for six months. In the event a period of hospitalization under the provisions of paragraph (a) has expired, or in the event no such period of examination has been ordered, the court may order the temporary detention of such person in a jail, house of correction, facility or the Bridgewater state hospital until such time as the findings required by this paragraph are made or a determination is made that such findings cannot be made.

(c) After the expiration of a commitment under paragraph (b) of this section, a person may be committed for additional one year periods under the provisions of sections seven and eight of this chapter, but no untried defendant shall be so committed unless in addition to the findings required by sections seven and eight the court also finds said defendant is incompetent to stand trial. If the person is not found incompetent, the court shall notify the court with jurisdiction of the criminal charges, which court shall thereupon order the defendant returned to its custody for the resumption of criminal proceedings. All subsequent proceedings for the further commitment of a person committed under this section shall be in the court which has jurisdiction of the facility or hospital.

(d) The district attorney for the district within which the alleged crime or crimes occurred shall be notified of any hearing conducted for a person under the provisions of this section or any subsequent hearing for such person conducted under the provisions of this chapter relative to the commitment of the mentally ill and shall have the right to be heard at such hearings.

(e) Any person committed to a facility under the provisions of this section may be restricted in his movements to the buildings and grounds of the facility at which he is committed by the court which ordered the commitment. If such restrictions are ordered, they shall not be removed except with the approval of the court. In the event the superintendent communicates his intention to remove or modify such restriction in writing to the court and within fourteen days the court does not make written objection thereto, such restrictions shall be removed by the superintendent. If the superintendent or medical director of the Bridgewater state hospital intends to discharge a person committed under this section or at the end of a period of commitment intends not to petition for his further commitment, he shall notify the court and district attorney which have or had jurisdiction of the criminal case. Within thirty days of the receipt of such notice, the district attorney may petition for commitment under the provisions of

paragraph (c). During such thirty day period, the person shall be held at the facility or hospital. This paragraph shall not apply to persons originally committed after a finding of incompetence to stand trial whose criminal charges have been dismissed.

(f) If a person is found incompetent to stand trial, the court shall send notice to the department of correction which shall compute the date of the expiration of the period of time equal to the time of imprisonment which the person would have had to serve prior to becoming eligible for parole if he had been convicted of the most serious crime with which he was charged in court and sentenced to the maximum sentence he could have received, if so convicted. For purposes of the computation of parole eligibility, the minimum sentence shall be regarded as one half of the maximum sentence potential sentence. Where applicable, the provisions of sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B, and one hundred and twenty-nine C of chapter one hundred and twenty-seven shall be applied to reduce such period of time. On the final date of such period, the court shall dismiss the criminal charges against such person, or the court in the interest of justice may dismiss the criminal charges against such person prior to the expiration of such period.

MASS. ANN. LAWS CH. 123 § 17 (2010). PERIODIC REVIEW OF PERSON FOUND INCOMPETENT TO STAND TRIAL; JUDICIAL HEARING OF DEFENDANT'S DEFENSE OF NOT GUILTY; RELEASE OF DEFENDANT DURING COURSE OF CRIMINAL PROCEEDINGS.

(a) The periodic review of a person found incompetent to stand trial shall include a clinical opinion with regard to the person's competence to stand trial, which opinion shall be noted in writing on the patient's record. If any person found incompetent to stand trial is determined by the superintendent of the facility or the medical director of the Bridgewater state hospital to be no longer incompetent, the superintendent or medical director shall notify the court, which shall without delay hold a hearing on the person's competency to stand trial. Any person found incompetent to stand trial may at any time petition the court for a hearing on his competency. Whenever a hearing is held and the court finds that the person is competent to stand trial, his commitment, if any, to a facility or to the Bridgewater state hospital shall be terminated and he shall be returned to the custody of the court for trial. However, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

(b) If either a person or counsel of a person who has been found to be incompetent to stand trial believes that he can establish a defense of not guilty to the charges pending against the person other than the defense of not guilty by reason of mental illness or mental defect, he may request an opportunity to offer a defense thereto on the merits before the court which has criminal jurisdiction. The court may require counsel for the defendant to support the request by affidavit or other evidence. If the court in its discretion grants such a request, the evidence of the defendant and of the commonwealth shall be heard by the court sitting without a jury. If after hearing such petition the court

finds a lack of substantial evidence to support a conviction it shall dismiss the indictment or other charges or find them defective or insufficient and order the release of the defendant from criminal custody.

(c) Notwithstanding any finding of incompetence to stand trial under the provisions of this chapter, the court having jurisdiction may, at any appropriate stage of the criminal proceedings, allow a defendant to be released with or without bail.

MASS. ANN. LAWS CH. 123 § 18 (2010). TRANSFER OF PRISONERS IN NEED OF HOSPITALIZATION BY REASON OF MENTAL ILLNESS TO FACILITIES.

(a) If the person in charge of any place of detention within the commonwealth has reason to believe that a person confined therein is in need of hospitalization by reason of mental illness at a facility of the department or at the Bridgewater state hospital, he shall cause such prisoner to be examined at such place of detention by a physician or psychologist, designated by the department as qualified to perform such examination. Said physician or psychologist shall report the results of the examination to the district court which has jurisdiction over the place of detention or, if the prisoner is awaiting trial, to the court which has jurisdiction of the criminal case. Such report shall include an opinion, with reasons therefore, as to whether such hospitalization is actually required. The court which receives such report may order the prisoner to be taken to a facility or, if a male, to the Bridgewater state hospital to be received for examination and observation for a period not to exceed thirty days. After completion of such examination and observation, a written report shall be sent to such court and to the person in charge of the place of detention. Such report shall be signed by the physician or psychologist conducting such examination, and shall contain an evaluation, supported by clinical findings, of whether the prisoner is in need of further treatment and care at a facility or, if a male, the Bridgewater state hospital by reason of mental illness. The person in charge of the place of detention shall have the same right as a superintendent of a facility and the medical director of the Bridgewater state hospital to file a petition with the court which received the results of the examination for the commitment of the person to a facility or to the Bridgewater state hospital; provided, however, that, notwithstanding the court's failure, after an initial hearing or after any subsequent hearing, to make a finding required for commitment to the Bridgewater state hospital, the prisoner shall be confined at said hospital if the findings required for commitment to a facility are made and if the commissioner of correction certifies to the court that confinement of the prisoner at said hospital is necessary to insure his continued retention in custody. An initial court order of commitment issued subject to the provisions of this section shall be valid for a six-month period, and all subsequent commitments during the term of the sentence shall take place under the provisions of sections seven and eight and shall be valid for one year.

(b) Notwithstanding any contrary provision of general or special law, a prisoner who is retained in any place of detention within the commonwealth and who is in need of care and treatment in a facility may, with the approval of the person in charge of such place of detention apply for voluntary admission under the provisions of paragraph (a) of section ten.

(c) At the commencement of hospitalization under the provisions of paragraph (a) or paragraph (b) the department of correction shall enter in the patient record of such prisoner the date of the expiration of the sentence of the prisoner. Where applicable, the provisions of sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B and one hundred and twenty-nine C of chapter one hundred and twenty-seven may be applied to reduce such sentence, and on such date the prisoner shall be discharged; provided, however, that if the superintendent or other head of a facility or the medical director of the Bridgewater state hospital determines that the discharge of the prisoner committed subject to the provisions of paragraph (a) would create a likelihood of serious harm by reason of mental illness, he shall petition the district court having jurisdiction over the facility prior to the date of expiration to order the commitment of such person to a facility or to the Bridgewater state hospital under the provisions of this chapter other than paragraph (a); and provided, further, that any prisoner resident in a facility subject to the provisions of paragraph (b) shall be free to leave such facility subject to the provisions of section eleven.

(d) In the event the provisions of this chapter require the release of a prisoner from a facility or from the Bridgewater state hospital prior to the date of expiration of his sentence calculated under the provisions of paragraph (c), such prisoner shall be forthwith returned to the place of detention from which he was transferred to such facility or to said hospital.

MASS. ANN. LAWS CH. 123 § 21 (2010). TRANSPORTATION; RESTRAINTS; EXAMINATION OF MINORS; SECLUSION OF MINORS; TIME LIMITATIONS; CHEMICAL RESTRAINTS; PERSON IN ATTENDANCE REQUIREMENT.

Any person who transports a mentally ill person to or from a facility for any purpose authorized under this chapter shall not use any restraint which is unnecessary for the safety of the person being transported or other persons likely to come in contact with him.

In the case of persons being hospitalized under the provisions of section six, the applicant shall authorize practicable and safe means of transport, including where appropriate, departmental or police transport.

Restraint of a mentally ill patient may only be used in cases of emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide; provided, however, that written authorization for such restraint is given by the superintendent or director of the facility or by a physician designated by him for this purpose who is present at the time of the emergency or if the superintendent or director or designated physician is not present at the time of the emergency, non-chemical means of restraint may be used for a period of one hour provided that within one hour the person in restraint shall be examined by the superintendent, director or designated physician. Provided further, that if said examination has not occurred within one hour, the patient may be restrained for up to an additional one hour period until such examination is conducted, and the superintendent, director, or designated physician shall attach to the restraint form a written report as to why the examination was not completed by the end of the first hour of restraint.

Any minor placed in restraint shall be examined within fifteen minutes of the order for restraint by a physician or, if a physician is not available, by a registered nurse or a certified physician assistant; provided, however, that said minor shall be examined by a physician within one hour of the order for restraint. A physician or, if a physician is not available, a registered nurse or a certified physician assistant, shall review the restraint order, by personal examination of the minor or consultation with ward staff attending the minor, every hour thereafter.

No minor shall be secluded for more than two hours in any twenty-four hour period; provided, however, that no such seclusion of a minor may occur except in a facility with authority to use such seclusion after said facility has been inspected and specially certified by the department. The department shall issue regulations establishing procedures by which a facility may be specially certified with authority to seclude a minor. Such regulations shall provide for review and approval or disapproval by the commissioner of a biannual application by the facility which shall include (i) a comprehensive statement of the facility's policies and procedures for the utilization and monitoring of restraint of minors including a statistical analysis of the facility's actual use of such restraint, and (ii) a certification by the facility of its ability and intent to comply with all applicable statutes and regulations regarding physical space, staff training, staff authorization, record keeping, monitoring and other requirements for the use of restraints.

Any use of restraint on a minor exceeding one hour in any twenty-four hour period shall be reviewed within two working days by the director of the facility. The director shall forward a copy of his report on each such instance of restraint to the human rights committee of that facility and, in the event that there is no human rights committee, to the appropriate body designated by the commissioner of mental health. The director shall also compile a record of every instance of restraint in the facility and shall forward a copy of said report on a monthly basis to the human rights committee or the body designated by the commissioner of mental health.

No order for restraint for an individual shall be valid for a period of more than three hours beyond which time it may be renewed upon personal examination by the superintendent, director, authorized physician or, for adults, by a registered nurse or a certified physician assistant; provided, however, that no adult shall be restrained for more than six hours beyond which time an order may be renewed only upon personal examination by a physician. The reasons for the original use of restraint, the reason for its continuation after each renewal, and the reason for its cessation shall be noted upon the restraining form by the superintendent, director or authorized physician or, when applicable, by the registered nurse or certified physician assistant at the time of each occurrence.

When a designated physician is not present at the time and site of the emergency, an order for chemical restraint may be issued by a designated physician who has determined, after telephone consultation with a physician, registered nurse or certified physician assistant who is present at the time and site of the emergency and who has personally

examined the patient, that such chemical restraint is the least restrictive, most appropriate alternative available; provided, however, that the medication so ordered has been previously authorized as part of the individual's current treatment plan.

No person shall be kept in restraint without a person in attendance specially trained to understand, assist and afford therapy to the person in restraint. The person may by in attendance immediately outside the room in full view of the patient when an individual is being secluded without mechanical restraint; provided, however, that in emergency situations when a person specially trained is not available, an adult, may be kept in restraint unattended for a period not to exceed two hours. In that event, the person kept in restraints must be observed at least every five minutes; provided, further, that the superintendent, director, or designated physician shall attach to the restraint form a written report as to why the specially trained attendant was not available. The maintenance of any adult in restraint for more than eight hours in any twenty-four hour period must be authorized by the superintendent or facility director or the person specifically designated to act in the absence of the superintendent or facility director; provided, however, that when such restraint is authorized in the absence of the superintendent of facility director, such authorization must be reviewed by the superintendent or facility director upon his return.

No "P.R.N." or "as required" authorization of restraint may be written. No restraint is authorized except as specified in this section in any public or private facility for the care and treatment of mentally ill persons including Bridgewater.

No later than twenty-four hours after the period of restraint, a copy of the restraint form shall be delivered to the person who was in restraint. A place shall be provided on the form or on attachments thereto, for the person to comment on the circumstances leading to the use of restraint and on the manner of restraint used.

A copy of the restraint form and any such attachments shall become part of the chart of the patient. Copies of all restraint forms and attachments shall be sent to the commissioner of mental health, or with respect to Bridgewater state hospital to the commissioner of correction, who shall review and sign them within thirty days, and statistical records shall be kept thereof for each facility including Bridgewater state hospital, and each designated physician. Furthermore such reports, excluding patient identification, shall be made available to the general public at the department's central office, or with respect to Bridgewater state hospital at the department of correction's central office.

Responsibility and liability for the implementation of the provisions of this section shall rest with the department, the superintendent or director of each facility or the physician designated by such superintendent or director for this purpose.

MASS. ANN. LAWS CH. 123 § 24 (2010). COMMITMENT AS AFFECTING LEGAL COMPETENCY OF PERSONS COMMITTED.

No person shall be deemed to be incompetent to manage his affairs, to contract, to hold professional or occupational or vehicle operators licenses or to make a will solely by reason of his admission or commitment in any capacity to the treatment or care of the department or to any public or private facility, nor shall departmental regulations restrict such rights.

MASS. ANN. LAWS CH. 123A § 1 (2010). DEFINITIONS.

As used in this chapter the following words shall, except as otherwise provided, have the following meanings:--

"Agency with jurisdiction", the agency with the authority to direct the release of a person presently incarcerated, confined or committed to the department of youth services, regardless of the reason for such incarceration, confinement or commitment, including, but not limited to a sheriff, keeper, master or superintendent of a jail, house of correction or prison, the director of a custodial facility in the department of youth services, the parole board and, where a person has been found incompetent to stand trial, a district attorney.

"Community access board", a board consisting of five members appointed by the commissioner of correction, whose function shall be to consider a person's placement within a community access program and conduct an annual review of a person's sexual dangerousness.

"Community Access Program", a program established pursuant to section six A that provides for a person's reintegration into the community.

"Conviction", a conviction of or adjudication as a delinquent juvenile or a youthful offender by reason of sexual offense, regardless of the date of offense or date of conviction or adjudication.

"Mental abnormality", a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

"Personality disorder", a congenital or acquired physical or mental condition that results in a general lack of power to control sexual impulses.

"Qualified examiner", a physician who is licensed pursuant to section two of chapter one hundred and twelve who is either certified in psychiatry by the American Board of Psychiatry and Neurology or eligible to be so certified, or a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve; provided, however, that the examiner has had two years of experience with diagnosis or treatment of sexually aggressive offenders and is designated by the commissioner of correction. A "qualified examiner" need not be an employee of the department of correction or of any facility or institution of the

department.

"Sexual offense", includes any of the following crimes: indecent assault and battery on a child under fourteen under the provisions of section thirteen B of chapter two hundred and sixty-five; aggravated indecent assault and battery on a child under the age of 14 under section 13B1/2 of chapter 265; a repeat offense under section 13B3/4 of chapter 265; indecent assault and battery on a mentally retarded person under the provisions of section thirteen F of chapter two hundred and sixty-five; indecent assault and battery on a person who has obtained the age of fourteen under the provisions of section thirteen H of chapter two hundred and sixty-five; rape under the provisions of section twenty-two of chapter two hundred and sixty-five; rape of a child under sixteen with force under the provisions of section twenty-two A of chapter two hundred and sixty-five; aggravated rape of a child under 16 with force under section 22B of chapter 265; a repeat offense under section 22C of chapter 265; rape and abuse of a child under sixteen under the provisions of section twenty-three of chapter two hundred and sixty-five; aggravated rape and abuse of a child under section 23A of chapter 265; a repeat offense under section 23B of chapter 265; assault with intent to commit rape under the provisions of section twenty-four of chapter two hundred and sixty-five; assault on a child with intent to commit rape under section 24B of chapter 265; kidnapping under section 26 of said chapter 265 with intent to commit a violation of section 13B, 13B1/2, 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of said chapter 265; enticing away a person for prostitution or sexual intercourse under section 2 of chapter 272; drugging persons for sexual intercourse under section 3 of chapter 272; inducing a person under 18 into prostitution under section 4A of said chapter 272; living off or sharing earnings of a minor prostitute under section 4B of said chapter 272; open and gross lewdness and lascivious behavior under section 16 of said chapter 272; incestuous intercourse under section 17 of said chapter 272 involving a person under the age of 21; dissemination or possession with the intent to disseminate to a minor matter harmful to a minor under section 28 of said chapter 272; posing or exhibiting a child in a state of nudity under section 29A of said chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under section 29B of said chapter 272; purchase or possession of visual material of a child depicted in sexual conduct under section 29C of said chapter 272; dissemination of visual material of a child in the state of nudity or in sexual conduct under section 30D of chapter 272; unnatural and lascivious acts with a child under the age of sixteen under the provisions of section thirty-five A of chapter two hundred and seventy-two; accosting or annoying persons of the opposite sex and lewd, wanton and lascivious speech or behavior under section 53 of said chapter 272; and any attempt to commit any of the above listed crimes under the provisions of section six of chapter two hundred and seventy-four or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority; and any other offense, the facts of which, under the totality of the circumstances, manifest a sexual motivation or pattern of conduct or series of acts of sexually-motivated offenses.

"Sexually dangerous person", any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely

to engage in sexual offenses if not confined to a secure facility; (ii) charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.

MASS. ANN. LAWS CH. 123A § 2 (2010). NEMANSKET CORRECTIONAL CENTER; TREATMENT OF SEXUALLY DANGEROUS PRISONERS.

The commissioner of correction shall maintain subject to the jurisdiction of the department of correction a treatment program or branch thereof at a correctional institution for the care, custody, treatment and rehabilitation of persons adjudicated as being sexually dangerous. Said facility shall be known as the "Nemansket Correctional Center". The commissioner of correction shall appoint a chief administrative officer who shall have responsibility for providing personnel with respect to the treatment and rehabilitation of the sexually dangerous persons, consistent with public safety. The commissioner of correction shall have the authority to promulgate regulations consistent with the provisions of this chapter.

MASS. ANN. LAWS CH. 123A § 2A (2010). TRANSFER OF SEXUALLY DANGEROUS PRISONER TO ANOTHER CORRECTIONAL INSTITUTION; ANNUAL REVIEW OF SEXUAL DANGEROUSNESS.

An individual committed as sexually dangerous and who has also been sentenced for a criminal offense and said sentence has not expired may be transferred from the treatment center to another correctional institution designated by the commissioner of correction. In determining whether a transfer to a correctional institution is appropriate the commissioner of correction may consider the following factors:

(1) the person's unamenability to treatment;

(2) the person's unwillingness or failure to follow treatment recommendations;

(3) the person's lack of progress in treatment at the center or branch thereof;

(4) the danger posed by the person to other residents or staff at the Treatment Center or branch thereof;

(5) the degree of security necessary to protect the public.

The department of correction shall promulgate regulations establishing a transfer board and procedures governing transfer, including notification of hearing, opportunity to be heard, written decision notification of decision, opportunity for appeal, and periodic

review of placement.

The commissioner of correction shall make available to the remanded individuals a program of voluntary treatment services. An annual review shall be conducted of the current sexual dangerousness of each transferred individual and a report prepared which shall be admissible in a hearing under section nine of this chapter. Upon completion of said person's criminal sentence, he shall be returned to the treatment center and considered for participation in the community access program. Existing civil commitments to the treatment center shall not be vacated by the transfer to a correctional institution.

MASS. ANN. LAWS CH. 123A § 6A (2010). PERSON COMMITTED AS SEXUALLY DANGEROUS TO BE HELD IN APPROPRIATE LEVEL OF SECURITY; COMMUNITY ACCESS PROGRAM.

Any person committed as a sexually dangerous person to the treatment center or a branch thereof under the provisions of this chapter shall be held in the most appropriate level of security required to ensure protection of the public, correctional staff, himself and others. Any juvenile who is committed as a sexually dangerous person to the treatment center or a branch thereof under the provisions of this chapter shall be segregated from any adults held at such facility.

Only a person whose criminal sentence has expired or upon whom a criminal sentence was never imposed shall be entitled to apply for participation in a community access program once in every twelve months. Said program shall be administered pursuant to the rules and regulations promulgated by the department of correction. As part of its program of community access the department of correction shall establish a board known as the community access board which board shall consist of five members appointed by the commissioner of correction, consistent with the rules and regulations of the department. Membership shall include three department of correction employees and two persons who are not department of correction employees but who may be independent contractors or consultants. The non-employee members shall consist of psychiatrists or psychologists licensed by the commonwealth. The board shall evaluate residents for participation in the community access program and establish conditions to ensure the safety of the general community. The board shall have access to all records of the person being evaluated and shall give a report of its findings including dissenting views, to the chief administrative officer of the center. Such report shall be admissible in any hearing under section nine of this chapter. The board shall also conduct annual reviews of and prepare reports on the current sexual dangerousness of all persons at the treatment center, including those whose criminal sentences have not expired. The reports shall be admissible in a hearing under section nine of this chapter.

Any person participating in a community access program under this section shall continue to reside within the secure confines of MCI-Bridgewater and be under daily evaluation by treatment center personnel to determine if he presents a danger to the community. Upon approval of a person for participation in a community access program, notice shall be given to the colonel of state police, to the attorney general, to the district

attorney in the district from which the person's criminal commitment originated, to the police department of the city or town from which the commitment originated, the police department of the town of Bridgewater, the police department where such person's participation in the community access program will occur the employer of persons participating in the access program, and any victim of the sexual offense from which the commitment originated. If such victim is deceased at the time of such program participation, notice of the person's participation in a community access program shall be given to the parent, spouse or other member of the immediate family of such deceased victim.

MASS. ANN. LAWS CH. 123A § 9 (2010). PETITIONS FOR EXAMINATION AND DISCHARGE; PROCEDURES.

Any person committed to the treatment center shall be entitled to file a petition for examination and discharge once in every twelve months. Such petition may be filed by either the committed person, his parents, spouse, issue, next of kin or any friend. The department of correction may file a petition at any time if it believes a person is no longer a sexually dangerous person. A copy of any petition filed under this subsection shall be sent within fourteen days after the filing thereof to the department of the attorney general and to the district attorney for the district where the original proceedings were commenced. Said petition shall be filed in the district of the superior court department in which said person was committed. The petitioner shall have a right to a speedy hearing on a date set by the administrative justice of the superior court department. Upon the motion of the person or upon its own motion, the court shall appoint counsel for the person. The hearing may be held in any court or any place designated for such purpose by the administrative justice of the superior court department. In any hearing held pursuant to the provisions of this section, either the petitioner or the commonwealth may demand that the issue be tried by a jury. If a jury trial is demanded, the matter shall proceed according to the practice of trial in civil cases in the superior court.

The court shall issue whatever process is necessary to assure the presence in court of the committed person. The court shall order the petitioner to be examined by two qualified examiners, who shall conduct examinations, including personal interviews, of the person on whose behalf such petition is filed and file with the court written reports of their examinations and diagnoses, and their recommendations for the disposition of such person. Said reports shall be admissible in a hearing pursuant to this section. If such person refuses, without good cause, to be personally interviewed by a qualified examiner appointed pursuant to this section, such person shall be deemed to have waived his right to a hearing on the petition and the petition shall be dismissed upon motion filed by the commonwealth. The qualified examiners shall have access to all records of the person being examined. Evidence of the person's juvenile and adult court and probation records, psychiatric and psychological records, the department of correction's updated annual progress report of the petition, including all relevant materials prepared in connection with the section six A process, and any other evidence that tends to indicate that he is a sexually dangerous person shall be admissible in a hearing under this section. The chief administrative officer of the treatment center or his designee may testify at the hearing regarding the annual report and his recommendations for the disposition of the petition.

Unless the trier of fact finds that such person remains a sexually dangerous person, it shall order such person to be discharged from the treatment center. Upon such discharge, notice shall be given to the chief administrative officer, to the commissioner of correction and the colonel of state police, to the attorney general, to the district attorney in the district from which the commitment originated, to the police department of the city or town from which the commitment originated, the police department of the town of Bridgewater, the police department where such person is anticipated to take up residency, any employer of the resident, the department of criminal justice information services, and any victim of the sexual offense from which the commitment originated; provided, however, that said victim has requested notification pursuant to section three of chapter two hundred and fifty-eight B. If such victim is deceased at the time of such discharge, notice of such discharge shall be given to the parent, spouse or other member of the immediate family of such deceased victim.

MASS. ANN. LAWS CH. 123A § 12 (2010). NOTIFICATION OF DISTRICT ATTORNEY AND ATTORNEY GENERAL SIX MONTHS PRIOR TO RELEASE OF CERTAIN SEXUAL OFFENDERS; PETITION ALLEGING THAT SEXUAL OFFENDER IS A SEXUALLY DANGEROUS PERSON; PROBABLE CAUSE DETERMINATION; HEARING.

(a) Any agency with jurisdiction of a person who has ever been convicted of or adjudicated as a delinquent juvenile or a youthful offender by reason of a sexual offense as defined in section 1, regardless of the reason for the current incarceration, confinement or commitment, or who has been charged with such offense but has been found incompetent to stand trial, or who has been charged with any offense, is currently incompetent to stand trial and has previously been convicted of or adjudicated as a delinquent juvenile or a youthful offender by reason of a sexual offense, shall notify in writing the district attorney of the county where the offense occurred and the attorney general six months prior to the release of such person, except that in the case of a person who is returned to prison for no more than six months as a result of a revocation of parole or who is committed for no more than six months, such notice shall be given as soon as practicable following such person's admission to prison. In such notice, the agency with jurisdiction shall also identify those prisoners or youths who have a particularly high likelihood of meeting the criteria for a sexually dangerous person.

(b) When the district attorney or the attorney general determines that the prisoner or youth in the custody of the department of youth services is likely to be a sexually dangerous person as defined in section 1, the district attorney or the attorney general at the request of the district attorney may file a petition alleging that the prisoner or youth is a sexually dangerous person and stating sufficient facts to support such allegation in the superior court where the prisoner or youth is committed or in the superior court of the county where the sexual offense occurred.

(c) Upon the filing of a petition under this section, the court in which the petition was filed shall determine whether probable cause exists to believe that the person named in the petition is a sexually dangerous person. Such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause.

(d) At the probable cause hearing, the person named in the petition shall have the following rights:

(1) to be represented by counsel;

(2) to present evidence on such person's behalf;

(3) to cross-examine witnesses who testify against such person; and

(4) to view and copy all petitions and reports in the court file.

(e) If the person named in the petition is scheduled to be released from jail, house of correction, prison or a facility of the department of youth services at any time prior to the court's probable cause determination, the court, upon a sufficient showing based on the evidence before the court at that time, may temporarily commit such person to the treatment center pending disposition of the petition. The person named in the petition may move the court for relief from such temporary commitment at any time prior to the probable cause determination.

MASS. ANN. LAWS CH. 123A § 13 (2010). COMMITMENT OF PERSON TO TREATMENT CENTER FOR EXAMINATION AND DIAGNOSIS WHERE COURT IS SATISFIED PROBABLE CAUSE EXISTS; RECOMMENDATION OF QUALIFIED EXAMINERS; RIGHT TO COUNSEL; RIGHT TO RETAIN PSYCHOLOGIST OR PSYCHIATRIST.

(a) If the court is satisfied that probable cause exists to believe that the person named in the petition is a sexually dangerous person, the prisoner or youth shall be committed to the treatment center for a period not exceeding 60 days for the purpose of examination and diagnosis under the supervision of two qualified examiners who shall, no later than 15 days prior to the expiration of said period, file with the court a written report of the examination and diagnosis and their recommendation of the disposition of the person named in the petition.

(b) The court shall supply to the qualified examiners copies of any juvenile and adult court records which shall contain, if available, a history of previous juvenile and adult offenses, previous psychiatric and psychological examinations and such other information as may be pertinent or helpful to the examiners in making the diagnosis and recommendation. The district attorney or the attorney general shall provide a narrative or police reports for each sexual offense conviction or adjudication as well as any psychiatric, psychological, medical or social worker records of the person named in the petition in the district attorney's or the attorney general's possession. The agency with jurisdiction over the person named in the petition shall provide such examiners with copies of any incident reports arising out of the person's incarceration or custody.

(c) The person named in the petition shall be entitled to counsel and, if indigent, the court shall appoint an attorney. All written documentation submitted to the two qualified

examiners shall also be provided to counsel for the person named in the petition and to the district attorney and general.

(d) Any person subject to an examination pursuant to the provisions of this section may retain a psychologist or psychiatrist who meets the requirements of a qualified examiner, as defined in section 1, to perform an examination on his behalf. If the person named in the petition is indigent, the court shall provide for such qualified examiner.

MASS. ANN. LAWS CH. 123A § 14 (2010). TRIAL BY JURY TO DETERMINE WHETHER SEXUAL OFFENDER IS A SEXUALLY DANGEROUS PERSON; RIGHT TO COUNSEL; RIGHT TO RETAIN EXPERTS; EVIDENCE; ORDER OF COMMITMENT.

(a) The district attorney, or the attorney general at the request of the district attorney, may petition the court for a trial. In any trial held pursuant to this section, either the person named in the petition or the petitioning party may demand, in writing, that the case be tried to a jury and, upon such demand, the case shall be tried to a jury. Such petition shall be made within 14 days of the filing of the report of the two qualified examiners. If such petition is timely filed within the allowed time, the court shall notify the person named in the petition and his attorney, the district attorney and the attorney general that a trial by jury will be held within 60 days to determine whether such person is a sexually dangerous person. The trial may be continued upon motion of either party for good cause shown or by the court on its own motion if the interests of justice so require, unless the person named in the petition will be substantially prejudiced thereby. The person named in the petition shall be confined to a secure facility for the duration of the trial.

(b) The person named in the petition shall be entitled to the assistance of counsel and shall be entitled to have counsel appointed if he is indigent in accordance with section 2 of chapter 211D. In addition, the person named in the petition may retain experts or professional persons to perform an examination on his behalf. Such experts or professional persons shall be permitted to have reasonable access to such person for the purpose of the examination as well as to all relevant medical and psychological records and reports of the person named in the petition. If the person named in the petition is indigent under said section 2 of said chapter 211D, the court shall, upon such person's request, determine whether the expert or professional services are necessary and shall determine reasonable compensation for such services. If the court so determines, the court shall assist the person named in the petition in obtaining an expert or professional person to perform an examination and participate in the trial on such person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred and compensation received in the same case or for the same services from any other source. The court shall inform the person named in the petition of his rights under this section before the trial commences. The person named in the petition shall be entitled to have process issued from the court to compel the attendance of witnesses on his behalf. If such person intends to rely upon the testimony or report of his qualified examiner, the report must be filed with the court and a copy must be provided to the district attorney and attorney general no later than ten days prior to the scheduled

trial.

(c) Juvenile and adult court probation records, psychiatric and psychological records and reports of the person named in the petition, including the report of any qualified examiner, as defined in section 1, and filed under this chapter, police reports relating to such person's prior sexual offenses, incident reports arising out of such person's incarceration or custody, oral or written statements prepared for and to be offered at the trial by the victims of the person who is the subject of the petition and any other evidence tending to show that such person is or is not a sexually dangerous person shall be admissible at the trial if such written information has been provided to opposing counsel reasonably in advance of trial.

(d) If after the trial, the jury finds unanimously and beyond a reasonable doubt that the person named in the petition is a sexually dangerous person, such person shall be committed to the treatment center or, if such person is a youth who has been adjudicated as a delinquent, to the department of youth services until he reaches his twenty-first birthday, and then to the treatment center for an indeterminate period of a minimum of one day and a maximum of such person's natural life until discharged pursuant to the provisions of section 9. The order of commitment, which shall be forwarded to the treatment center and to the appropriate agency with jurisdiction, shall become effective on the date of such person's parole or in all other cases, including persons sentenced to community parole supervision for life pursuant to section 133C of chapter 127, on the date of discharge from jail, the house of correction, prison or facility of the department of youth services.

(e) If the person named in the petition is scheduled to be released from jail, house of correction, prison or a facility of the department of youth services at any time prior to the final judgment, the court may temporarily commit such person to the treatment center pending disposition of the petition.

MASS. ANN. LAWS CH. 123A § 15 (2010). HEARING TO DETERMINE WHETHER PERSON CHARGED WITH SEXUAL OFFENSE COMMITTED SEXUAL OFFENSE WHERE PERSON INCOMPETENT TO STAND TRIAL; PROBABLE CAUSE; COMMITMENT.

If a person who has been charged with a sexual offense has been found incompetent to stand trial and his commitment is sought and probable cause has been determined to exist pursuant to section 12, the court, without a jury, shall hear evidence and determine whether the person did commit the act or acts charged. The hearing on the issue of whether the person did commit the act or acts charged shall comply with all procedures specified in section 14, except with respect to trial by jury. The rules of evidence applicable in criminal cases shall apply and all rights available to criminal defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence the court shall make specific findings relative to whether the person did commit the act or acts charged; the extent to which the cause of the person's incompetence to stand trial affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his own behalf; the

extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, subject to appeal by the person named in the petition and the court may proceed to consider whether the person is a sexually dangerous person according to the procedures set forth in sections 13 and 14. Any determination made under this section shall not be admissible in any subsequent criminal proceeding.

MASS. ANN. LAWS CH. 123A § 16 (2010). ANNUAL TREATMENT REPORTS OF SEXUALLY DANGEROUS PERSONS; PLAN FOR ADMINISTRATION AND MANAGEMENT OF TREATMENT CENTER.

The department of correction and the department of youth services shall annually prepare reports describing the treatment offered to each person who has been committed to the treatment center or the department of youth services as a sexually dangerous person and, without disclosing the identity of such persons, describe the treatment provided. The annual reports shall be submitted, on or before January 1, 2000 and every November 1 thereafter, to the clerk of the house of representatives and the clerk of the senate, who shall forward the same to the house and senate committees on ways and means and to the joint committee on criminal justice. The treatment center shall submit on or before December 12, 1999 its plan for the administration and management of the treatment center to the clerk of the house of representatives and the clerk of the senate, who shall forward the same to the house and senate committees on ways and means and to the joint committee on criminal justice. The treatment center shall promptly notify said committees of any modifications to said plan.

MICHIGAN

MICH. COMP. LAWS SERV. § 330.2003C (2010). HEARING.

(1) If a prisoner refuses treatment or services recommended under section 1003a or if the corrections mental health program determines that a voluntary admittee to the program who wishes to terminate admission continues to require mental health services, the corrections mental health program shall appoint a hearing committee to hear the matter. The hearing committee shall consist of a psychiatrist, a psychologist, and another mental health professional, whose licensure or registration requirements include a minimum of a baccalaureate degree from an accredited college or university, none of whom is, at the time of hearing, involved in the prisoner's treatment or diagnosis.

(2) A hearing under this section shall be held not less than 24 hours after the prisoner and the guardian of the person, if applicable, are provided the documents required under section 1003a(d) or section 1003b(c), but not more than 7 business days after the documents have been provided to the prisoner.

(3) A prisoner has the following rights with respect to the hearing under this section:

(a) Attendance at the hearing, and if the prisoner has a guardian of the person, the guardian's attendance at the hearing.

(b) Presentation of evidence, including witnesses, who may be family members, and cross-examination of witnesses, unless the hearing committee finds that the presentation, confrontation, or cross-examination would present a serious threat to the order and security of the facility or the safety of the prisoner or others.

(c) Assistance of 1 of the following persons designated by the director of the corrections mental health program:

(i) A recipient rights advisor from the office of recipient rights.

(ii) A mental health professional who is not involved in the prisoner's treatment or diagnosis and whose licensure or registration requirements include a minimum of a baccalaureate degree from an accredited college or university.

(4) The hearing committee appointed under subsection (1) shall consider the report of the mental health professional who has alleged that the prisoner is mentally ill or mentally retarded, the certificate described in section 1003a(1)(b), proof of service of the notice of hearing, proof of nonmedication for 24 hours prior to the hearing, and any other admissible evidence presented at the hearing. To be admissible, evidence shall be relevant, nonrepetitious, and of a type relied upon by a person in the conduct of everyday affairs.

(5) The hearing committee appointed under subsection (1) shall prepare an official record of the hearing including all evidence described in subsection (4). The hearing shall be recorded, but need not be transcribed unless requested by a party. A party who requests transcription shall pay for the transcription of the portion requested.

(6) After a hearing under this section, the hearing committee shall decide by a majority vote that includes an affirmative vote by the psychiatrist whether the prisoner is mentally ill or mentally retarded and whether the proposed mental health services are suitable to the prisoner's condition. If the hearing committee finds that the prisoner is mentally ill or mentally retarded but that the proposed services are not suitable to the prisoner's condition, the hearing committee shall order services available within the corrections mental health program that are suitable to the prisoner's condition.

(7) Upon reaching a decision, the hearing committee shall prepare a report and order expressing the findings of the hearing committee and the basis for those findings. Each member shall indicate his or her agreement or disagreement with the hearing committee findings. Within 24 hours after the hearing, the hearing committee shall provide a copy of the hearing committee report and order to the prisoner.

(8) A prisoner may appeal the decision of the hearing committee under this section to the director of the corrections mental health program if the appeal is filed within 48 hours of the prisoner's receipt of the hearing committee's report and order under subsection (7). The director of the corrections mental health program shall render a decision within 2 business days after receipt of the appeal.

(9) A prisoner may appeal the decision of the director of the corrections mental health program under subsection (8) pursuant to section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws, except that no oral argument shall be permitted. If the director of the corrections mental health program upholds the hearing committee's findings of mental illness or mental retardation and the hearing committee's proposed services, the prisoner's treatment shall not be stayed pending the appeal.

MICH. COMP. LAWS SERV. § 330.2005D (2010). TREATMENT PERIOD; REPORT REQUIRING CONTINUED MENTAL HEALTH SERVICES; INITIAL ORDER OF ADMISSION; CERTIFICATE; STATEMENT; PLACEMENT ACCORDING TO NORMAL PROCEDURES.

(1) An initial order for treatment under section 1003c shall be for a period not to exceed 90 days.

(2) If, before the expiration of the initial 90-day order, the treating psychiatrist or psychologist believes that a prisoner continues to be mentally ill or mentally retarded and requires mental health services, the treating psychiatrist or psychologist, not less than 14 days before the expiration of the order, shall file with the director of the corrections mental health program or the director's designee a report of the determination that the prisoner continues to require those services. Upon receipt of the report under this subsection and proof of notice to the prisoner of an opportunity for a hearing, and following a hearing, if requested by the prisoner, a hearing committee appointed pursuant to section 1003c may authorize continued care in the corrections mental health program for an additional period not to exceed 90 days.

(3) If, before the expiration of the second 90-day order, the treating psychiatrist or psychologist believes that the condition of a prisoner is such that the prisoner continues to be mentally ill or mentally retarded and requires mental health services, the treating psychiatrist or psychologist, not less than 14 days before the expiration of the order, shall file with the director of the corrections mental health program or the director's designee a report of the determination that the prisoner continues to require those services. Upon receipt of the report under this subsection and proof of notice to the prisoner of an opportunity for a hearing, and following a hearing, if requested by the prisoner, the hearing committee may authorize continued care in the corrections mental health program for an additional period not to exceed 180 days. Upon completion of the order for continuing admission to the corrections mental health program, if the treating psychiatrist or psychologist believes that the prisoner continues to be mentally ill or mentally retarded and requires mental health services, the treating psychiatrist or psychologist shall request an initial order of admission pursuant to section 1003c.

(4) A report of a determination under subsection (2) or (3) shall be accompanied by a certificate executed by the psychiatrist or psychologist and shall contain a statement setting forth all of the following:

(a) The reasons for the treating psychiatrist's or psychologist's determination that the prisoner continues to be mentally ill or mentally retarded and requires mental health services.

(b) A statement describing the treatment program provided to the prisoner.

(c) The results of the course of treatment.

(d) A clinical estimate as to the time further treatment will be required.

(5) If at any hearing held under this section the hearing committee appointed under section 1003c finds that the prisoner is not mentally ill or mentally retarded, the hearing committee shall enter a finding to that effect and the prisoner shall be placed according to normal procedures of the department of corrections.

MICH. COMP. LAWS SERV. § 330.2006 (2010). DISCHARGE; CONDITIONS; PROCEDURE; AFTERCARE REINTEGRATION AND COMMUNITY-BASED MENTAL HEALTH SERVICES.

(1) A prisoner admitted to the corrections mental health program pursuant to section 1003a or section 1003b shall be discharged from the program when 1 or more of the following occur:

(a) The prisoner ceases to require mental health services.

(b) The prisoner is paroled or discharged from prison.

(2) If a prisoner is to be discharged from the corrections mental health program before the expiration of the prisoner's criminal sentence, the director of the corrections mental health program shall first notify the department of corrections of the pending discharge, and shall transmit a full report on the condition of the prisoner to the department of corrections.

(3) If the prisoner is paroled or discharged from prison, and the corrections mental health program considers the prisoner to be a person requiring treatment, as defined in section 401, or a person who meets the criteria for judicial admission, as prescribed in section 515, the director of the corrections mental health program at least 14 days before the parole date or the date of discharge shall file a petition pursuant to section 434 or section 516 asserting that the prisoner is a person requiring treatment or that the prisoner meets the criteria for judicial admission. The petition shall be filed with the probate court of the prisoner's county of residence.

(4) The department of mental health is responsible for assuring that needed aftercare reintegration and community-based mental health services are offered to mentally ill and mentally retarded persons who are leaving prison, upon referral by the department of corrections. Upon request from the department of corrections, community-based mental health services shall be provided by the department of mental health throughout the parole period.

MICH. COMP. LAWS SERV. § 330.2026 (2010). EXAMINATION OF DEFENDANT.

(1) Upon a showing that the defendant may be incompetent to stand trial, the court shall order the defendant to undergo an examination by personnel of either the center for forensic psychiatry or other facility officially certified by the department of mental health to perform examinations relating to the issue of incompetence to stand trial. The defendant shall make himself available for the examination at the places and times established by the center or other certified facility. If the defendant, after being notified, fails to make himself available for the examination, the court may order his commitment to the center or other facility without a hearing.

(2) When the defendant is to be held in a jail or similar place of detention pending trial, the center or other facility may perform the examination in the jail or may notify the sheriff to transport the defendant to the center or other facility for the examination, and the sheriff shall return the defendant to the jail upon completion of the examination.

(3) Except as provided in subsection (1), when the defendant is not to be held in a jail or similar place of detention pending trial, the court shall commit him to the center or other facility only when the commitment is necessary for the performance of the examination.

(4) The defendant shall be released by the center or other facility upon completion of the examination.

MICH. COMP. LAWS SERV. § 330.2032 (2010). ORDERING TREATMENT; MEDICAL SUPERVISOR; COMMITMENT; RESTRICTION OF MOVEMENTS.

(1) If the defendant is determined incompetent to stand trial, and if the court determines that there is a substantial probability that, if provided a course of treatment, he will attain competence to stand trial within the time limit established by section 1034, the court shall order him to undergo treatment to render him competent to stand trial.

(2) The court shall appoint a medical supervisor of the course of treatment. The supervisor may be any person or agency willing to supervise the course of treatment, or the department of mental health.

(3) The court may commit the defendant to the custody of the department of mental health, or to the custody of any other inpatient mental health facility if it agrees, only if commitment is necessary for the effective administration of the course of treatment. If the defendant, absent commitment to the department of mental health or other inpatient facility, would otherwise be held in a jail or similar place of detention pending trial, the court may enter an order restricting the defendant in his movements to the buildings and grounds of the facility at which he is to be treated.

MICH. COMP. LAWS SERV. § 330.2034 (2010). EFFECTIVE DURATION OF ORDER; NOTICE OF DISMISSED CHARGE OR VOIDED ORDERS; FILING PETITION PRIOR TO DISCHARGE OR RELEASE.

(1) No order or combination of orders issued under section 1032 or 1040, or both, shall have force and effect for a total period in excess of 15 months or 1/3 of the maximum sentence the defendant could receive if convicted of the charges against him, whichever is lesser; nor after the charges against the defendant are dismissed.

(2) The court shall provide for notification of defense counsel, the prosecution, and the medical supervisor of treatment whenever the charges against the defendant are dismissed and whenever an order whose stated time period has not elapsed is voided by the court.

(3) If the defendant is to be discharged or released because of the expiration of an order or orders under section 1032 or 1040, the supervisor of treatment prior to the discharge or release may file a petition asserting that the defendant is a person requiring treatment as defined by section 401 or meets the criteria for judicial admission as defined by section 515 with the probate court of the defendant's county of residence.

MICH. COMP. LAWS SERV. § 330.2050 (2010). PERSON ACQUITTED OF CRIMINAL CHARGE BY REASON OF INSANITY; COMMITMENT TO CENTER FOR FORENSIC PSYCHIATRY; RECORD; EXAMINATION AND EVALUATION; REPORT; OPINION; CERTIFICATES; PETITION; RETENTION OR DISCHARGE OF PERSON; APPLICABILITY OF RELEASE PROVISIONS; CONDITION TO BEING DISCHARGED OR PLACED ON LEAVE; EXTENSION OF LEAVE.

(1) The court shall immediately commit any person who is acquitted of a criminal charge by reason of insanity to the custody of the center for forensic psychiatry, for a

period not to exceed 60 days. The court shall forward to the center a full report, in the form of a settled record, of the facts concerning the crime which the patient was found to have committed but of which he was acquitted by reason of insanity. The center shall thoroughly examine and evaluate the present mental condition of the person in order to reach an opinion on whether the person meets the criteria of a person requiring treatment or for judicial admission set forth in section 401 or 515.

(2) Within the 60-day period the center shall file a report with the court, prosecuting attorney, and defense counsel. The report shall contain a summary of the crime which the patient committed but of which he was acquitted by reason of insanity and an opinion as to whether the person meets the criteria of a person requiring treatment or for judicial admission as defined by section 401 or 515, and the facts upon which the opinion is based. If the opinion stated is that the person is a person requiring treatment, the report shall be accompanied by certificates from 2 physicians, at least 1 of whom shall be a psychiatrist, which conform to the requirements of section 400(j).

(3) After receipt of the report, the court may direct the prosecuting attorney to file a petition pursuant to section 434 or 516 for an order of hospitalization or an order of admission to a facility with the probate court of the person's county of residence or of the county in which the criminal trial was held. Any certificates that accompanied the report of the center may be filed with the petition, and shall be sufficient to cause a hearing to be held pursuant to section 451 even if they were not executed within 72 hours of the filing of the petition. The report from the court containing the facts concerning the crime for which he was acquitted by reason of insanity shall be admissible in the hearings.

(4) If the report states the opinion that the person meets the criteria of a person requiring treatment or for judicial admission, and if a petition is to be filed pursuant to subsection (3), the center may retain the person pending a hearing on the petition. If a petition is not to be filed, the prosecutor shall notify the center in writing. The center, upon receipt of the notification, shall cause the person to be discharged.

(5) The release provisions of sections 476 to 479 of this act shall apply to a person found to have committed a crime by a court or jury, but who is acquitted by reason of insanity, except that a person shall not be discharged or placed on leave without first being evaluated and recommended for discharge or leave by the department's program for forensic psychiatry, and authorized leave or absence from the hospital may be extended for a period of 5 years.

MINNESOTA

MINN. STAT. § 242.18 (2010). STUDY OF OFFENDER'S BACKGROUND; REHABILITATION

When a person has been committed to the commissioner of corrections, the commissioner under rules shall forthwith cause the person to be examined and studied, and investigate all of the pertinent circumstances of the person's life and the antecedents of the crime or other delinquent conduct because of which the person has been committed to the commissioner, and thereupon order the treatment the commissioner determines to be most conducive to rehabilitation. Persons convicted of crimes shall not be detained in

institutions for adjudicated delinquents, nor shall delinquent children be detained in institutions for persons convicted of crimes. The court and the prosecuting and police authorities and other public officials shall make available to the commissioner of corrections all pertinent data in their possession in respect to the case.

MINN. STAT. § 242.19 (2010). DISPOSITION OF JUVENILE OFFENDERS

Subdivision 1.

[Repealed, 1977 c 392 s 14]

Subd. 2. Dispositions.

When a child has been committed to the commissioner of corrections by a juvenile court, upon a finding of delinquency, the commissioner may for the purposes of treatment and rehabilitation:

(1) order the child's confinement to the Minnesota Correctional Facility-Red Wing or the Minnesota Correctional Facility-Sauk Centre, which shall accept the child, or to a group foster home under the control of the commissioner of corrections, or to private facilities or facilities established by law or incorporated under the laws of this state that may care for delinquent children;

(2) order the child's release on parole under such supervisions and conditions as the commissioner believes conducive to law-abiding conduct, treatment and rehabilitation;

(3) order reconfinement or renewed parole as often as the commissioner believes to be desirable;

(4) revoke or modify any order, except an order of discharge, as often as the commissioner believes to be desirable;

(5) discharge the child when the commissioner is satisfied that the child has been rehabilitated and that such discharge is consistent with the protection of the public;

(6) if the commissioner finds that the child is eligible for probation or parole and it appears from the commissioner's investigation that conditions in the child's or the guardian's home are not conducive to the child's treatment, rehabilitation, or law-abiding conduct, refer the child, together with the commissioner's findings, to a local social services agency or a licensed child-placing agency for placement in a foster care or, when appropriate, for initiation of child in need of protection or services proceedings as provided in sections 260C.001 to 260C.421. The commissioner of corrections shall reimburse local social services agencies for foster care costs they incur for the child while on probation or parole to the extent that funds for this purpose are made available to the commissioner by the legislature. The juvenile court shall order the parents of a child on probation or parole to pay the costs of foster care under section 260B.331, subdivision 1,

according to their ability to pay, and to the extent that the commissioner of corrections has not reimbursed the local social services agency.

Subd. 3. Retaking absconding and other person.

The written order of the commissioner of corrections is authority to any peace officer or parole or probation officer to take and detain any child committed to the commissioner of corrections by a juvenile court who absconds from field supervision or escapes from confinement, violates furlough conditions, or is released from court while on institution status. Any person of the age of 18 years or older who is taken into custody under the provisions of this subdivision may be detained as provided in section 260B.181, subdivision 4.

MINN. STAT. § 242.195 (2010). JUVENILE SEX OFFENDERS

Subdivision 1. Sex offender programs.

(a) The commissioner of corrections shall develop a plan to provide for a range of sex offender programs, including intensive sex offender programs, for juveniles within state juvenile correctional facilities and through purchase of service from county and private residential and outpatient juvenile sex offender programs. The plan may include co-payments from the offenders, third-party payers, local agencies, and other funding sources as they are identified.

(b) The commissioner shall establish and operate a residential sex offender program at one of the state juvenile correctional facilities. The program must be structured to address both the therapeutic and disciplinary needs of juvenile sex offenders. The program must afford long-term residential treatment for a range of juveniles who have committed sex offenses and have failed other treatment programs or are not likely to benefit from an outpatient or a community-based residential treatment program.

Subd. 2. Secure confinement.

If a juvenile sex offender committed to the custody of the commissioner is in need of secure confinement, the commissioner shall provide for the appropriate level of sex offender treatment within a secure facility or unit in a state juvenile correctional facility.

Subd. 3. Dispositions.

When a juvenile is committed to the commissioner of corrections by a juvenile court, upon a finding of delinquency for a sex offense, the commissioner may, for the purposes of treatment and rehabilitation:

(1) order the child confined to a state juvenile correctional facility that provides the appropriate level of juvenile sex offender treatment;

(2) purchase sex offender treatment from a county and place the child in the county's

qualifying juvenile correctional facility;

(3) purchase sex offender treatment from a qualifying private residential juvenile sex offender treatment program and place the child in the program;

(4) purchase outpatient juvenile sex offender treatment for the child from a qualifying county or private program and order the child released on parole under treatment and other supervisions and conditions the commissioner believes to be appropriate;

(5) order reconfinement or renewed parole, revoke or modify any order, or discharge the child under the procedures provided in section 242.19, subdivision 2, clauses (3), (4), and (5); or

(6) refer the child to a local social services agency or licensed child-placing agency for placement in foster care, or when appropriate, for initiation of child in need of protection or services proceedings under section 242.19, subdivision 2, clause (6).

Subd. 4. Qualifying facilities; treatment programs.

The commissioner may not place a juvenile in a correctional facility under this section unless the facility has met the requirements of section 241.021, subdivision 2.

MINN. STAT. § 244.05 (2010). SUPERVISED RELEASE TERM

Subdivision 1. Supervised release required.

Except as provided in subdivisions 1b, 4, and 5, every inmate shall serve a supervised release term upon completion of the inmate's term of imprisonment as reduced by any good time earned by the inmate or extended by confinement in punitive segregation pursuant to section 244.04, subdivision 2. Except for a sex offender conditionally released under Minnesota Statutes 2004, section 609.108, subdivision 5, the supervised release term shall be equal to the period of good time the inmate has earned, and shall not exceed the length of time remaining in the inmate's sentence.

Subd. 1a. Release on certain days.

Notwithstanding the amount of good time earned by an inmate whose crime was committed before August 1, 1992, if the inmate's scheduled release date occurs on a Friday, Saturday, Sunday, or holiday, the inmate's supervised release term shall begin on the last day before the inmate's scheduled release date that is not a Friday, Saturday, Sunday, or holiday. For an inmate whose crime was committed on or after August 1, 1992, if the inmate's scheduled release date occurs on a Friday, Saturday, Sunday, or holiday, the inmate's supervised release term shall begin on the first day after the inmate's scheduled release date that is not a Friday, Saturday, Sunday, or holiday.

Subd. 1b. Supervised release; offenders who commit crimes on or after August 1, 1993.

(a) Except as provided in subdivisions 4 and 5, every inmate sentenced to prison for a felony offense committed on or after August 1, 1993, shall serve a supervised release term upon completion of the inmate's term of imprisonment and any disciplinary confinement period imposed by the commissioner due to the inmate's violation of any disciplinary rule adopted by the commissioner or refusal to participate in a rehabilitative program required under section 244.03. The amount of time the inmate serves on supervised release shall be equal in length to the amount of time remaining in the inmate's executed sentence after the inmate has served the term of imprisonment and any disciplinary confinement period imposed by the commissioner.

(b) No inmate who violates a disciplinary rule or refuses to participate in a rehabilitative program as required under section 244.03 shall be placed on supervised release until the inmate has served the disciplinary confinement period for that disciplinary sanction or until the inmate is discharged or released from punitive segregation confinement, whichever is later. The imposition of a disciplinary confinement period shall be considered to be a disciplinary sanction imposed upon an inmate, and the procedure for imposing the disciplinary confinement period and the rights of the inmate in the procedure shall be those in effect for the imposition of other disciplinary sanctions at each state correctional institution.

Subd. 1c. Release to residential program; escort required.

The commissioner shall provide an escort for any inmate on parole or supervised release status who is released to a halfway house or other residential community program. The escort shall be an employee of the commissioner or a person acting as the commissioner's agent for this purpose.

Subd. 2. Rules.

The commissioner of corrections shall adopt by rule standards and procedures for the revocation of supervised or conditional release, and shall specify the period of revocation for each violation of release. Procedures for the revocation of release shall provide due process of law for the inmate.

Subd. 3. Sanctions for violation.

If an inmate violates the conditions of the inmate's supervised release imposed by the commissioner, the commissioner may:

(1) continue the inmate's supervised release term, with or without modifying or enlarging the conditions imposed on the inmate; or

(2) revoke the inmate's supervised release and reimprison the inmate for the appropriate period of time.

The period of time for which a supervised release may be revoked may not exceed the

period of time remaining in the inmate's sentence, except that if a sex offender is sentenced and conditionally released under Minnesota Statutes 2004, section 609.108, subdivision 5, the period of time for which conditional release may be revoked may not exceed the balance of the conditional release term.

Subd. 4. Minimum imprisonment, life sentence.

(a) An inmate serving a mandatory life sentence under section 609.106 or 609.3455, subdivision 2, must not be given supervised release under this section.

(b) An inmate serving a mandatory life sentence under section 609.185, clause (3), (5), or (6); or Minnesota Statutes 2004, section 609.109, subdivision 3, must not be given supervised release under this section without having served a minimum term of 30 years.

(c) An inmate serving a mandatory life sentence under section 609.385 must not be given supervised release under this section without having served a minimum term of imprisonment of 17 years.

(d) An inmate serving a mandatory life sentence under section 609.3455, subdivision 3 or 4, must not be given supervised release under this section without having served the minimum term of imprisonment specified by the court in its sentence.

Subd. 5. Supervised release, life sentence.

(a) The commissioner of corrections may, under rules promulgated by the commissioner, give supervised release to an inmate serving a mandatory life sentence under section 609.185, clause (3), (5), or (6); 609.3455, subdivision 3 or 4; 609.385; or Minnesota Statutes 2004, section 609.109, subdivision 3, after the inmate has served the minimum term of imprisonment specified in subdivision 4.

(b) The commissioner shall require the preparation of a community investigation report and shall consider the findings of the report when making a supervised release decision under this subdivision. The report shall reflect the sentiment of the various elements of the community toward the inmate, both at the time of the offense and at the present time. The report shall include the views of the sentencing judge, the prosecutor, any law enforcement personnel who may have been involved in the case, and any successors to these individuals who may have information relevant to the supervised release decision. The report shall also include the views of the victim and the victim's family unless the victim or the victim's family chooses not to participate.

(c) The commissioner shall make reasonable efforts to notify the victim, in advance, of the time and place of the inmate's supervised release review hearing. The victim has a right to submit an oral or written statement at the review hearing. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the inmate should be given supervised release at this time. The commissioner must consider the victim's statement when making the supervised

release decision.

(d) When considering whether to give supervised release to an inmate serving a life sentence under section 609.3455, subdivision 3 or 4, the commissioner shall consider, at a minimum, the following: the risk the inmate poses to the community if released, the inmate's progress in treatment, the inmate's behavior while incarcerated, psychological or other diagnostic evaluations of the inmate, the inmate's criminal history, and any other relevant conduct of the inmate while incarcerated or before incarceration. The commissioner may not give supervised release to the inmate unless:

(1) while in prison:

(i) the inmate has successfully completed appropriate sex offender treatment;

(ii) the inmate has been assessed for chemical dependency needs and, if appropriate, has successfully completed chemical dependency treatment; and

(iii) the inmate has been assessed for mental health needs and, if appropriate, has successfully completed mental health treatment; and

(2) a comprehensive individual release plan is in place for the inmate that ensures that, after release, the inmate will have suitable housing and receive appropriate aftercare and community-based treatment. The comprehensive plan also must include a postprison employment or education plan for the inmate.

(e) As used in this subdivision, "victim" means the individual who suffered harm as a result of the inmate's crime or, if the individual is deceased, the deceased's surviving spouse or next of kin.

Subd. 6. Intensive supervised release.

(a) The commissioner may order that an inmate be placed on intensive supervised release for all or part of the inmate's supervised release or parole term if the commissioner determines that the action will further the goals described in section 244.14, subdivision 1, clauses (2), (3), and (4). In addition, the commissioner may order that an inmate be placed on intensive supervised release for all of the inmate's conditional or supervised release term if the inmate was convicted of a sex offense under section 609.342, 609.343, 609.344, 609.345, or 609.3453 or was sentenced under the provisions of section 609.3455, subdivision 3a. The commissioner shall order that all level III predatory offenders be placed on intensive supervised release for the entire supervised release, conditional release, or parole term.

(b) The commissioner may impose appropriate conditions of release on the inmate including but not limited to unannounced searches of the inmate's person, vehicle, premises, computer, or other electronic devices capable of accessing the Internet by an intensive supervision agent; compliance with court-ordered restitution, if any; random

drug testing; house arrest; daily curfews; frequent face-to-face contacts with an assigned intensive supervision agent; work, education, or treatment requirements; and electronic surveillance. In addition, any sex offender placed on intensive supervised release may be ordered to participate in an appropriate sex offender program as a condition of release.

(c) As a condition of release for an inmate required to register under section 243.166 who is placed on intensive supervised release under this subdivision, the commissioner shall prohibit the inmate from accessing, creating, or maintaining a personal Web page, profile, account, password, or user name for: (1) a social networking Web site, or (2) an instant messaging or chat room program, which permits persons under the age of 18 to become a member or to create or maintain a personal Web page. An intensive supervised release agent may modify the prohibition described in this paragraph if doing so does not jeopardize public safety and the modification is specifically described and agreed to in advance by the agent.

(d) If the inmate violates the conditions of the intensive supervised release, the commissioner shall impose sanctions as provided in subdivision 3 and section 609.3455.

Subd. 7. Sex offenders; civil commitment determination.

(a) Before the commissioner releases from prison any inmate convicted under section 609.342, 609.343, 609.344, 609.345, or 609.3453, or sentenced as a patterned offender under section 609.3455, subdivision 3a, and determined by the commissioner to be in a high risk category, the commissioner shall make a preliminary determination whether, in the commissioner's opinion, a petition under section 253B.185 may be appropriate. The commissioner's opinion must be based on a recommendation of a Department of Corrections screening committee and a legal review and recommendation from independent counsel knowledgeable in the legal requirements of the civil commitment process. The commissioner may retain a retired judge or other attorney to serve as independent counsel.

(b) In making this decision, the commissioner shall have access to the following data only for the purposes of the assessment and referral decision:

(1) private medical data under section 13.384 or sections 144.291 to 144.298, or welfare data under section 13.46 that relate to medical treatment of the offender;

(2) private and confidential court services data under section 13.84;

(3) private and confidential corrections data under section 13.85; and

(4) private criminal history data under section 13.87.

(c) If the commissioner determines that a petition may be appropriate, the commissioner shall forward this determination, along with a summary of the reasons for the determination, to the county attorney in the county where the inmate was convicted no

later than 12 months before the inmate's release date. If the inmate is received for incarceration with fewer than 12 months remaining in the inmate's term of imprisonment, or if the commissioner receives additional information less than 12 months before release that makes the inmate's case appropriate for referral, the commissioner shall forward the determination as soon as is practicable. Upon receiving the commissioner's preliminary determination, the county attorney shall proceed in the manner provided in section 253B.185. The commissioner shall release to the county attorney all requested documentation maintained by the department.

Subd. 8. Conditional medical release.

Notwithstanding subdivisions 4 and 5, the commissioner may order that any offender be placed on conditional medical release before the offender's scheduled supervised release date or target release date if the offender suffers from a grave illness or medical condition and the release poses no threat to the public. In making the decision to release an offender on this status, the commissioner must consider the offender's age and medical condition, the health care needs of the offender, the offender's custody classification and level of risk of violence, the appropriate level of community supervision, and alternative placements that may be available for the offender. An inmate may not be released under this provision unless the commissioner has determined that the inmate's health costs are likely to be borne by medical assistance, Medicaid, general assistance medical care, veteran's benefits, or by any other federal or state medical assistance programs or by the inmate. Conditional medical release is governed by provisions relating to supervised release except that it may be rescinded without hearing by the commissioner if the offender's medical condition improves to the extent that the continuation of the conditional medical release presents a more serious risk to the public.

MINN. STAT. § 253B.045 (2010). TEMPORARY CONFINEMENT

Subdivision 1. Restriction.

Except when ordered by the court pursuant to a finding of necessity to protect the life of the proposed patient or others or as provided under subdivision 1a, no person subject to the provisions of this chapter shall be confined in a jail or correctional institution, except pursuant to chapter 242 or 244.

Subd. 1a. Exception.

(a) A person who is being petitioned for commitment under section 253B.185 and who is placed under a judicial hold order under section 253B.07, subdivision 2b or 7, may be confined at a Department of Corrections or a county correctional or detention facility, rather than a secure treatment facility, until a determination of the commitment petition as specified in this subdivision.

(b) A court may order that a person who is being petitioned for commitment under section 253B.185 be confined in a Department of Corrections facility pursuant to the judicial hold order under the following circumstances and conditions:

(1) The person is currently serving a sentence in a Department of Corrections facility and the court determines that the person has made a knowing and voluntary (i) waiver of the right to be held in a secure treatment facility and (ii) election to be held in a Department of Corrections facility. The order confining the person in the Department of Corrections facility shall remain in effect until the court vacates the order or the person's criminal sentence and conditional release term expire.

In no case may the person be held in a Department of Corrections facility pursuant only to this subdivision, and not pursuant to any separate correctional authority, for more than 210 days.

(2) A person who has elected to be confined in a Department of Corrections facility under this subdivision may revoke the election by filing a written notice of intent to revoke the election with the court and serving the notice upon the Department of Corrections and the county attorney. The court shall order the person transferred to a secure treatment facility within 15 days of the date that the notice of revocation was filed with the court, except that, if the person has additional time to serve in prison at the end of the 15-day period, the person shall not be transferred to a secure treatment facility until the person's prison term expires. After a person has revoked an election to remain in a Department of Corrections facility under this subdivision, the court may not adopt another election to remain in a Department of Corrections facility without the agreement of both parties and the Department of Corrections.

(3) Upon petition by the commissioner of corrections, after notice to the parties and opportunity for hearing and for good cause shown, the court may order that the person's place of confinement be changed from the Department of Corrections to a secure treatment facility.

(4) While at a Department of Corrections facility pursuant to this subdivision, the person shall remain subject to all rules and practices applicable to correctional inmates in the facility in which the person is placed including, but not limited to, the powers and duties of the commissioner of corrections under section 241.01, powers relating to use of force under section 243.52, and the right of the commissioner of corrections to determine the place of confinement in a prison, reformatory, or other facility.

(5) A person may not be confined in a Department of Corrections facility under this provision beyond the end of the person's executed sentence or the end of any applicable conditional release period, whichever is later. If a person confined in a Department of Corrections facility pursuant to this provision reaches the person's supervised release date and is subject to a period of conditional release, the period of conditional release shall commence on the supervised release date even though the person remains in the Department of Corrections facility pursuant to this provision. At the end of the later of the executed sentence or any applicable conditional release period, the person shall be transferred to a secure treatment facility.

(6) Nothing in this section may be construed to establish a right of an inmate in a state correctional facility to participate in sex offender treatment. This section must be construed in a manner consistent with the provisions of section 244.03.

(c) The committing county may offer a person who is being petitioned for commitment under section 253B.185 and who is placed under a judicial hold order under section 253B.07, subdivision 2b or 7, the option to be held in a county correctional or detention facility rather than a secure treatment facility, under such terms as may be agreed to by the county, the commitment petitioner, and the commitment respondent. If a person makes such an election under this paragraph, the court hold order shall specify the terms of the agreement, including the conditions for revoking the election.

Subd. 2. Facilities.

(a) Each county or a group of counties shall maintain or provide by contract a facility for confinement of persons held temporarily for observation, evaluation, diagnosis, treatment, and care. When the temporary confinement is provided at a regional treatment center, the commissioner shall charge the county of financial responsibility for the costs of confinement of persons hospitalized under section 253B.05, subdivisions 1 and 2, and section 253B.07, subdivision 2b, except that the commissioner shall bill the responsible health plan first. If the person has health plan coverage, but the hospitalization does not meet the criteria in subdivision 6 or section 62M.07, 62Q.53, or 62Q.535, the county is responsible. When a person is temporarily confined in a Department of Corrections facility solely under subdivision 1a, and not based on any separate correctional authority:

(1) the commissioner of corrections may charge the county of financial responsibility for the costs of confinement; and

(2) the Department of Human Services shall use existing appropriations to fund all remaining nonconfinement costs. The funds received by the commissioner for the confinement and nonconfinement costs are appropriated to the department for these purposes.

(b) For the purposes of this subdivision, "county of financial responsibility" has the meaning specified in section 253B.02, subdivision 4c, or, if the person has no residence in this state, the county which initiated the confinement. The charge for confinement in a facility operated by the commissioner of human services shall be based on the commissioner's determination of the cost of care pursuant to section 246.50, subdivision 5. When there is a dispute as to which county is the county of financial responsibility, the county charged for the costs of confinement shall pay for them pending final determination of the dispute over financial responsibility.

Subd. 3. Cost of care.

Notwithstanding subdivision 2, a county shall be responsible for the cost of care as specified under section 246.54 for persons hospitalized at a regional treatment center in

accordance with section 253B.09 and the person's legal status has been changed to a court hold under section 253B.07, subdivision 2b, pending a judicial determination regarding continued commitment pursuant to sections 253B.12 and 253B.13.

Subd. 4. Treatment.

The designated agency shall take reasonable measures to assure proper care and treatment of a person temporarily confined pursuant to this section.

Subd. 5. Health plan company; definition.

For purposes of this section, "health plan company" has the meaning given it in section 62Q.01, subdivision 4, and also includes a demonstration provider as defined in section 256B.69, subdivision 2, paragraph (b), a county or group of counties participating in county-based purchasing according to section 256B.692, and a children's mental health collaborative under contract to provide medical assistance for individuals enrolled in the prepaid medical assistance and MinnesotaCare programs according to sections 245.493 to 245.495.

Subd. 6. Coverage.

(a) For purposes of this section, "mental health services" means all covered services that are intended to treat or ameliorate an emotional, behavioral, or psychiatric condition and that are covered by the policy, contract, or certificate of coverage of the enrollee's health plan company or by law.

(b) All health plan companies that provide coverage for mental health services must cover or provide mental health services ordered by a court of competent jurisdiction under a court order that is issued on the basis of a behavioral care evaluation performed by a licensed psychiatrist or a doctoral level licensed psychologist, which includes a diagnosis and an individual treatment plan for care in the most appropriate, least restrictive environment. The health plan company must be given a copy of the court order and the behavioral care evaluation. The health plan company shall be financially liable for the evaluation if performed by a participating provider of the health plan company and shall be financially liable for the care included in the court-ordered individual treatment plan if the care is covered by the health plan company and ordered to be provided by a participating provider or another provider as required by rule or law. This court-ordered coverage must not be subject to a separate medical necessity determination by a health plan company under its utilization procedures.

MINN. STAT. § 253B.095 (2010). RELEASE BEFORE COMMITMENT

Subdivision 1. Court release.(a) After the hearing and before a commitment order has been issued, the court may release a proposed patient to the custody of an individual or agency upon conditions that guarantee the care and treatment of the patient.

(b) A person against whom a criminal proceeding is pending may not be released.

(c) A continuance for dismissal, with or without findings, may be granted for up to 90 days.

(d) When the court stays an order for commitment for more than 14 days beyond the date of the initially scheduled hearing, the court shall issue an order that must include:

(1) a written plan for services to which the proposed patient has agreed;

(2) a finding that the proposed treatment is available and accessible to the patient and that public or private financial resources are available to pay for the proposed treatment;

(3) conditions the patient must meet to avoid revocation of the stayed commitment order and imposition of the commitment order; and

(4) a condition that the patient is prohibited from giving consent to participate in a clinical drug trial while the court order is in effect.

(e) Notwithstanding paragraph (d), clause (4), during the period of a stay of commitment, the court may allow the patient to give consent to participate in a specific psychiatric clinical drug trial if the treating psychiatrist testifies or submits an affidavit that the patient may benefit from participating in the trial because, after providing other treatment options for a reasonable period of time, those options have been ineffective. The treating psychiatrist must not be the psychiatrist conducting the psychiatric clinical drug trial. The court must determine that, under the circumstances of the case, the patient is competent to choose to participate in the trial, that the patient is freely choosing to participate in the trial, that the compulsion of the stayed commitment is not being used to coerce the person to participate in the clinical trial, and that a reasonable person may choose to participate in the clinical trial.

(f) A person receiving treatment under this section has all rights under this chapter.

Subd. 2. Case manager.

When a court releases a patient under this section, the court shall direct the case manager to report to the court at least once every 90 days and shall immediately report a substantial failure of a patient or provider to comply with the conditions of the release.

Subd. 3. Duration.

The maximum duration of a stayed order under this section is six months. The court may continue the order for a maximum of an additional 12 months if, after notice and hearing, under sections 253B.08 and 253B.09 the court finds that (1) the person continues to be mentally ill, chemically dependent, or developmentally disabled, and (2) an order is needed to protect the patient or others.

Subd. 4. Modification of order.

An order under this section may be modified upon agreement of the parties and approval of the court.

Subd. 5. Revocation of order.

The court, on its own motion or upon the motion of any party that the patient has not complied with a material condition of release, and after notice and a hearing unless otherwise ordered by the court, may revoke any release and commit the proposed patient under this chapter.

Subd. 6.

[Renumbered subd 4]

Subd. 7.

[Renumbered subd 5]

MINN. STAT. § 253B.10 (2010). PROCEDURES UPON COMMITMENT

Subdivision 1. Administrative requirements.

When a person is committed, the court shall issue a warrant or an order committing the patient to the custody of the head of the treatment facility. The warrant or order shall state that the patient meets the statutory criteria for civil commitment. Upon the arrival of a patient at the designated treatment facility, the head of the facility shall retain the duplicate of the warrant and endorse receipt upon the original warrant or acknowledge receipt of the order. The endorsed receipt or acknowledgment must be filed in the court of commitment. After arrival, the patient shall be under the control and custody of the head of the treatment facility.

Copies of the petition for commitment, the court's findings of fact and conclusions of law, the court order committing the patient, the report of the examiners, and the prepetition report shall be provided promptly to the treatment facility.

Subd. 2. Transportation.

When a patient is about to be placed in a treatment facility, the court may order the designated agency, the treatment facility, or any responsible adult to transport the patient to the treatment facility. Whenever possible, a peace officer who provides the transportation shall not be in uniform and shall not use a vehicle visibly marked as a police vehicle. The proposed patient may be accompanied by one or more interested persons.

When a patient who is at a regional treatment center requests a hearing for adjudication

of a patient's status pursuant to section 253B.17, the commissioner shall provide transportation.

Subd. 3. Notice of admission.

Whenever a committed person has been admitted to a treatment facility under the provisions of sections 253B.09 or 253B.18, the head of the treatment facility shall immediately notify the patient's spouse, health care agent, or parent and the county of financial responsibility if the county may be liable for a portion of the cost of treatment. If the committed person was admitted upon the petition of a spouse, health care agent, or parent the head of the treatment facility shall notify an interested person other than the petitioner.

Subd. 4. Private treatment.

Patients or other responsible persons are required to pay the necessary charges for patients committed or transferred to private treatment facilities. Private treatment facilities may not refuse to accept a committed person solely based on the person's court-ordered status. Insurers must provide treatment and services as ordered by the court under section 253B.045, subdivision 6, or as required under chapter 62M.

Subd. 5. Transfer to voluntary status.

At any time prior to the expiration of the initial commitment period, a patient who has not been committed as mentally ill and dangerous to the public or as a sexually dangerous person or as a sexual psychopathic personality may be transferred to voluntary status upon the patient's application in writing with the consent of the head of the facility. Upon transfer, the head of the treatment facility shall immediately notify the court in writing and the court shall terminate the proceedings.

MINN. STAT. § 253B.12 (2010). TREATMENT REPORT; REVIEW; HEARING

Subdivision 1. Reports.

(a) If a patient who was committed as a person who is mentally ill, developmentally disabled, or chemically dependent is discharged from commitment within the first 60 days after the date of the initial commitment order, the head of the treatment facility shall file a written report with the committing court describing the patient's need for further treatment. A copy of the report must be provided to the county attorney, the patient, and the patient's counsel.

(b) If a patient who was committed as a person who is mentally ill, developmentally disabled, or chemically dependent remains in treatment more than 60 days after the date of the commitment, then at least 60 days, but not more than 90 days, after the date of the order, the head of the facility that has custody of the patient shall file a written report with the committing court and provide a copy to the county attorney, the patient, and the

patient's counsel. The report must set forth in detailed narrative form at least the following:

(1) the diagnosis of the patient with the supporting data;

(2) the anticipated discharge date;

(3) an individualized treatment plan;

(4) a detailed description of the discharge planning process with suggested after care plan;

(5) whether the patient is in need of further care and treatment, the treatment facility which is needed, and evidence to support the response;

(6) whether the patient satisfies the statutory requirement for continued commitment to a treatment facility, with documentation to support the opinion; and

(7) whether the administration of neuroleptic medication is clinically indicated, whether the patient is able to give informed consent to that medication, and the basis for these opinions.

(c) Prior to the termination of the initial commitment order or final discharge of the patient, the head of the treatment facility that has custody or care of the patient shall file a written report with the committing court with a copy to the county attorney, the patient, and the patient's counsel that sets forth the information required in paragraph (b).

(d) If the patient has been provisionally discharged from a treatment facility, the report shall be filed by the designated agency, which may submit the discharge report as part of its report.

(e) If no written report is filed within the required time, or if a report describes the patient as not in need of further institutional care and treatment, the proceedings must be terminated by the committing court and the patient discharged from the treatment facility.

Subd. 2. Basis for discharge.

If no written report is filed within the required time or if the written statement describes the patient as not in need of further institutional care and treatment, the proceedings shall be terminated by the committing court, and the patient shall be discharged from the treatment facility.

Subd. 2a. Time for hearing.

Unless the proceedings are terminated under subdivision 1, paragraph (e), a review hearing must be held within 14 days after receipt by the committing court of the report

required under subdivision 1, paragraph (c) or (d), and before the time the commitment expires. For good cause shown, the court may continue the hearing for up to an additional 14 days and extend any orders until the review hearing is held.

The patient, the patient's counsel, the petitioner, and other persons as the court directs must be given at least five days' notice of the time and place of the hearing.

Subd. 3. Examination.

Prior to the review hearing, the court shall inform the patient of the right to an independent examination by an examiner chosen by the patient and appointed in accordance with provisions of section 253B.07, subdivision 3. The report of the examiner may be submitted at the hearing.

Subd. 4. Hearing; standard of proof.

The committing court shall not make a final determination of the need to continue commitment unless the court finds by clear and convincing evidence that (1) the person continues to be mentally ill, developmentally disabled, or chemically dependent; (2) involuntary commitment is necessary for the protection of the patient or others; and (3) there is no alternative to involuntary commitment.

In determining whether a person continues to be mentally ill, chemically dependent, or developmentally disabled, the court need not find that there has been a recent attempt or threat to physically harm self or others, or a recent failure to provide necessary personal food, clothing, shelter, or medical care. Instead, the court must find that the patient is likely to attempt to physically harm self or others, or to fail to provide necessary personal food, clothing, shelter, or medical care unless involuntary commitment is continued.

Subd. 5.

[Repealed, 1997 c 217 art 1 s 118]

Subd. 6. Waiver.

A patient, after consultation with counsel, may waive any hearing under this section or section 253B.13 in writing. The waiver shall be signed by the patient and counsel. The waiver must be submitted to the committing court.

Subd. 7. Record required.

Where continued commitment is ordered, the findings of fact and conclusions of law shall specifically state the conduct of the proposed patient which is the basis for the final determination, that the statutory criteria of commitment continue to be met, and that less restrictive alternatives have been considered and rejected by the court. Reasons for rejecting each alternative shall be stated. A copy of the final order for continued

commitment shall be forwarded to the head of the treatment facility.

Subd. 8.

[Repealed, 1997 c 217 art 1 s 118]

MINN. STAT. § 253B.13 (2010). DURATION OF CONTINUED COMMITMENT

Subdivision 1. Mentally ill or chemically dependent persons.

If at the conclusion of a review hearing the court finds that the person continues to be mentally ill or chemically dependent and in need of treatment or supervision, the court shall determine the length of continued commitment. No period of commitment shall exceed this length of time or 12 months, whichever is less.

At the conclusion of the prescribed period, commitment may not be continued unless a new petition is filed pursuant to section 253B.07 and hearing and determination made on it. Notwithstanding the provisions of section 253B.09, subdivision 5, the initial commitment period under the new petition shall be the probable length of commitment necessary or 12 months, whichever is less. The standard of proof at the hearing on the new petition shall be the standard specified in section 253B.12, subdivision 4.

Subd. 2. Persons who are developmentally disabled.

If, at the conclusion of a review hearing the court finds that the person continues to be developmentally disabled, the court shall order commitment of the person for an indeterminate period of time, subject to the reviews required by section 253B.03, subdivisions 5 and 7, and subject to the right of the patient to seek judicial review of continued commitment.

Subd. 3.

[Repealed, 1997 c 217 art 1 s 118]

MINN. STAT. § 253B.14 (2010). TRANSFER OF COMMITTED PERSONS

The commissioner may transfer any committed person, other than a person committed as mentally ill and dangerous to the public, or as a sexually dangerous person or as a sexual psychopathic personality, from one regional treatment center to any other treatment facility under the commissioner's jurisdiction which is capable of providing proper care and treatment. When a committed person is transferred from one treatment facility to another, written notice shall be given to the committing court, the county attorney, the patient's counsel, and to the person's parent, health care agent, or spouse or, if none is known, to an interested person, and the designated agency.

MINN. STAT. § 253B.16 (2010). DISCHARGE OF COMMITTED PERSONS

Subdivision 1. Date.

The head of a treatment facility shall discharge any patient admitted as a person who is mentally ill or chemically dependent, or a person with a developmental disability admitted under Minnesota Rules of Criminal Procedure, rules 20.01 and 20.02, to the secure bed component of the Minnesota extended treatment options when the head of the facility certifies that the person is no longer in need of care and treatment or at the conclusion of any period of time specified in the commitment order, whichever occurs first. The head of a treatment facility shall discharge any person admitted as developmentally disabled, except those admitted under Minnesota Rules of Criminal Procedure, rules 20.01 and 20.02, to the secure bed component of the Minnesota extended treatment options, when that person's screening team has determined, under section 256B.092, subdivision 8, that the person's needs can be met by services provided in the community and a plan has been developed in consultation with the interdisciplinary team to place the person in the available community services.

Subd. 2. Notification of discharge.

Prior to the discharge or provisional discharge of any committed person, the head of the treatment facility shall notify the designated agency and the patient's spouse or health care agent, or if there is no spouse or health care agent, then an adult child, or if there is none, the next of kin of the patient, of the proposed discharge. The notice shall be sent to the last known address of the person to be notified by certified mail with return receipt. The notice shall include the following: (1) the proposed date of discharge or provisional discharge; (2) the date, time and place of the meeting of the staff who have been treating the patient to discuss discharge and discharge planning; (3) the fact that the patient will be present at the meeting; and (4) the fact that the next of kin or health care agent may attend that staff meeting and present any information relevant to the discharge of the patient. The notice shall be sent at least one week prior to the date set for the meeting.

MINN. STAT. § 253B.17 (2010). RELEASE; JUDICIAL DETERMINATION

Subdivision 1. Petition.

Any patient, except one committed as a person who is mentally ill and dangerous to the public or as a sexually dangerous person or person with a sexual psychopathic personality as provided in section 253B.18, subdivision 3, or any interested person may petition the committing court or the court to which venue has been transferred for an order that the patient is not in need of continued care and treatment or for an order that an individual is no longer a person who is mentally ill, developmentally disabled, or chemically dependent, or for any other relief. A patient committed as a person who is mentally ill or mentally ill and dangerous may petition the committing court or the court to which venue has been transferred for a hearing concerning the administration of neuroleptic medication.

Subd. 2. Notice of hearing.

Upon the filing of the petition, the court shall fix the time and place for the hearing on it. Ten days' notice of the hearing shall be given to the county attorney, the patient, patient's counsel, the person who filed the initial commitment petition, the head of the treatment facility, and other persons as the court directs. Any person may oppose the petition.

Subd. 3. Examiners.

The court shall appoint an examiner and, at the patient's request, shall appoint a second examiner of the patient's choosing to be paid for by the county at a rate of compensation to be fixed by the court. Unless otherwise agreed by the parties, the examiners shall file a report with the court not less than 48 hours prior to the hearing under this section.

Subd. 4. Evidence.

The patient, patient's counsel, the petitioner and the county attorney shall be entitled to be present at the hearing and to present and cross-examine witnesses, including examiners. The court may hear any relevant testimony and evidence which is offered at the hearing.

Subd. 5. Order.

Upon completion of the hearing, the court shall enter an order stating its findings and decision and mail it to the head of the treatment facility.

MINN. STAT. § 253B.18 (2010). PERSONS WHO ARE MENTALLY ILL AND DANGEROUS TO THE PUBLIC

Subdivision 1. Procedure.

(a) Upon the filing of a petition alleging that a proposed patient is a person who is mentally ill and dangerous to the public, the court shall hear the petition as provided in sections 253B.07 and 253B.08. If the court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill and dangerous to the public, it shall commit the person to a secure treatment facility or to a treatment facility willing to accept the patient under commitment. The court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety. In any case where the petition was filed immediately following the acquittal of the proposed patient for a crime against the person pursuant to a verdict of not guilty by reason of mental illness, the verdict constitutes evidence that the proposed patient is a person who is mentally ill and dangerous within the meaning of this section. The proposed patient has the burden of going forward in the presentation of evidence. The standard of proof remains as required by this chapter. Upon commitment, admission procedures shall be carried out pursuant to section 253B.10.

(b) Once a patient is admitted to a treatment facility pursuant to a commitment under this subdivision, treatment must begin regardless of whether a review hearing will be held under subdivision 2.

Subd. 2. Review; hearing.

(a) A written treatment report shall be filed by the treatment facility with the committing court within 60 days after commitment. If the person is in the custody of the commissioner of corrections when the initial commitment is ordered under subdivision 1, the written treatment report must be filed within 60 days after the person is admitted to a secure treatment facility. The court shall hold a hearing to make a final determination as to whether the person should remain committed as a person who is mentally ill and dangerous to the public. The hearing shall be held within the earlier of 14 days of the court's receipt of the written treatment report, or within 90 days of the date of initial commitment or admission, unless otherwise agreed by the parties.

(b) The court may, with agreement of the county attorney and attorney for the patient:

(1) waive the review hearing under this subdivision and immediately order an indeterminate commitment under subdivision 3; or

(2) continue the review hearing for up to one year.

(c) If the court finds that the patient should be committed as a person who is mentally ill, but not as a person who is mentally ill and dangerous to the public, the court may commit the person as a person who is mentally ill and the person shall be deemed not to have been found to be dangerous to the public for the purposes of subdivisions 4a to 15. Failure of the treatment facility to provide the required report at the end of the 60-day period shall not result in automatic discharge of the patient.

Subd. 3. Indeterminate commitment.

If the court finds at the final determination hearing held pursuant to subdivision 2 that the patient continues to be a person who is mentally ill and dangerous, then the court shall order commitment of the proposed patient for an indeterminate period of time. After a final determination that a patient is a person who is mentally ill and dangerous to the public, the patient shall be transferred, provisionally discharged or discharged, only as provided in this section.

Subd. 4.

[Repealed, 1997 c 217 art 1 s 118]

Subd. 4a. Release on pass; notification.

A patient who has been committed as a person who is mentally ill and dangerous and

who is confined at a secure treatment facility or has been transferred out of a state-operated services facility according to section 253B.18, subdivision 6, shall not be released on a pass unless the pass is part of a pass plan that has been approved by the medical director of the secure treatment facility. The pass plan must have a specific therapeutic purpose consistent with the treatment plan, must be established for a specific period of time, and must have specific levels of liberty delineated. The county case manager must be invited to participate in the development of the pass plan. At least ten days prior to a determination on the plan, the medical director shall notify the designated agency, the committing court, the county attorney of the county of commitment, an interested person, the local law enforcement agency where the facility is located, the county attorney and the local law enforcement agency in the location where the pass is to occur, the petitioner, and the petitioner's counsel of the plan, the nature of the passes proposed, and their right to object to the plan. If any notified person objects prior to the proposed date of implementation, the person shall have an opportunity to appear, personally or in writing, before the medical director, within ten days of the objection, to present grounds for opposing the plan. The pass plan shall not be implemented until the objecting person has been furnished that opportunity. Nothing in this subdivision shall be construed to give a patient an affirmative right to a pass plan.

Subd. 4b. Pass-eligible status; notification.

The following patients committed to a secure treatment facility shall not be placed on pass-eligible status unless that status has been approved by the medical director of the secure treatment facility:

(a) a patient who has been committed as a person who is mentally ill and dangerous and who:

(1) was found incompetent to proceed to trial for a felony or was found not guilty by reason of mental illness of a felony immediately prior to the filing of the commitment petition;

(2) was convicted of a felony immediately prior to or during commitment as a person who is mentally ill and dangerous; or

(3) is subject to a commitment to the commissioner of corrections; and

(b) a patient who has been committed as a psychopathic personality, a sexually psychopathic personality, or a sexually dangerous person.

At least ten days prior to a determination on the status, the medical director shall notify the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner, and the petitioner's counsel of the proposed status, and their right to request review by the special review board. If within ten days of receiving notice any notified person requests review by filing a notice of objection with the commissioner and the head of the treatment facility, a hearing shall be held before the

special review board. The proposed status shall not be implemented unless it receives a favorable recommendation by a majority of the board and approval by the commissioner. The order of the commissioner is appealable as provided in section 253B.19.

Nothing in this subdivision shall be construed to give a patient an affirmative right to seek pass-eligible status from the special review board.

Subd. 4c. Special review board.

(a) The commissioner shall establish one or more panels of a special review board. The board shall consist of three members experienced in the field of mental illness. One member of each special review board panel shall be a psychiatrist and one member shall be an attorney. No member shall be affiliated with the Department of Human Services. The special review board shall meet at least every six months and at the call of the commissioner. It shall hear and consider all petitions for a reduction in custody or to appeal a revocation of provisional discharge. A "reduction in custody" means transfer from a secure treatment facility, discharge, and provisional discharge. Patients may be transferred by the commissioner between secure treatment facilities without a special review board hearing.

Members of the special review board shall receive compensation and reimbursement for expenses as established by the commissioner.

(b) A petition filed by a person committed as mentally ill and dangerous to the public under this section must be heard as provided in subdivision 5 and, as applicable, subdivision 13. A petition filed by a person committed as a sexual psychopathic personality or as a sexually dangerous person under section 253B.185, or committed as both mentally ill and dangerous to the public under this section and as a sexual psychopathic personality or as a sexually dangerous person must be heard as provided in section 253B.185, subdivision 9.

Subd. 5. Petition; notice of hearing; attendance; order.

(a) A petition for a reduction in custody or revocation of provisional discharge shall be filed with the commissioner and may be filed by the patient or by the head of the treatment facility. A patient may not petition the special review board for six months following commitment under subdivision 3 or following the final disposition of any previous petition and subsequent appeal by the patient. The medical director may petition at any time.

(b) Fourteen days prior to the hearing, the committing court, the county attorney of the county of commitment, the designated agency, interested person, the petitioner, and the petitioner's counsel shall be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the

names and addresses to the commissioner at least 21 days before the hearing. The board shall provide the commissioner with written findings of fact and recommendations within 21 days of the hearing. The commissioner shall issue an order no later than 14 days after receiving the recommendation of the special review board. A copy of the order shall be mailed to every person entitled to statutory notice of the hearing within five days after it is signed. No order by the commissioner shall be effective sooner than 30 days after the order is signed, unless the county attorney, the patient, and the commissioner agree that it may become effective sooner.

(c) The special review board shall hold a hearing on each petition prior to making its recommendation to the commissioner. The special review board proceedings are not contested cases as defined in chapter 14. Any person or agency receiving notice that submits documentary evidence to the special review board prior to the hearing shall also provide copies to the patient, the patient's counsel, the county attorney of the county of commitment, the case manager, and the commissioner.

(d) Prior to the final decision by the commissioner, the special review board may be reconvened to consider events or circumstances that occurred subsequent to the hearing.

(e) In making their recommendations and order, the special review board and commissioner must consider any statements received from victims under subdivision 5a.

Subd. 5a. Victim notification of petition and release; right to submit statement.

(a) As used in this subdivision:

(1) "crime" has the meaning given to "violent crime" in section 609.1095, and includes criminal sexual conduct in the fifth degree and offenses within the definition of "crime against the person" in section 253B.02, subdivision 4a, and also includes offenses listed in section 253B.02, subdivision 7a, paragraph (b), regardless of whether they are sexually motivated;

(2) "victim" means a person who has incurred loss or harm as a result of a crime the behavior for which forms the basis for a commitment under this section or section 253B.185; and

(3) "convicted" and "conviction" have the meanings given in section 609.02, subdivision 5, and also include juvenile court adjudications, findings under Minnesota Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved, and findings in commitment cases under this section or section 253B.185 that an act or acts constituting a crime occurred.

(b) A county attorney who files a petition to commit a person under this section or section 253B.185 shall make a reasonable effort to provide prompt notice of filing the petition to any victim of a crime for which the person was convicted. In addition, the county attorney shall make a reasonable effort to promptly notify the victim of the resolution of

the petition.

(c) Before provisionally discharging, discharging, granting pass-eligible status, approving a pass plan, or otherwise permanently or temporarily releasing a person committed under this section from a treatment facility, the head of the treatment facility shall make a reasonable effort to notify any victim of a crime for which the person was convicted that the person may be discharged or released and that the victim has a right to submit a written statement regarding decisions of the medical director, special review board, or commissioner with respect to the person. To the extent possible, the notice must be provided at least 14 days before any special review board hearing or before a determination on a pass plan. Notwithstanding section 611A.06, subdivision 4, the commissioner shall provide the judicial appeal panel with victim information in order to comply with the provisions of this section. The judicial appeal panel shall ensure that the data on victims remains private as provided for in section 611A.06, subdivision 4.

(d) This subdivision applies only to victims who have requested notification by contacting, in writing, the county attorney in the county where the conviction for the crime occurred. A county attorney who receives a request for notification under this paragraph shall promptly forward the request to the commissioner of human services.

(e) The rights under this subdivision are in addition to rights available to a victim under chapter 611A. This provision does not give a victim all the rights of a "notified person" or a person "entitled to statutory notice" under subdivision 4a, 4b, or 5 or section 253B.185, subdivision 10.

Subd. 6. Transfer.

A patient who is mentally ill and dangerous shall not be transferred out of a secure treatment facility unless it appears to the satisfaction of the commissioner, after a hearing and favorable recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other regional centers under the commissioner's control. In those instances where a commitment also exists to the Department of Corrections, transfer may be to a facility designated by the commissioner of corrections.

The following factors must be considered in determining whether a transfer is appropriate:

(1) the person's clinical progress and present treatment needs;

(2) the need for security to accomplish continuing treatment;

(3) the need for continued institutionalization;

(4) which facility can best meet the person's needs; and

(5) whether transfer can be accomplished with a reasonable degree of safety for the

public.

Subd. 7. Provisional discharge.

A patient who is mentally ill and dangerous shall not be provisionally discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.

The following factors are to be considered in determining whether a provisional discharge shall be recommended: (1) whether the patient's course of hospitalization and present mental status indicate there is no longer a need for treatment and supervision in the patient's current treatment setting; and (2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Subd. 8. Provisional discharge plan.

A provisional discharge plan shall be developed, implemented and monitored by the designated agency in conjunction with the patient, the treatment facility and other appropriate persons. The designated agency shall, at least quarterly, review the plan with the patient and submit a written report to the commissioner and the treatment facility concerning the patient's status and compliance with each term of the plan.

Subd. 9. Provisional discharge; review.

A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 15. The commissioner shall notify the patient that the terms of a provisional discharge continue unless the patient requests and is granted a change in the conditions of provisional discharge or unless the patient petitions the special review board for a full discharge and the discharge is granted.

Subd. 10. Provisional discharge; revocation.

The head of the treatment facility may revoke a provisional discharge if any of the following grounds exist:

(i) the patient has departed from the conditions of the provisional discharge plan;

(ii) the patient is exhibiting signs of a mental illness which may require in-hospital evaluation or treatment; or

(iii) the patient is exhibiting behavior which may be dangerous to self or others.

Revocation shall be commenced by a notice of intent to revoke provisional discharge, which shall be served upon the patient, patient's counsel, and the designated agency. The

notice shall set forth the grounds upon which the intention to revoke is based, and shall inform the patient of the rights of a patient under this chapter.

In all nonemergency situations, prior to revoking a provisional discharge, the head of the treatment facility shall obtain a report from the designated agency outlining the specific reasons for recommending the revocation, including but not limited to the specific facts upon which the revocation recommendation is based.

The patient must be provided a copy of the revocation report and informed orally and in writing of the rights of a patient under this section.

Subd. 11. Exceptions.

If an emergency exists, the head of the treatment facility may revoke the provisional discharge and, either orally or in writing, order that the patient be immediately returned to the treatment facility. In emergency cases, a report documenting reasons for revocation shall be submitted by the designated agency within seven days after the patient is returned to the treatment facility.

Subd. 12. Return of patient.

After revocation of a provisional discharge or if the patient is absent without authorization, the head of the treatment facility may request the patient to return to the treatment facility voluntarily. The head of the facility may request a health officer, a welfare officer, or a peace officer to return the patient to the treatment facility. If a voluntary return is not arranged, the head of the treatment facility shall inform the committing court of the revocation or absence and the court shall direct a health or peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility. The expense of returning the patient to a regional treatment center shall be paid by the commissioner unless paid by the patient or other persons on the patient's behalf.

Subd. 13. Appeal.

Any patient aggrieved by a revocation decision or any interested person may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and shall recommend to the commissioner whether or not the revocation shall be upheld. The special review board may also recommend a new provisional discharge at the time of a revocation hearing.

Subd. 14. Voluntary readmission.

(a) With the consent of the head of the treatment facility, a patient may voluntarily return from provisional discharge for a period of up to 30 days, or up to 60 days with the

consent of the designated agency. If the patient is not returned to provisional discharge status within 60 days, the provisional discharge is revoked. Within 15 days of receiving notice of the change in status, the patient may request a review of the matter before the special review board. The board may recommend a return to a provisional discharge status.

(b) The treatment facility is not required to petition for a further review by the special review board unless the patient's return to the community results in substantive change to the existing provisional discharge plan. All the terms and conditions of the provisional discharge order shall remain unchanged if the patient is released again.

Subd. 15. Discharge.

A patient who is mentally ill and dangerous shall not be discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.

In determining whether a discharge shall be recommended, the special review board and commissioner shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

MINN. STAT. § 253B.185 (2010). SEXUAL PSYCHOPATHIC PERSONALITY; SEXUALLY DANGEROUS

Subdivision 1. Commitment generally.

(a) Except as otherwise provided in this section, the provisions of this chapter pertaining to persons who are mentally ill and dangerous to the public apply with like force and effect to persons who are alleged or found to be sexually dangerous persons or persons with a sexual psychopathic personality. For purposes of this section, "sexual psychopathic personality" includes any individual committed as a "psychopathic personality" under Minnesota Statutes 1992, section 526.10.

(b) Before commitment proceedings are instituted, the facts shall first be submitted to the county attorney, who, if satisfied that good cause exists, will prepare the petition. The county attorney may request a prepetition screening report. The petition is to be executed by a person having knowledge of the facts and filed with the district court of the county of financial responsibility or the county where the patient is present. If the patient is in the custody of the commissioner of corrections, the petition may be filed in the county where the conviction for which the person is incarcerated was entered.

(c) Upon the filing of a petition alleging that a proposed patient is a sexually dangerous person or is a person with a sexual psychopathic personality, the court shall hear the petition as provided in section 253B.18.

(d) In commitments under this section, the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.

(e) After a final determination that a patient is a sexually dangerous person or sexual psychopathic personality, the court shall order commitment for an indeterminate period of time and the patient shall be transferred, provisionally discharged, or discharged, only as provided in this section.

Subd. 1a. Temporary confinement.

During any hearing held under this section, or pending emergency revocation of a provisional discharge, the court may order the patient or proposed patient temporarily confined in a jail or lockup but only if:

(1) there is no other feasible place of confinement for the patient within a reasonable distance;

(2) the confinement is for less than 24 hours or, if during a hearing, less than 24 hours prior to commencement and after conclusion of the hearing; and

(3) there are protections in place, including segregation of the patient, to ensure the safety of the patient.

Subd. 1b. County attorney access to data.

Notwithstanding sections 144.291 to 144.298; 245.467, subdivision 6; 245.4876, subdivision 7; 260B.171; 260B.235, subdivision 8; 260C.171; and 609.749, subdivision 6, or any provision of chapter 13 or other state law, prior to filing a petition for commitment as a sexual psychopathic personality or as a sexually dangerous person, and upon notice to the proposed patient, the county attorney or the county attorney's designee may move the court for an order granting access to any records or data, to the extent it relates to the proposed patient, for the purpose of determining whether good cause exists to file a petition and, if a petition is filed, to support the allegations set forth in the petition.

The court may grant the motion if: (1) the Department of Corrections refers the case for commitment as a sexual psychopathic personality or a sexually dangerous person; or (2) upon a showing that the requested category of data or records may be relevant to the determination by the county attorney or designee. The court shall decide a motion under this subdivision within 48 hours after a hearing on the motion. Notice to the proposed patient need not be given upon a showing that such notice may result in harm or harassment of interested persons or potential witnesses.

Notwithstanding any provision of chapter 13 or other state law, a county attorney considering the civil commitment of a person under this section may obtain records and data from the Department of Corrections or any probation or parole agency in this state upon request, without a court order, for the purpose of determining whether good cause exists to file a petition and, if a petition is filed, to support the allegations set forth in the petition. At the time of the request for the records, the county attorney shall provide notice of the request to the person who is the subject of the records.

Data collected pursuant to this subdivision shall retain their original status and, if not public, are inadmissible in any court proceeding unrelated to civil commitment, unless otherwise permitted.

Subd. 2. Transfer to correctional facility.

(a) If a person has been committed under this section and later is committed to the custody of the commissioner of corrections for any reason, including but not limited to, being sentenced for a crime or revocation of the person's supervised release or conditional release under section 244.05; 609.3455, subdivision 6, 7, or 8; Minnesota Statutes 2004, section 609.108, subdivision 6; or Minnesota Statutes 2004, section 609.109, subdivision 7, the person shall be transferred to a facility designated by the commissioner of corrections without regard to the procedures provided in subdivision 11.

(b) If a person is committed under this section after a commitment to the commissioner of corrections, the person shall first serve the sentence in a facility designated by the commissioner of corrections. After the person has served the sentence, the person shall be transferred to a treatment program designated by the commissioner of human services.

Subd. 3. Not to constitute defense.

The existence in any person of a condition of a sexual psychopathic personality or the fact that a person is a sexually dangerous person shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge.

Subd. 4. Statewide judicial panel; com mitment proceedings.

(a) The Supreme Court may establish a panel of district judges with statewide authority to preside over commitment proceedings of sexual psychopathic personalities and sexually dangerous persons. Only one judge of the panel is required to preside over a particular commitment proceeding. Panel members shall serve for one-year terms. One of the judges shall be designated as the chief judge of the panel, and is vested with the power to designate the presiding judge in a particular case, to set the proper venue for the proceedings, and to otherwise supervise and direct the operation of the panel. The chief judge shall designate one of the other judges to act as chief judge whenever the chief judge is unable to act.

(b) If the Supreme Court creates the judicial panel authorized by this section, all petitions for civil commitment brought under subdivision 1 shall be filed with the supreme court instead of with the district court in the county where the proposed patient is present, notwithstanding any provision of subdivision 1 to the contrary. Otherwise, all of the other applicable procedures contained in this chapter apply to commitment proceedings conducted by a judge on the panel.

Subd. 5. Financial responsibility.

(a) For purposes of this subdivision, "state facility" has the meaning given in section 246.50 and also includes a Department of Corrections facility when the proposed patient is confined in such a facility pursuant to section 253B.045, subdivision 1a.

(b) Notwithstanding sections 246.54, 253B.045, and any other law to the contrary, when a petition is filed for commitment under this section pursuant to the notice required in section 244.05, subdivision 7, the state and county are each responsible for 50 percent of the cost of the person's confinement at a state facility or county jail, prior to commitment.

(c) The county shall submit an invoice to the state court administrator for reimbursement of the state's share of the cost of confinement.

(d) Notwithstanding paragraph (b), the state's responsibility for reimbursement is limited to the amount appropriated for this purpose.

Subd. 6.

[Repealed by amendment, 2010 c 300 s 26]

Subd. 7. Rights of patients committed under this section.

(a) The commissioner or the commissioner's designee may limit the statutory rights described in paragraph (b) for patients committed to the Minnesota sex offender program under this section or with the commissioner's consent under section 246B.02. The statutory rights described in paragraph (b) may be limited only as necessary to maintain a therapeutic environment or the security of the facility or to protect the safety and well-being of patients, staff, and the public.

(b) The statutory rights that may be limited in accordance with paragraph (a) are those set forth in section 144.651, subdivision 19, personal privacy; section 144.651, subdivision 21, private communications; section 144.651, subdivision 22, retain and use of personal property; section 144.651, subdivision 25, manage personal financial affairs; section 144.651, subdivision 26, meet with visitors and participate in groups; section 253B.03, subdivision 2, correspond with others; and section 253B.03, subdivision 3, receive visitors and make telephone calls. Other statutory rights enumerated by sections 144.651 and 253B.03, or any other law, may be limited as provided in those sections.

Subd. 8. Petition and report required.

(a) Within 120 days of receipt of a preliminary determination from a court under section 609.1351, or a referral from the commissioner of corrections pursuant to section 244.05, subdivision 7, a county attorney shall determine whether good cause under this section exists to file a petition, and if good cause exists, the county attorney or designee shall file the petition with the court.

(b) Failure to meet the requirements of paragraph (a) does not bar filing a petition under subdivision 1 any time the county attorney determines pursuant to subdivision 1 that good cause for such a petition exists.

Subd. 9. Petition for reduction in custody.

(a) This subdivision applies only to committed persons as defined in paragraph (b). The procedures in subdivision 10 for victim notification and right to submit a statement apply to petitions filed and reductions in custody recommended under this subdivision.

(b) As used in this subdivision:

(1) "committed person" means an individual committed under this section, or under this section and under section 253B.18, as mentally ill and dangerous. It does not include persons committed only as mentally ill and dangerous under section 253B.18; and

(2) "reduction in custody" means transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment. A reduction in custody is considered to be a commitment proceeding under section 8.01.

(c) A petition for a reduction in custody or an appeal of a revocation of provisional discharge may be filed by either the committed person or by the head of the treatment facility and must be filed with and considered by a panel of the special review board authorized under section 253B.18, subdivision 4c. A committed person may not petition the special review board any sooner than six months following either:

(1) the entry of judgment in the district court of the order for commitment issued under section 253B.18, subdivision 3, or upon the exhaustion of all related appeal rights in state court relating to that order, whichever is later; or

(2) any recommendation of the special review board or order of the judicial appeal panel, or upon the exhaustion of all appeal rights in state court, whichever is later. The head of the treatment facility may petition at any time. The special review board proceedings are not contested cases as defined in chapter 14.

(d) The special review board shall hold a hearing on each petition before issuing a recommendation under paragraph (f). Fourteen days before the hearing, the committing court, the county attorney of the county of commitment, the designated agency, an

interested person, the petitioner and the petitioner's counsel, and the committed person and the committed person's counsel must be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing.

(e) A person or agency receiving notice that submits documentary evidence to the special review board before the hearing must also provide copies to the committed person, the committed person's counsel, the county attorney of the county of commitment, the case manager, and the commissioner. The special review board must consider any statements received from victims under subdivision 10.

(f) Within 30 days of the hearing, the special review board shall issue written findings of fact and shall recommend denial or approval of the petition to the judicial appeal panel established under section 253B.19. The commissioner shall forward the recommendation of the special review board to the judicial appeal panel and to every person entitled to statutory notice. No reduction in custody or reversal of a revocation of provisional discharge recommended by the special review board is effective until it has been reviewed by the judicial appeal panel and until 15 days after an order from the judicial appeal panel affirming, modifying, or denying the recommendation.

Subd. 10. Victim notification of petition and release; right to submit statement.

(a) As used in this subdivision:

(1) "crime" has the meaning given to "violent crime" in section 609.1095, and includes criminal sexual conduct in the fifth degree and offenses within the definition of "crime against the person" in section 253B.02, subdivision 4a, and also includes offenses listed in section 253B.02, subdivision 7a, paragraph (b), regardless of whether they are sexually motivated;

(2) "victim" means a person who has incurred loss or harm as a result of a crime, the behavior for which forms the basis for a commitment under this section or section 253B.18; and

(3) "convicted" and "conviction" have the meanings given in section 609.02, subdivision 5, and also include juvenile court adjudications, findings under Minnesota Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved, and findings in commitment cases under this section or section 253B.18, that an act or acts constituting a crime occurred.

(b) A county attorney who files a petition to commit a person under this section shall make a reasonable effort to provide prompt notice of filing the petition to any victim of a crime for which the person was convicted. In addition, the county attorney shall make a

reasonable effort to promptly notify the victim of the resolution of the petition.

(c) Before provisionally discharging, discharging, granting pass-eligible status, approving a pass plan, or otherwise permanently or temporarily releasing a person committed under this section from a treatment facility, the head of the treatment facility shall make a reasonable effort to notify any victim of a crime for which the person was convicted that the person may be discharged or released and that the victim has a right to submit a written statement regarding decisions of the head of the treatment facility or designee, or special review board, with respect to the person. To the extent possible, the notice must be provided at least 14 days before any special review board hearing or before a determination on a pass plan. Notwithstanding section 611A.06, subdivision 4, the commissioner shall provide the judicial appeal panel with victim information in order to comply with the provisions of this section. The judicial appeal panel shall ensure that the data on victims remains private as provided for in section 611A.06, subdivision 4.

(d) This subdivision applies only to victims who have requested notification by contacting, in writing, the county attorney in the county where the conviction for the crime occurred or where the civil commitment was filed or, following commitment, the head of the treatment facility. A county attorney who receives a request for notification under this paragraph shall promptly forward the request to the commissioner of human services.

(e) Rights under this subdivision are in addition to rights available to a victim under chapter 611A. This provision does not give a victim all the rights of a "notified person" or a person "entitled to statutory notice" under subdivision 12 or 13 or section 253B.18, subdivision 4a, 4b, or 5.

Subd. 11. Transfer.

(a) A patient who is committed as a sexually dangerous person or sexual psychopathic personality shall not be transferred out of a secure treatment facility unless it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other treatment programs under the commissioner's control.

(b) The following factors must be considered in determining whether a transfer is appropriate:

(1) the person's clinical progress and present treatment needs;

(2) the need for security to accomplish continuing treatment;

(3) the need for continued institutionalization;

(4) which facility can best meet the person's needs; and

(5) whether transfer can be accomplished with a reasonable degree of safety for the public.

Subd. 12. Provisional discharge.

A patient who is committed as a sexual psychopathic personality or sexually dangerous person shall not be provisionally discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing and a recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.

The following factors are to be considered in determining whether a provisional discharge shall be recommended:

(1) whether the patient's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the patient's current treatment setting; and

(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Subd. 13. Provisional discharge plan.

A provisional discharge plan shall be developed, implemented, and monitored by the head of the treatment facility or designee in conjunction with the patient and other appropriate persons. The head of the treatment facility or designee shall, at least quarterly, review the plan with the patient and submit a written report to the designated agency concerning the patient's status and compliance with each term of the plan.

Subd. 14. Provisional discharge; review.

A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 18. The commissioner shall notify the patient that the terms of a provisional discharge continue unless the patient requests and is granted a change in the conditions of provisional discharge or unless the patient petitions the special review board for a full discharge and the discharge is granted by the judicial appeal panel.

Subd. 15. Provisional discharge; revocation.

(a) The head of the treatment facility may revoke a provisional discharge if either of the following grounds exist:

(1) the patient has departed from the conditions of the provisional discharge plan; or

(2) the patient is exhibiting behavior which may be dangerous to self or others.

(b) The head of the treatment facility may revoke the provisional discharge and, either orally or in writing, order that the patient be immediately returned to the treatment facility. A report documenting reasons for revocation shall be issued by the head of the treatment facility within seven days after the patient is returned to the treatment facility. Advance notice to the patient of the revocation is not required.

(c) The patient must be provided a copy of the revocation report and informed, orally and in writing, of the rights of a patient under this section. The revocation report shall be served upon the patient, the patient's counsel, and the designated agency. The report shall outline the specific reasons for the revocation, including but not limited to the specific facts upon which the revocation recommendation is based.

(d) An individual who is revoked from provisional discharge must successfully re-petition the special review board and judicial appeal panel prior to being placed back on provisional discharge.

Subd. 16. Return of absent patient.

If the patient is absent without authorization, the head of the treatment facility or designee may request a peace officer to return the patient to the treatment facility. The head of the treatment facility shall inform the committing court of the revocation or absence, and the court shall direct a peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility. The expense of returning the patient to a treatment facility shall be paid by the commissioner unless paid by the patient or other persons on the patient's behalf.

Subd. 17. Appeal.

Any patient aggrieved by a revocation decision or any interested person may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new provisional discharge at the time of the revocation hearing.

Subd. 18. Discharge.

A patient who is committed as a sexual psychopathic personality or sexually dangerous person shall not be discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.

In determining whether a discharge shall be recommended, the special review board and

judicial appeal panel shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

Subd. 19. Aftercare services.

The Minnesota sex offender program shall provide the supervision, aftercare, and case management services for a person under commitment as sexual psychopathic personalities and sexually dangerous persons discharged after July 1, 1999. The designated agency shall assist with client eligibility for public welfare benefits and will provide those services that are currently available exclusively through county government.

Prior to the date of discharge or provisional discharge of any patient committed as a sexual psychopathic personality or sexually dangerous person, the head of the treatment facility or designee shall establish a continuing plan of aftercare services for the patient, including a plan for medical and behavioral health services, financial sustainability, housing, social supports, or other assistance the patient needs. The Minnesota sex offender program shall provide case management services and shall assist the patient in finding employment, suitable shelter, and adequate medical and behavioral health services and otherwise assist in the patient's readjustment to the community.

MINN. STAT. § 253B.19 (2010). JUDICIAL APPEAL PANEL; PATIENTS WHO ARE MENTALLY ILL AND DANGEROUS TO THE PUBLIC

Subdivision 1. Creation.

The Supreme Court shall establish an appeal panel composed of three judges and four alternate judges appointed from among the acting judges of the state. Panel members shall serve for terms of one year each. Only three judges need hear any case. One of the regular three appointed judges shall be designated as the chief judge of the appeal panel. The chief judge is vested with power to fix the time and place of all hearings before the panel, issue all notices, subpoena witnesses, appoint counsel for the patient, if necessary, and supervise and direct the operation of the appeal panel. The chief judge shall designate one of the other judges or an alternate judge to act as chief judge in any case where the chief judge is unable to act. No member of the appeal panel shall take part in the consideration of any case in which that judge committed the patient. The chief justice of the Supreme Court shall determine the compensation of the judges serving on the appeal panel. The compensation shall be in addition to their regular compensation as judges. All compensation and expenses of the appeal panel and all allowable fees and costs of the patient's counsel shall be established and paid by the Department of Human Services.

Subd. 2. Petition; hearing.

(a) A person committed as mentally ill and dangerous to the public under section 253B.18, or the county attorney of the county from which the person was committed or

the county of financial responsibility, may petition the judicial appeal panel for a rehearing and reconsideration of a decision by the commissioner under section 253B.18, subdivision 5. The judicial appeal panel must not consider petitions for relief other than those considered by the commissioner from which the appeal is taken. The petition must be filed with the Supreme Court within 30 days after the decision of the commissioner is signed. The hearing must be held within 45 days of the filing of the petition unless an extension is granted for good cause.

(b) A person committed as a sexual psychopathic personality or as a sexually dangerous person under section 253B.185, or committed as both mentally ill and dangerous to the public under section 253B.18 and as a sexual psychopathic personality or as a sexually dangerous person under section 253B.185; the county attorney of the county from which the person was committed or the county of financial responsibility; or the commissioner may petition the judicial appeal panel for a rehearing and reconsideration of a decision of the special review board under section 253B.185, subdivision 9. The petition must be filed with the Supreme Court within 30 days after the decision is mailed by the commissioner as required in section 253B.185, subdivision 9, paragraph (f). The hearing must be held within 180 days of the filing of the petition unless an extension is granted for good cause. If no party petitions the judicial appeal panel for a rehearing or reconsideration within 30 days, the judicial appeal panel shall either issue an order adopting the recommendations of the special review board or set the matter on for a hearing pursuant to this paragraph.

(c) For an appeal under paragraph (a) or (b), the Supreme Court shall refer the petition to the chief judge of the judicial appeal panel. The chief judge shall notify the patient, the county attorney of the county of commitment, the designated agency, the commissioner, the head of the treatment facility, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given at least 14 days prior to the date of the hearing.

(d) Any person may oppose the petition. The patient, the patient's counsel, the county attorney of the committing county or the county of financial responsibility, and the commissioner shall participate as parties to the proceeding pending before the judicial appeal panel, except when the patient is committed solely as mentally ill and dangerous, and shall, no later than 20 days before the hearing on the petition, inform the judicial appeal panel and the opposing party in writing whether they support or oppose the petition and provide a summary of facts in support of their position. The judicial appeal panel may appoint examiners and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all proceedings. The patient, the patient's counsel, and the county attorney of the committing county or the county of financial responsibility have the right to be present and may present and cross-examine all witnesses and offer a factual and legal basis in support of their positions. The petitioning party seeking discharge or provisional discharge bears the burden of going forward with the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief. If the petitioning party has met this burden, the party opposing discharge or provisional discharge bears the

burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied. A party seeking transfer under section 253B.18, subdivision 6, or 253B.185, subdivision 11, must establish by a preponderance of the evidence that the transfer is appropriate.

Subd. 3. Decision.

A majority of the judicial appeal panel shall rule upon the petition. The panel shall consider the petition de novo. The order of the judicial appeal panel shall supersede an order of the commissioner under section 253B.18, subdivision 5. No order of the judicial appeal panel granting a transfer, discharge or provisional discharge shall be made effective sooner than 15 days after it is issued. The panel may not consider petitions for relief other than those considered by the commissioner or special review board from which the appeal is taken. The judicial appeal panel may not grant a transfer or provisional discharge on terms or conditions that were not presented to the commissioner or the special review board.

Subd. 4. Effect of petition.

The filing of a petition shall immediately suspend the operation of any order for transfer, discharge or provisional discharge of the patient. The patient shall not be discharged in any manner except upon order of a majority of the appeal panel.

Subd. 5. Appeal.

A party aggrieved by an order of the appeal panel may appeal from the decision of the appeal panel to the Court of Appeals as in other civil cases. A party may seek review of a decision by the appeals panel within 60 days after a copy is sent to the parties by the clerk of appellate courts. The filing of an appeal shall immediately suspend the operation of any order granting transfer, discharge or provisional discharge, pending the determination of the appeal.

MINN. STAT. § 253B.20 (2010). DISCHARGE; ADMINISTRATIVE PROCEDURE

Subdivision 1. Notice to court.

When a committed person is discharged, provisionally discharged, transferred to another treatment facility, or partially hospitalized, or when the person dies, is absent without authorization, or is returned, the treatment facility having custody of the patient shall notify the committing court, the county attorney, and the patient's attorney.

Subd. 2. Necessities.

The head of the treatment facility shall make necessary arrangements at the expense of the state to insure that no patient is discharged or provisionally discharged without suitable clothing. The head of the treatment facility shall, if necessary, provide the patient

with a sufficient sum of money to secure transportation home, or to another destination of the patient's choice, if the destination is located within a reasonable distance of the treatment facility. The commissioner shall establish procedures by rule to help the patient receive all public assistance benefits provided by state or federal law to which the patient is entitled by residence and circumstances. The rule shall be uniformly applied in all counties. All counties shall provide temporary relief whenever necessary to meet the intent of this subdivision.

Subd. 3. Notice to designated agency.

The head of the treatment facility, upon the provisional discharge of any committed person, shall notify the designated agency before the patient leaves the treatment facility. Whenever possible the notice shall be given at least one week before the patient is to leave the facility.

Subd. 4. Aftercare services.

Prior to the date of discharge or provisional discharge of any committed person, the designated agency of the county of financial responsibility, in cooperation with the head of the treatment facility, and the patient's physician, if notified pursuant to subdivision 6, shall establish a continuing plan of aftercare services for the patient including a plan for medical and psychiatric treatment, nursing care, vocational assistance, and other assistance the patient needs. The designated agency shall provide case management services, supervise and assist the patient in finding employment, suitable shelter, and adequate medical and psychiatric treatment, and aid in the patient's readjustment to the community.

Subd. 5. Consultation.

In establishing the plan for aftercare services the designated agency shall consult with persons or agencies, including any public health nurse as defined in section 145A.02, subdivision 18, and vocational rehabilitation personnel, to insure adequate planning and periodic review for aftercare services.

Subd. 6. Notice to physician.

The head of the treatment facility shall notify the physician of any committed person at the time of the patient's discharge or provisional discharge, unless the patient objects to the notice.

Subd. 7. Services.

A committed person may at any time after discharge, provisional discharge or partial treatment, apply to the head of the treatment facility within whose district the committed person resides for treatment. The head of the treatment facility, on determining that the applicant requires service, may provide needed services related to mental illness,

developmental disability, or chemical dependency to the applicant. The services shall be provided in regional centers under terms and conditions established by the commissioner.

MINN. STAT. § 299C.46 (2010). CRIMINAL JUSTICE DATA COMMUNICATIONS NETWORK

Subdivision 1. Establishment; interconnection.

The commissioner of public safety shall establish a criminal justice data communications network which will enable the interconnection of the criminal justice agencies within the state. The commissioner of public safety is authorized to lease or purchase facilities and equipment as may be necessary to establish and maintain the data communications network.

Subd. 2. Criminal justice agency defined.

For the purposes of sections 299C.46 to 299C.49, "criminal justice agency" means an agency of the state or an agency of a political subdivision charged with detection, enforcement, prosecution, adjudication or incarceration in respect to the criminal or traffic laws of this state. This definition also includes all sites identified and licensed as a detention facility by the commissioner of corrections under section 241.021.

Subd. 2a. Noncriminal justice agency defined.

For the purposes of sections 299C.46 to 299C.49, "noncriminal justice agency" means an agency of a state or an agency of a political subdivision of a state charged with the responsibility of performing checks of state databases connected to the criminal justice data communications network.

Subd. 3. Authorized use, fee.

(a) The criminal justice data communications network shall be used exclusively by:

(1) criminal justice agencies in connection with the performance of duties required by law;

(2) agencies investigating federal security clearances of individuals for assignment or retention in federal employment with duties related to national security, as required by Public Law 99-169;

(3) other agencies to the extent necessary to provide for protection of the public or property in an emergency or disaster situation;

(4) noncriminal justice agencies statutorily mandated, by state or national law, to conduct checks into state databases prior to disbursing licenses or providing benefits;

(5) the public authority responsible for child support enforcement in connection with the

performance of its duties;

(6) the public defender, as provided in section 611.272; and

(7) a county attorney or the attorney general, as the county attorney's designee, for the purpose of determining whether a petition for the civil commitment of a proposed patient as a sexual psychopathic personality or as a sexually dangerous person should be filed, and during the pendency of the commitment proceedings.

(b) The commissioner of public safety shall establish a monthly network access charge to be paid by each participating criminal justice agency. The network access charge shall be a standard fee established for each terminal, computer, or other equipment directly addressable by the data communications network, as follows: January 1, 1984 to December 31, 1984, $40 connect fee per month; January 1, 1985 and thereafter, $50 connect fee per month.

(c) The commissioner of public safety is authorized to arrange for the connection of the data communications network with the criminal justice information system of the federal government, any adjacent state, or Canada.

Subd. 4. Commissioner administers and coordinates.

The commissioner of public safety shall administer the data communications network and shall coordinate matters relating to its use by other state agencies and political subdivisions. The commissioner shall receive the assistance of the commissioner of administration on matters involving the Department of Administration and its information systems division. Other state department or agency heads shall assist the commissioner where necessary in the performance of the commissioner's duties under this section.

Subd. 5. Diversion program data.

Counties operating diversion programs under section 401.065 shall supply to the bureau of criminal apprehension the names of and other identifying data specified by the bureau concerning diversion program participants. Notwithstanding section 299C.11, the bureau shall maintain the names and data in the computerized criminal history system for 20 years from the date of the offense. Data maintained under this subdivision are private data.

Subd. 6. Orders for protection and no contact orders.

(a) As used in this subdivision, "no contact orders" include orders issued as pretrial orders under section 629.72, subdivision 2, orders under section 629.75, and orders issued as probationary or sentencing orders at the time of disposition in a criminal domestic abuse case.

(b) The data communications network must include orders for protection issued under

section 518B.01 and no contact orders issued against adults and juveniles. A no contact order must be accompanied by a photograph of the offender for the purpose of enforcement of the order, if a photograph is available and verified by the court to be an image of the defendant.

(c) Data from orders for protection or no contact orders and data entered by law enforcement to assist in the enforcement of those orders are classified as private data on individuals as defined in section 13.02, subdivision 12. Data about the offender can be shared with the victim for purposes of enforcement of the order.

MINN. STAT. § 609.1055 (2010). OFFENDERS WITH SERIOUS AND PERSISTENT MENTAL ILLNESS; ALTERNATIVE PLACEMENT

When a court intends to commit an offender with a serious and persistent mental illness, as defined in section 245.462, subdivision 20, paragraph (c), to the custody of the commissioner of corrections for imprisonment at a state correctional facility, either when initially pronouncing a sentence or when revoking an offender's probation, the court, when consistent with public safety, may instead place the offender on probation or continue the offender's probation and require as a condition of the probation that the offender successfully complete an appropriate supervised alternative living program having a mental health treatment component. This section applies only to offenders who would have a remaining term of imprisonment after adjusting for credit for prior imprisonment, if any, of more than one year.

MINN. STAT. § 609.1351 (2010). PETITION FOR CIVIL COMMITMENT

When a court sentences a person under section 609.342, 609.343, 609.344, 609.345, 609.3453, or 609.3455, subdivision 3a, the court shall make a preliminary determination whether in the court's opinion a petition under section 253B.185 may be appropriate and include the determination as part of the sentencing order. If the court determines that a petition may be appropriate, the court shall forward its preliminary determination along with supporting documentation to the county attorney.

MINN. STAT. § 609.3455 (2010). DANGEROUS SEX OFFENDERS; LIFE SENTENCES; CONDITIONAL RELEASE

Subdivision 1. Definitions.

(a) As used in this section, the following terms have the meanings given.

(b) "Conviction" includes a conviction as an extended jurisdiction juvenile under section 260B.130 for a violation of, or an attempt to violate, section 609.342, 609.343, 609.344, or 609.3453, if the adult sentence has been executed.

(c) "Extreme inhumane conditions" mean situations where, either before or after the sexual penetration or sexual contact, the offender knowingly causes or permits the complainant to be placed in a situation likely to cause the complainant severe ongoing

mental, emotional, or psychological harm, or causes the complainant's death.

(d) A "heinous element" includes:

(1) the offender tortured the complainant;

(2) the offender intentionally inflicted great bodily harm upon the complainant;

(3) the offender intentionally mutilated the complainant;

(4) the offender exposed the complainant to extreme inhumane conditions;

(5) the offender was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the complainant to submit;

(6) the offense involved sexual penetration or sexual contact with more than one victim;

(7) the offense involved more than one perpetrator engaging in sexual penetration or sexual contact with the complainant; or

(8) the offender, without the complainant's consent, removed the complainant from one place to another and did not release the complainant in a safe place.

(e) "Mutilation" means the intentional infliction of physical abuse designed to cause serious permanent disfigurement or permanent or protracted loss or impairment of the functions of any bodily member or organ, where the offender relishes the infliction of the abuse, evidencing debasement or perversion.

(f) A conviction is considered a "previous sex offense conviction" if the offender was convicted and sentenced for a sex offense before the commission of the present offense.

(g) A conviction is considered a "prior sex offense conviction" if the offender was convicted of committing a sex offense before the offender has been convicted of the present offense, regardless of whether the offender was convicted for the first offense before the commission of the present offense, and the convictions involved separate behavioral incidents.

(h) "Sex offense" means any violation of, or attempt to violate, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or any similar statute of the United States, this state, or any other state.

(i) "Torture" means the intentional infliction of extreme mental anguish, or extreme psychological or physical abuse, when committed in an especially depraved manner.

(j) An offender has "two previous sex offense convictions" only if the offender was

convicted and sentenced for a sex offense committed after the offender was earlier convicted and sentenced for a sex offense and both convictions preceded the commission of the present offense of conviction.

Subd. 2. Mandatory life sentence without release; egregious firs t-time and repeat offenders.

(a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h); or 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h), to life without the possibility of release if:

(1) the fact finder determines that two or more heinous elements exist; or

(2) the person has a previous sex offense conviction for a violation of section 609.342, 609.343, or 609.344, and the fact finder determines that a heinous element exists for the present offense.

(b) A fact finder may not consider a heinous element if it is an element of the underlying specified violation of section 609.342 or 609.343. In addition, when determining whether two or more heinous elements exist, the fact finder may not use the same underlying facts to support a determination that more than one element exists.

Subd. 3. Mandatory life sentence for egregious first-time offenders.

(a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person to imprisonment for life if the person is convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h), or 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h); and the fact finder determines that a heinous element exists.

(b) The fact finder may not consider a heinous element if it is an element of the underlying specified violation of section 609.342 or 609.343.

Subd. 3a. Mandatory sentence for certain engrained offenders.

(a) A court shall commit a person to the commissioner of corrections for a period of time that is not less than double the presumptive sentence under the sentencing guidelines and not more than the statutory maximum, or if the statutory maximum is less than double the presumptive sentence, for a period of time that is equal to the statutory maximum, if:

(1) the court is imposing an executed sentence on a person convicted of committing or attempting to commit a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453;

(2) the fact finder determines that the offender is a danger to public safety; and

(3) the fact finder determines that the offender's criminal sexual behavior is so engrained that the risk of reoffending is great without intensive psychotherapeutic intervention or other long-term treatment or supervision extending beyond the presumptive term of imprisonment and supervised release.

(b) The fact finder shall base its determination that the offender is a danger to public safety on any of the following factors:

(1) the crime involved an aggravating factor that would justify a durational departure from the presumptive sentence under the sentencing guidelines;

(2) the offender previously committed or attempted to commit a predatory crime or a violation of section 609.224 or 609.2242, including:

(i) an offense committed as a juvenile that would have been a predatory crime or a violation of section 609.224 or 609.2242 if committed by an adult; or

(ii) a violation or attempted violation of a similar law of any other state or the United States; or

(3) the offender planned or prepared for the crime prior to its commission.

(c) As used in this section, "predatory crime" has the meaning given in section 609.341, subdivision 22.

Subd. 4. Mandatory life sentence; repeat offenders.

(a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person to imprisonment for life if the person is convicted of violating section 609.342, 609.343, 609.344, 609.345, or 609.3453 and:

(1) the person has two previous sex offense convictions;

(2) the person has a previous sex offense conviction and:

(i) the fact finder determines that the present offense involved an aggravating factor that would provide grounds for an upward durational departure under the sentencing guidelines other than the aggravating factor applicable to repeat criminal sexual conduct convictions;

(ii) the person received an upward durational departure from the sentencing guidelines for the previous sex offense conviction; or

(iii) the person was sentenced under this section or Minnesota Statutes 2004, section 609.108, for the previous sex offense conviction; or

(3) the person has two prior sex offense convictions, and the fact finder determines that the prior convictions and present offense involved at least three separate victims, and:

(i) the fact finder determines that the present offense involved an aggravating factor that would provide grounds for an upward durational departure under the sentencing guidelines other than the aggravating factor applicable to repeat criminal sexual conduct convictions;

(ii) the person received an upward durational departure from the sentencing guidelines for one of the prior sex offense convictions; or

(iii) the person was sentenced under this section or Minnesota Statutes 2004, section 609.108, for one of the prior sex offense convictions.

(b) Notwithstanding paragraph (a), a court may not sentence a person to imprisonment for life for a violation of section 609.345, unless the person's previous or prior sex offense convictions that are being used as the basis for the sentence are for violations of section 609.342, 609.343, 609.344, or 609.3453, or any similar statute of the United States, this state, or any other state.

Subd. 5. Life sentences; minimum term of imprisonment.

At the time of sentencing under subdivision 3 or 4, the court shall specify a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum sentence, that must be served before the offender may be considered for supervised release.

Subd. 6. Mandatory ten-year conditional release term.

Notwithstanding the statutory maximum sentence otherwise applicable to the offense and unless a longer conditional release term is required in subdivision 7, when a court commits an offender to the custody of the commissioner of corrections for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453, the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for ten years, minus the time the offender served on supervised release.

Subd. 7. Mandatory lifetime conditional release term.

(a) When a court sentences an offender under subdivision 3 or 4, the court shall provide that, if the offender is released from prison, the commissioner of corrections shall place the offender on conditional release for the remainder of the offender's life.

(b) Notwithstanding the statutory maximum sentence otherwise applicable to the offense, when the court commits an offender to the custody of the commissioner of corrections for

a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453, and the offender has a previous or prior sex offense conviction, the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for the remainder of the offender's life.

(c) Notwithstanding paragraph (b), an offender may not be placed on lifetime conditional release for a violation of section 609.345, unless the offender's previous or prior sex offense conviction is for a violation of section 609.342, 609.343, 609.344, or 609.3453, or any similar statute of the United States, this state, or any other state.

Subd. 8. Terms of conditional release; applicable to all sex offenders.

(a) The provisions of this subdivision relating to conditional release apply to all sex offenders sentenced to prison for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453. Except as provided in this subdivision, conditional release of sex offenders is governed by provisions relating to supervised release. The commissioner of corrections may not dismiss an offender on conditional release from supervision until the offender's conditional release term expires.

(b) The conditions of release may include successful completion of treatment and aftercare in a program approved by the commissioner, satisfaction of the release conditions specified in section 244.05, subdivision 6, and any other conditions the commissioner considers appropriate. The commissioner shall develop a plan to pay the cost of treatment of a person released under this subdivision. The plan may include co-payments from offenders, third-party payers, local agencies, or other funding sources as they are identified. This section does not require the commissioner to accept or retain an offender in a treatment program. Before the offender is placed on conditional release, the commissioner shall notify the sentencing court and the prosecutor in the jurisdiction where the offender was sentenced of the terms of the offender's conditional release. The commissioner also shall make reasonable efforts to notify the victim of the offender's crime of the terms of the offender's conditional release. If the offender fails to meet any condition of release, the commissioner may revoke the offender's conditional release and order that the offender serve all or a part of the remaining portion of the conditional release term in prison.

Subd. 9. Applicability.

The provisions of this section do not affect the applicability of Minnesota Statutes 2004, section 609.108, to crimes committed before August 1, 2005, or the validity of sentences imposed under Minnesota Statutes 2004, section 609.108.

MINN. STAT. § 609.3457 (2010). SEX OFFENDER ASSESSMENT

Subdivision 1. Assessment required.

When a person is convicted of a sex offense, the court shall order an independent professional assessment of the offender's need for sex offender treatment to be completed

before sentencing. The court may waive the assessment if: (1) the Sentencing Guidelines provide a presumptive prison sentence for the offender, or (2) an adequate assessment was conducted prior to the conviction. An assessor providing an assessment for the court must be experienced in the evaluation and treatment of sex offenders.

Subd. 1a. Repeat offenders; mandatory assessment.

When a person is convicted of a felony-level sex offense, and the person has previously been convicted of a sex offense regardless of the penalty level, the court shall order a sex offender assessment to be completed by the Minnesota security hospital. The assessment must contain the facts upon which the assessment conclusion is based, with reference to the offense history of the offender or the severity of the current offense, the social history of the offender, and the results of an examination of the offender's mental status unless the offender refuses to be examined. The assessment conclusion may not be based on testing alone. Upon completion, the assessment must be forwarded to the court and the commissioner of corrections. The court shall consider the assessment when sentencing the offender and, if applicable, when making the preliminary determination regarding the appropriateness of a civil commitment petition under section 609.1351.

Subd. 2. Access to data.

Notwithstanding sections 13.384, 13.85, 144.291 to 144.298, 260B.171, 260C.171, or 626.556, the assessor has access to the following private or confidential data on the person if access is relevant and necessary for the assessment:

(1) medical data under section 13.384;

(2) corrections and detention data under section 13.85;

(3) health records under sections 144.291 to 144.298;

(4) juvenile court records under sections 260B.171 and 260C.171; and

(5) local welfare agency records under section 626.556.

Data disclosed under this section may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

Subd. 3. Treatment order.

If the assessment indicates that the offender is in need of and amenable to sex offender treatment, the court shall include in the sentence a requirement that the offender undergo treatment, unless the court sentences the offender to prison.

Subd. 4. Definition.

As used in this section, "sex offense" means a violation of section 609.342; 609.343; 609.344; 609.345; 609.3451; 609.746, subdivision 1; 609.79; or 617.23; or another offense arising out of a charge based on one or more of those sections.

MINN. STAT. § 609.485 (2010). ESCAPE FROM CUSTODY

Subdivision 1. Definition.

"Escape" includes departure without lawful authority and failure to return to custody following temporary leave granted for a specific purpose or limited period.

Subd. 2. Acts prohibited.

Whoever does any of the following may be sentenced as provided in subdivision 4:

(1) escapes while held pursuant to a lawful arrest, in lawful custody on a charge or conviction of a crime, or while held in lawful custody on an allegation or adjudication of a delinquent act;

(2) transfers to another, who is in lawful custody on a charge or conviction of a crime, or introduces into an institution in which the latter is confined, anything usable in making such escape, with intent that it shall be so used;

(3) having another in lawful custody on a charge or conviction of a crime, intentionally permits the other to escape;

(4) escapes while in a facility designated under section 253B.18, subdivision 1, pursuant to a court commitment order after a finding of not guilty by reason of mental illness or mental deficiency of a crime against the person, as defined in section 253B.02, subdivision 4a. Notwithstanding section 609.17, no person may be charged with or convicted of an attempt to commit a violation of this clause;

(5) escapes while in or under the supervision of a facility designated under section 253B.18, subdivision 1, or Minnesota Statutes 1992, section 526.10;

(6) escapes while on pass status or provisional discharge according to section 253B.18; or

(7) escapes while a client of the Minnesota sex offender program as defined in section 246B.01, subdivision 1a, or subject to a court hold order under section 253B.185.

For purposes of clauses (1) and (7), "escapes while held in lawful custody" or "escapes while a client of the Minnesota sex offender program" includes absconding from electronic monitoring or absconding after removing an electronic monitoring device from the person's body.

Subd. 3. Exceptions.

This section does not apply to a person who is free on bail or who is on parole or probation, or subject to a stayed sentence or stayed execution of sentence, unless the person (1) has been taken into actual custody upon revocation of the parole, probation, or stay of the sentence or execution of sentence, (2) is in custody in a county jail or workhouse as a condition of a stayed sentence, or (3) is subject to electronic monitoring as a condition of parole, probation, or supervised release.

Subd. 3a. Dismissal of charge.

A felony charge brought under subdivision 2, clause (4) shall be dismissed if the person charged voluntarily returns to the facility within 30 days after a reasonable effort has been made to provide written notice to the person that failure to return within 30 days may result in felony charges being filed.

Subd. 4. Sentence.

(a) Except as otherwise provided in subdivision 3a, whoever violates this section may be sentenced as follows:

(1) if the person who escapes is in lawful custody for a felony, to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both;

(2) if the person who escapes is in lawful custody after a finding of not guilty by reason of mental illness or mental deficiency of a crime against the person, as defined in section 253B.02, subdivision 4a, to imprisonment for not more than one year and one day or to payment of a fine of not more than $3,000, or both;

(3) if the person who escapes is in lawful custody for a gross misdemeanor or misdemeanor, or if the person who escapes is in lawful custody on an allegation or adjudication of a delinquent act, to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both;

(4) if the person who escapes is under civil commitment under section 253B.18, to imprisonment for not more than one year and one day or to payment of a fine of not more than $3,000, or both; or

(5) if the person who escapes is under a court hold, civil commitment, or supervision under section 253B.185 or Minnesota Statutes 1992, section 526.10, to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

(b) If the escape was a violation of subdivision 2, clause (1), (2), or (3), and was effected by violence or threat of violence against a person, the sentence may be increased to not more than twice those permitted in paragraph (a), clauses (1) and (3).

(c) Unless a concurrent term is specified by the court, a sentence under this section shall be consecutive to any sentence previously imposed or which may be imposed for any

crime or offense for which the person was in custody when the person escaped.

(d) Notwithstanding paragraph (c), if a person who was committed to the commissioner of corrections under section 260B.198 escapes from the custody of the commissioner while 18 years of age, the person's sentence under this section shall commence on the person's 19th birthday or on the person's date of discharge by the commissioner of corrections, whichever occurs first. However, if the person described in this clause is convicted under this section after becoming 19 years old and after having been discharged by the commissioner, the person's sentence shall commence upon imposition by the sentencing court.

(e) Notwithstanding paragraph (c), if a person who is in lawful custody on an allegation or adjudication of a delinquent act while 18 years of age escapes from a local juvenile correctional facility, the person's sentence under this section begins on the person's 19th birthday or on the person's date of discharge from the jurisdiction of the juvenile court, whichever occurs first. However, if the person described in this paragraph is convicted after becoming 19 years old and after discharge from the jurisdiction of the juvenile court, the person's sentence begins upon imposition by the sentencing court.

(f) Notwithstanding paragraph (a), any person who escapes or absconds from electronic monitoring or removes an electric monitoring device from the person's body is guilty of a crime and shall be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than $3,000, or both. A person in lawful custody for a violation of section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, 609.221, 609.222, 609.223, 609.2231, 609.342, 609.343, 609.344, 609.345, 609.3451, or civil commitment under section 253B.185, and who escapes or absconds from electronic monitoring or removes an electronic monitoring device while under sentence may be sentenced to imprisonment for not more than five years or to a payment of a fine of not more than $10,000, or both.

MISSISSIPPI

MISS. CODE ANN. § 41-32-7 (2010). EARLIER HEARING FOR DEFENDANT WHO COULD FLEE JURISDICTION OR CAUSE PHYSICAL HARM; INTERIM COMMITMENT

Upon allegation in the complaint and upon clear and convincing proof that the defendant is under the influence of alcohol or drugs, or both, to the extent that if the defendant is served with process he will, in all likelihood, flee the jurisdiction of the court or physically harm himself or others, then the chancellor may, in his discretion, set the matter for hearing not more than five (5) days, excluding Saturdays, Sundays and legal holidays, from the filing of the complaint, and order the defendant committed and confined, without notice, until the hearing, to a chemical dependency unit, alcohol and drug unit, outpatient house or any other private facility for the treatment of chemically dependent persons.

MISS. CODE ANN. § 99-13-3 (2010). DISPOSITION OF OFFENDER WHO IS INSANE OR A PERSON WITH AN INTELLECTUAL DISABILITY BROUGHT BEFORE CONSERVATOR OF THE PEACE

When any prisoner or any person charged with a crime or delinquency is brought before any conservator of the peace, and in the course of the investigation it appears that the person was insane when the offense was committed and still is insane, or was a person with an intellectual disability to such an extent as not to be responsible for his or her act or omission at the time when the act or omission charged was made, he shall not be discharged, but the conservator of the peace shall remand the prisoner to custody and immediately report the case to the chancellor or clerk of the chancery court, whose duty it shall be to proceed with the case according to the law provided for persons with mental illness or persons with an intellectual disability.

MISS. CODE ANN. § 99-13-5 (2010). DISPOSITION OF AN ACCUSED WHO GRAND JURY HAS FOUND TO BE INSANE OR A PERSON WITH AN INTELLECTUAL DISABILITY

When any person is held in prison or on bail, charged with an offense, and the grand jury does not find a true bill for reason of insanity of the accused or for reason that the accused has an intellectual disability, which they judge to be such that he or she was not responsible for his acts or omissions at the time when the act or omission charged was committed or made, the grand jury shall certify the fact to the circuit court and shall state whether or not the insane person or person with an intellectual disability is a danger to the security of persons and property and the peace and safety of the community, and if the grand jury reports that insanity or intellectual disability and that danger, the court shall immediately give notice of the case to the chancellor or to the clerk of the chancery court, whose duty it shall be to proceed with the insane person and his estate or the person with an intellectual disability according to the law provided in the case of persons with mental illness or persons with an intellectual disability.

MISS. CODE ANN. § 99-13-7 (2010). ACQUITTAL FOR INSANITY; PRESUMPTION OF CONTINUING MENTAL ILLNESS AND DANGEROUSNESS OF PERSON ACQUITTED ON GROUND OF INSANITY; CHALLENGE TO PRESUMPTION; HEARING; RIGHT TO COUNSEL

(1) When any person is indicted for an offense and acquitted on the ground of insanity, the jury rendering the verdict shall state in the verdict that ground and whether the accused has since been restored to his sanity and whether he is dangerous to the community. If the jury certifies that the person is still insane and dangerous, the judge shall order him to be conveyed to and confined in one of the state psychiatric hospitals or institutions.

(2) There shall be a presumption of continuing mental illness and dangerousness of the person acquitted on the ground of insanity. The presumption may be challenged by the person confined to the state psychiatric hospital or institution and overcome by clear and convincing evidence that the person has been restored to sanity and is no longer dangerous to the community. The court ordering confinement of the person to a state

psychiatric hospital or institution shall conduct the hearing to determine whether the person has been restored to sanity and is no longer dangerous to the community. The person shall have the right to counsel at the hearing and if the person is indigent, counsel shall be appointed. The provisions of this subsection shall not apply to a person found by the jury to have been restored to sanity and no longer a threat to the community.

MISS. CODE ANN. § 99-13-9 (2010). ACQUITTAL ON THE GROUND OF HAVING AN INTELLECTUAL DISABILITY

When any person is indicted for an offense and acquitted on the ground of having an intellectual disability, the jury rendering the verdict shall state in the verdict that ground and whether the accused constitutes a danger to life or property and to the peace and safety of the community. If the jury certifies that the person with an intellectual disability is dangerous to the peace and safety of the community or to himself, the court shall immediately give notice of the case to the chancellor or the clerk of the chancery court, whose duty it shall be to proceed with the person according to the law provided in the case of persons with an intellectual disability, the person with an intellectual disability himself being remanded to custody to await the action of the chancery court.

MISS. CODE ANN. § 99-13-11 (2010). MENTAL EXAMINATION OF PERSON CHARGED WITH FELONY; COST

In any criminal action in the circuit court in which the mental condition of a person indicted for a felony is in question, the court or judge in vacation on motion duly made by the defendant, the district attorney or on the motion of the court or judge, may order such person to submit to a mental examination by a competent psychiatrist or psychologist selected by the court to determine his ability to make a defense; provided, however, any cost or expense in connection with such mental examination shall be paid by the county in which such criminal action is pending.

MISSOURI

MO. REV. STAT. § 552.015(2010). EVIDENCE OF MENTAL DISEASE OR DEFECT, ADMISSIBLE, WHEN

1. Evidence that the defendant did or did not suffer mental disease or defect shall not be admissible in a criminal prosecution except as provided in this section.

2. Evidence that the defendant did or did not suffer from a mental disease or defect shall be admissible in a criminal proceeding:

(1) To determine whether the defendant lacks capacity to understand the proceedings against him or to assist in his own defense as provided in section 552.020;

(2) To determine whether the defendant is criminally responsible as provided in section 552.030;

(3) To determine whether a person committed to the director of the department of mental health pursuant to this chapter shall be released as provided in section 552.040;

(4) To determine if a person in the custody of any correctional institution needs care in a mental hospital as provided in section 552.050;

(5) To determine whether a person condemned to death shall be executed as provided in sections 552.060 and 552.070;

(6) To determine whether or not the defendant, if found guilty, should be sentenced to death as provided in chapter 558, RSMo;

(7) To determine the appropriate disposition of a defendant, if guilty, as provided in sections 557.011 and 557.031, RSMo;

(8) To prove that the defendant did or did not have a state of mind which is an element of the offense;

(9) To determine if the defendant, if found not guilty by reason of mental disease or defect, should be immediately conditionally released by the court under the provisions of section 552.040 to the community or committed to a mental health or mental retardation facility. This question shall not be asked regarding defendants charged with any of the dangerous felonies as defined in section 556.061, RSMo, or with those crimes set forth in subsection 11 of section 552.040, or the attempts thereof.

MO. REV. STAT. § 552.020 (2010). LACK OF MENTAL CAPACITY BAR TO TRIAL OR CONVICTION--PSYCHIATRIC EXAMINATION, WHEN, REPORT OF--PLEA OF NOT GUILTY BY REASON OF MENTAL DISEASE, SUPPORTING PRETRIAL EVALUATION, CONDITIONS OF RELEASE--COMMITMENT TO HOSPITAL, WHEN--STATEMENTS OF ACCUSED INADMISSIBLE, WHEN--JURY MAY BE IMPANELED TO DETERMINE MENTAL FITNESS

1. No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

2. Whenever any judge has reasonable cause to believe that the accused lacks mental fitness to proceed, he shall, upon his own motion or upon motion filed by the state or by or on behalf of the accused, by order of record, appoint one or more private psychiatrists or psychologists, as defined in section 632.005, RSMo, or physicians with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, who are neither employees nor contractors of the department of mental health for purposes of performing the examination in question, to examine the accused; or shall direct the director to have the accused so examined by one or more psychiatrists or psychologists, as defined in section 632.005, RSMo, or physicians with a

minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals. The order shall direct that a written report or reports of such examination be filed with the clerk of the court. No private physician, psychiatrist, or psychologist shall be appointed by the court unless he has consented to act. The examinations ordered shall be made at such time and place and under such conditions as the court deems proper; except that, if the order directs the director of the department to have the accused examined, the director, or his designee, shall determine the time, place and conditions under which the examination shall be conducted. The order may include provisions for the interview of witnesses and may require the provision of police reports to the department for use in evaluations. The department shall establish standards and provide training for those individuals performing examinations pursuant to this section and section 552.030. No individual who is employed by or contracts with the department shall be designated to perform an examination pursuant to this chapter unless the individual meets the qualifications so established by the department. Any examination performed pursuant to this subsection shall be completed and filed with the court within sixty days of the order unless the court for good cause orders otherwise. Nothing in this section or section 552.030 shall be construed to permit psychologists to engage in any activity not authorized by chapter 337, RSMo. One pretrial evaluation shall be provided at no charge to the defendant by the department. All costs of subsequent evaluations shall be assessed to the party requesting the evaluation.

3. A report of the examination made under this section shall include:

(1) Detailed findings;

(2) An opinion as to whether the accused has a mental disease or defect;

(3) An opinion based upon a reasonable degree of medical or psychological certainty as to whether the accused, as a result of a mental disease or defect, lacks capacity to understand the proceedings against him or to assist in his own defense;

(4) A recommendation as to whether the accused should be held in custody in a suitable hospital facility for treatment pending determination, by the court, of mental fitness to proceed; and

(5) A recommendation as to whether the accused, if found by the court to be mentally fit to proceed, should be detained in such hospital facility pending further proceedings.

4. If the accused has pleaded lack of responsibility due to mental disease or defect or has given the written notice provided in subsection 2 of section 552.030, the court shall order the report of the examination conducted pursuant to this section to include, in addition to the information required in subsection 3 of this section, an opinion as to whether at the time of the alleged criminal conduct the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality, or wrongfulness of his conduct or as a result of mental disease or defect was incapable of conforming his conduct to the requirements of law. A plea of not guilty by reason of mental disease or defect shall not

be accepted by the court in the absence of any such pretrial evaluation which supports such a defense. In addition, if the accused has pleaded not guilty by reason of mental disease or defect, and the alleged crime is not a dangerous felony as defined in section 556.061, RSMo, or those crimes set forth in subsection 11 of section 552.040, or the attempts thereof, the court shall order the report of the examination to include an opinion as to whether or not the accused should be immediately conditionally released by the court pursuant to the provisions of section 552.040 or should be committed to a mental health or mental retardation facility. If such an evaluation is conducted at the direction of the director of the department of mental health, the court shall also order the report of the examination to include an opinion as to the conditions of release which are consistent with the needs of the accused and the interest of public safety, including, but not limited to, the following factors:

(1) Location and degree of necessary supervision of housing;

(2) Location of and responsibilities for appropriate psychiatric, rehabilitation and aftercare services, including the frequency of such services;

(3) Medication follow-up, including necessary testing to monitor medication compliance;

(4) At least monthly contact with the department's forensic case monitor;

(5) Any other conditions or supervision as may be warranted by the circumstances of the case.

5. If the report contains the recommendation that the accused should be committed to or held in a suitable hospital facility pending determination of the issue of mental fitness to proceed, and if the accused is not admitted to bail or released on other conditions, the court may order that the accused be committed to or held in a suitable hospital facility pending determination of the issue of mental fitness to proceed.

6. The clerk of the court shall deliver copies of the report to the prosecuting or circuit attorney and to the accused or his counsel. The report shall not be a public record or open to the public. Within ten days after the filing of the report, both the defendant and the state shall, upon written request, be entitled to an order granting them an examination of the accused by a psychiatrist or psychologist, as defined in section 632.005, RSMo, or a physician with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, of their own choosing and at their own expense. An examination performed pursuant to this subsection shall be completed and a report filed with the court within sixty days of the date it is received by the department or private psychiatrist, psychologist or physician unless the court, for good cause, orders otherwise. A copy shall be furnished the opposing party.

7. If neither the state nor the accused nor his counsel requests a second examination relative to fitness to proceed or contests the findings of the report referred to in

subsections 2 and 3 of this section, the court may make a determination and finding on the basis of the report filed or may hold a hearing on its own motion. If any such opinion is contested, the court shall hold a hearing on the issue. The court shall determine the issue of mental fitness to proceed and may impanel a jury of six persons to assist in making the determination. The report or reports may be received in evidence at any hearing on the issue but the party contesting any opinion therein shall have the right to summon and to cross-examine the examiner who rendered such opinion and to offer evidence upon the issue.

8. At a hearing on the issue pursuant to subsection 7 of this section, the accused is presumed to have the mental fitness to proceed. The burden of proving that the accused does not have the mental fitness to proceed is by a preponderance of the evidence and the burden of going forward with the evidence is on the party raising the issue. The burden of going forward shall be on the state if the court raises the issue.

9. If the court determines that the accused lacks mental fitness to proceed, the criminal proceedings shall be suspended and the court shall commit him to the director of the department of mental health.

10. Any person committed pursuant to subsection 9 of this section shall be entitled to the writ of habeas corpus upon proper petition to the court that committed him. The issue of the mental fitness to proceed after commitment under subsection 9 of this section may also be raised by a motion filed by the director of the department of mental health or by the state, alleging the mental fitness of the accused to proceed. A report relating to the issue of the accused's mental fitness to proceed may be attached thereto. If the motion is not contested by the accused or his counsel or if after a hearing on a motion the court finds the accused mentally fit to proceed, or if he is ordered discharged from the director's custody upon a habeas corpus hearing, the criminal proceedings shall be resumed.

11. The following provisions shall apply after a commitment as provided in this section:

(1) Six months after such commitment, the court which ordered the accused committed shall order an examination by the head of the facility in which the accused is committed, or a qualified designee, to ascertain whether the accused is mentally fit to proceed and if not, whether there is a substantial probability that the accused will attain the mental fitness to proceed to trial in the foreseeable future. The order shall direct that written report or reports of the examination be filed with the clerk of the court within thirty days and the clerk shall deliver copies to the prosecuting attorney or circuit attorney and to the accused or his counsel. The report required by this subsection shall conform to the requirements under subsection 3 of this section with the additional requirement that it include an opinion, if the accused lacks mental fitness to proceed, as to whether there is a substantial probability that the accused will attain the mental fitness to proceed in the foreseeable future;

(2) Within ten days after the filing of the report, both the accused and the state shall,

upon written request, be entitled to an order granting them an examination of the accused by a psychiatrist or psychologist, as defined in section 632.005, RSMo, or a physician with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, of their own choosing and at their own expense. An examination performed pursuant to this subdivision shall be completed and filed with the court within thirty days unless the court, for good cause, orders otherwise. A copy shall be furnished to the opposing party;

(3) If neither the state nor the accused nor his counsel requests a second examination relative to fitness to proceed or contests the findings of the report referred to in subdivision (1) of this subsection, the court may make a determination and finding on the basis of the report filed, or may hold a hearing on its own motion. If any such opinion is contested, the court shall hold a hearing on the issue. The report or reports may be received in evidence at any hearing on the issue but the party contesting any opinion therein relative to fitness to proceed shall have the right to summon and to cross-examine the examiner who rendered such opinion and to offer evidence upon the issue;

(4) If the accused is found mentally fit to proceed, the criminal proceedings shall be resumed;

(5) If it is found that the accused lacks mental fitness to proceed but there is a substantial probability the accused will be mentally fit to proceed in the reasonably foreseeable future, the court shall continue such commitment for a period not longer than six months, after which the court shall reinstitute the proceedings required under subdivision (1) of this subsection;

(6) If it is found that the accused lacks mental fitness to proceed and there is no substantial probability that the accused will be mentally fit to proceed in the reasonably foreseeable future, the court shall dismiss the charges without prejudice and the accused shall be discharged, but only if proper proceedings have been filed under chapter 632 or chapter 475, RSMo, in which case those sections and no others will be applicable. The probate division of the circuit court shall have concurrent jurisdiction over the accused upon the filing of a proper pleading to determine if the accused shall be involuntarily detained under chapter 632, RSMo, or to determine if the accused shall be declared incapacitated under chapter 475, RSMo, and approved for admission by the guardian under section 632.120 or 633.120, RSMo, to a mental health or retardation facility. When such proceedings are filed, the criminal charges shall be dismissed without prejudice if the court finds that the accused is mentally ill and should be committed or that he is incapacitated and should have a guardian appointed. The period of limitation on prosecuting any criminal offense shall be tolled during the period that the accused lacks mental fitness to proceed.

12. If the question of the accused's mental fitness to proceed was raised after a jury was impaneled to try the issues raised by a plea of not guilty and the court determines that the accused lacks the mental fitness to proceed or orders the accused committed for an examination pursuant to this section, the court may declare a mistrial. Declaration of a

mistrial under these circumstances, or dismissal of the charges pursuant to subsection 11 of this section, does not constitute jeopardy, nor does it prohibit the trial, sentencing or execution of the accused for the same offense after he has been found restored to competency.

13. The result of any examinations made pursuant to this section shall not be a public record or open to the public.

14. No statement made by the accused in the course of any examination or treatment pursuant to this section and no information received by any examiner or other person in the course thereof, whether such examination or treatment was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal. A finding by the court that the accused is mentally fit to proceed shall in no way prejudice the accused in a defense to the crime charged on the ground that at the time thereof he was afflicted with a mental disease or defect excluding responsibility, nor shall such finding by the court be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

MO. REV. STAT. § 552.030 (2010). MENTAL DISEASE OR DEFECT, NOT GUILTY PLEA BASED ON, PRETRIAL INVESTIGATION--EVIDENCE--NOTICE OF DEFENSE--EXAMINATION, REPORTS CONFIDENTIAL--STATEMENTS NOT ADMISSIBLE, EXCEPTION--PRESUMPTION OF COMPETENCY--VERDICT CONTENTS--ORDER OF COMMITMENT TO DEPARTMENT

1. A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect such person was incapable of knowing and appreciating the nature, quality, or wrongfulness of such person's conduct.

2. Evidence of mental disease or defect excluding responsibility shall not be admissible at trial of the accused unless the accused, at the time of entering such accused's plea to the charge, pleads not guilty by reason of mental disease or defect excluding responsibility, or unless within ten days after a plea of not guilty, or at such later date as the court may for good cause permit, the accused files a written notice of such accused's purpose to rely on such defense. Such a plea or notice shall not deprive the accused of other defenses. The state may accept a defense of mental disease or defect excluding responsibility, whether raised by plea or written notice, if the accused has no other defense and files a written notice to that effect. The state shall not accept a defense of mental disease or defect excluding responsibility in the absence of any pretrial evaluation as described in this section or section 552.020. Upon the state's acceptance of the defense of mental disease or defect excluding responsibility, the court shall proceed to order the commitment of the accused as provided in section 552.040 in cases of persons acquitted on the ground of mental disease or defect excluding responsibility, and further proceedings shall be had regarding the confinement and release of the accused as provided in section 552.040.

3. Whenever the accused has pleaded mental disease or defect excluding responsibility or

has given the written notice provided in subsection 2 of this section, and such defense has not been accepted as provided in subsection 2 of this section, the court shall, after notice and upon motion of either the state or the accused, by order of record, appoint one or more private psychiatrists or psychologists, as defined in section 632.005, RSMo, or physicians with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, who are neither employees nor contractors of the department of mental health for purposes of performing the examination in question, to examine the accused, or shall direct the director of the department of mental health, or the director's designee, to have the accused so examined by one or more psychiatrists or psychologists, as defined in section 632.005, RSMo, or physicians with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals designated by the director, or the director's designee, as qualified to perform examinations pursuant to this chapter. The order shall direct that written report or reports of such examination be filed with the clerk of the court. No private psychiatrist, psychologist, or physician shall be appointed by the court unless such psychiatrist, psychologist or physician has consented to act. The examinations ordered shall be made at such time and place and under such conditions as the court deems proper; except that, if the order directs the director of the department of mental health to have the accused examined, the director, or the director's designee, shall determine the time, place and conditions under which the examination shall be conducted. The order may include provisions for the interview of witnesses and may require the provision of police reports to the department for use in evaluation. If an examination provided in section 552.020 was made and the report of such examination included an opinion as to whether, at the time of the alleged criminal conduct, the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality or wrongfulness of such accused's conduct or as a result of mental disease or defect was incapable of conforming such accused's conduct to the requirements of law, such report may be received in evidence, and no new examination shall be required by the court unless, in the discretion of the court, another examination is necessary. If an examination is ordered pursuant to this section, the report shall contain the information required in subsections 3 and 4 of section 552.020. Within ten days after receiving a copy of such report, both the accused and the state shall, upon written request, be entitled to an order granting them an examination of the accused by an examiner of such accused's or its own choosing and at such accused's or its expense. The clerk of the court shall deliver copies of the report or reports to the prosecuting or circuit attorney and to the accused or his counsel. No reports required by this subsection shall be public records or be open to the public. Any examination performed pursuant to this subsection shall be completed and the results shall be filed with the court within sixty days of the date it is received by the department or private psychiatrist, psychologist or physician unless the court, for good cause, orders otherwise.

4. If the report contains the recommendation that the accused should be held in custody in a suitable hospital facility pending trial, and if the accused is not admitted to bail, or released on other conditions, the court may order that the accused be committed to or held in a suitable hospital facility pending trial.

5. No statement made by the accused in the course of any such examination and no information received by any physician or other person in the course thereof, whether such examination was made with or without the consent of the accused or upon the accused's motion or upon that of others, shall be admitted in evidence against the accused on the issue of whether the accused committed the act charged against the accused in any criminal proceeding then or thereafter pending in any court, state or federal. The statement or information shall be admissible in evidence for or against the accused only on the issue of the accused's mental condition, whether or not it would otherwise be deemed to be a privileged communication. If the statement or information is admitted for or against the accused on the issue of the accused's mental condition, the court shall, both orally at the time of its admission and later by instruction, inform the jury that it must not consider such statement or information as any evidence of whether the accused committed the act charged against the accused.

6. All persons are presumed to be free of mental disease or defect excluding responsibility for their conduct, whether or not previously adjudicated in this or any other state to be or to have been sexual or social psychopaths, or incompetent; provided, however, the court may admit evidence presented at such adjudication based on its probative value. The issue of whether any person had a mental disease or defect excluding responsibility for such person's conduct is one for the trier of fact to decide upon the introduction of substantial evidence of lack of such responsibility. But, in the absence of such evidence, the presumption shall be conclusive. Upon the introduction of substantial evidence of lack of such responsibility, the presumption shall not disappear and shall alone be sufficient to take that issue to the trier of fact. The jury shall be instructed as to the existence and nature of such presumption when requested by the state and, where the issue of such responsibility is one for the jury to decide, the jury shall be told that the burden rests upon the accused to show by a preponderance or greater weight of the credible evidence that the defendant was suffering from a mental disease or defect excluding responsibility at the time of the conduct charged against the defendant. At the request of the defense the jury shall be instructed by the court as to the contents of subsection 2 of section 552.040.

7. When the accused is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state as well as state the offense for which the accused was acquitted. The clerk of the court shall furnish a copy of any judgment or order of commitment to the department of mental health pursuant to this section to the criminal records central repository pursuant to section 43.503, RSMo.

MO. REV. STAT. § 552.040 (2010). DEFINITIONS--ACQUITTAL BASED ON MENTAL DISEASE OR DEFECT, COMMITMENT TO STATE HOSPITAL REQUIRED--IMMEDIATE CONDITIONAL RELEASE--CONDITIONAL OR UNCONDITIONAL RELEASE, WHEN--PRIOR COMMITMENT, AUTHORITY TO REVOKE --APPLICATIONS FOR RELEASE, NOTICE, BURDEN OF PERSUASION, CRITERIA --HEARINGS REQUIRED, WHEN--DENIAL, REAPPLICATION--ESCAPE, NOTICE --ADDITIONAL CRITERIA FOR RELEASE

1. For the purposes of this section, the following words mean:

(1) "Prosecutor of the jurisdiction", the prosecuting attorney in a county or the circuit attorney of a city not within a county;

(2) "Secure facility", a state mental health facility, state mental retardation facility, private facility under contract with the department of mental health, or a section within any of these facilities, in which persons committed to the department of mental health pursuant to this chapter, shall not be permitted to move about the facility or section of the facility, nor to leave the facility or section of the facility, without approval by the head of the facility or such head's designee and adequate supervision consistent with the safety of the public and the person's treatment, habilitation or rehabilitation plan;

(3) "Tried and acquitted" includes both pleas of mental disease or defect excluding responsibility that are accepted by the court and acquittals on the ground of mental disease or defect excluding responsibility following the proceedings set forth in section 552.030.

2. When an accused is tried and acquitted on the ground of mental disease or defect excluding responsibility, the court shall order such person committed to the director of the department of mental health for custody. The court shall also order custody and care in a state mental health or retardation facility unless an immediate conditional release is granted pursuant to this section. If the accused has not been charged with a dangerous felony as defined in section 556.061, RSMo, or with murder in the first degree pursuant to section 565.020, RSMo, or sexual assault pursuant to section 566.040, RSMo, or the attempts thereof, and the examination contains an opinion that the accused should be immediately conditionally released to the community by the court, the court shall hold a hearing to determine if an immediate conditional release is appropriate pursuant to the procedures for conditional release set out in subsections 10 to 14 of this section. Prior to the hearing, the court shall direct the director of the department of mental health, or the director's designee, to have the accused examined to determine conditions of confinement in accordance with subsection 4 of section 552.020. The provisions of subsection 16 of this section shall be applicable to defendants granted an immediate conditional release and the director shall honor the immediate conditional release as granted by the court. If the court determines that an immediate conditional release is warranted, the court shall order the person committed to the director of the department of mental health before ordering such a release. The court granting the immediate conditional release shall retain jurisdiction over the case for the duration of the conditional release. This shall not limit the authority of the director of the department of mental health or the director's designee to revoke the conditional release or the trial release of any committed person pursuant to subsection 17 of this section. If the accused is committed to a mental health or mental retardation facility, the director of the department of mental health, or the director's designee, shall determine the time, place and conditions of confinement.

3. The provisions of sections 630.110, 630.115, 630.130, 630.133, 630.135, 630.140, 630.145, 630.150, 630.180, 630.183, 630.192, 630.194, 630.196, 630.198, 630.805,

632.370, 632.395, and 632.435, RSMo, shall apply to persons committed pursuant to subsection 2 of this section. If the department does not have a treatment or rehabilitation program for a mental disease or defect of an individual, that fact may not be the basis for a release from commitment. Notwithstanding any other provision of law to the contrary, no person committed to the department of mental health who has been tried and acquitted by reason of mental disease or defect as provided in section 552.030 shall be conditionally or unconditionally released unless the procedures set out in this section are followed. Upon request by an indigent committed person, the appropriate court may appoint the office of the public defender to represent such person in any conditional or unconditional release proceeding under this section.

4. Notwithstanding section 630.115, RSMo, any person committed pursuant to subsection 2 of this section shall be kept in a secure facility until such time as a court of competent jurisdiction enters an order granting a conditional or unconditional release to a nonsecure facility.

5. The committed person or the head of the facility where the person is committed may file an application in the court that committed the person seeking an order releasing the committed person unconditionally; except that any person who has been denied an application for a conditional release pursuant to subsection 13 of this section shall not be eligible to file for an unconditional release until the expiration of one year from such denial. In the case of a person who was immediately conditionally released after being committed to the department of mental health, the released person or the director of the department of mental health, or the director's designee, may file an application in the same court that released the committed person seeking an order releasing the committed person unconditionally. Copies of the application shall be served personally or by certified mail upon the head of the facility unless the head of the facility files the application, the committed person unless the committed person files the application, or unless the committed person was immediately conditionally released, the director of the department of mental health, and the prosecutor of the jurisdiction where the committed person was tried and acquitted. Any party objecting to the proposed release must do so in writing within thirty days after service. Within a reasonable period of time after any written objection is filed, which period shall not exceed sixty days unless otherwise agreed upon by the parties, the court shall hold a hearing upon notice to the committed person, the head of the facility, if necessary, the director of the department of mental health, and the prosecutor of the jurisdiction where the person was tried. Prior to the hearing any of the parties, upon written application, shall be entitled to an examination of the committed person, by a psychiatrist or psychologist, as defined in section 632.005, RSMo, or a physician with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals of its own choosing and at its expense. The report of the mental condition of the committed person shall accompany the application. By agreement of all parties to the proceeding any report of the mental condition of the committed person which may accompany the application for release or which is filed in objection thereto may be received by evidence, but the party contesting any opinion therein shall have the right to summon and to cross-examine the examiner who rendered such opinion and to offer evidence upon the issue.

6. By agreement of all the parties and leave of court, the hearing may be waived, in which case an order granting an unconditional release shall be entered in accordance with subsection 8 of this section.

7. At a hearing to determine if the committed person should be unconditionally released, the court shall consider the following factors in addition to any other relevant evidence:

(1) Whether or not the committed person presently has a mental disease or defect;

(2) The nature of the offense for which the committed person was committed;

(3) The committed person's behavior while confined in a mental health facility;

(4) The elapsed time between the hearing and the last reported unlawful or dangerous act;

(5) Whether the person has had conditional releases without incident; and

(6) Whether the determination that the committed person is not dangerous to himself or others is dependent on the person's taking drugs, medicine or narcotics.

The burden of persuasion for any person committed to a mental health facility under the provisions of this section upon acquittal on the grounds of mental disease or defect excluding responsibility shall be on the party seeking unconditional release to prove by clear and convincing evidence that the person for whom unconditional release is sought does not have, and in the reasonable future is not likely to have, a mental disease or defect rendering the person dangerous to the safety of himself or others.

8. The court shall enter an order either denying the application for unconditional release or granting an unconditional release. An order denying the application shall be without prejudice to the filing of another application after the expiration of one year from the denial of the last application.

9. No committed person shall be unconditionally released unless it is determined through the procedures in this section that the person does not have, and in the reasonable future is not likely to have, a mental disease or defect rendering the person dangerous to the safety of himself or others.

10. The committed person or the head of the facility where the person is committed may file an application in the court having probate jurisdiction over the facility where the person is detained for a hearing to determine whether the committed person shall be released conditionally. In the case of a person committed to a mental health facility upon acquittal on the grounds of mental disease or defect excluding responsibility for a dangerous felony as defined in section 556.061, RSMo, murder in the first degree pursuant to section 565.020, RSMo, or sexual assault pursuant to section 566.040, RSMo,

any such application shall be filed in the court that committed the person. In such cases, jurisdiction over the application for conditional release shall be in the committing court. In the case of a person who was immediately conditionally released after being committed to the department of mental health, the released person or the director of the department of mental health, or the director's designee, may file an application in the same court that released the person seeking to amend or modify the existing release. The procedures for application for unconditional releases set out in subsection 5 of this section shall apply, with the following additional requirements:

(1) A copy of the application shall also be served upon the prosecutor of the jurisdiction where the person is being detained, unless the released person was immediately conditionally released after being committed to the department of mental health, or unless the application was required to be filed in the court that committed the person in which case a copy of the application shall be served upon the prosecutor of the jurisdiction where the person was tried and acquitted and the prosecutor of the jurisdiction into which the committed person is to be released;

(2) The prosecutor of the jurisdiction where the person was tried and acquitted shall use their best efforts to notify the victims of dangerous felonies. Notification by the appropriate person or agency by certified mail to the most current address provided by the victim shall constitute compliance with the victim notification requirement of this section;

(3) The application shall specify the conditions and duration of the proposed release;

(4) The prosecutor of the jurisdiction where the person is being detained shall represent the public safety interest at the hearing unless the prosecutor of the jurisdiction where the person was tried and acquitted decides to appear to represent the public safety interest. If the application for release was required to be filed in the committing court, the prosecutor of the jurisdiction where the person was tried and acquitted shall represent the public safety interest. In the case of a person who was immediately conditionally released after being committed to the department of mental health, the prosecutor of the jurisdiction where the person was tried and acquitted shall appear and represent the public safety interest.

11. By agreement of all the parties, the hearing may be waived, in which case an order granting a conditional release, stating the conditions and duration agreed upon by all the parties and the court, shall be entered in accordance with subsection 13 of this section.

12. At a hearing to determine if the committed person should be conditionally released, the court shall consider the following factors in addition to any other relevant evidence:

(1) The nature of the offense for which the committed person was committed;

(2) The person's behavior while confined in a mental health facility;

(3) The elapsed time between the hearing and the last reported unlawful or dangerous act;

(4) The nature of the person's proposed release plan;

(5) The presence or absence in the community of family or others willing to take responsibility to help the defendant adhere to the conditions of the release; and

(6) Whether the person has had previous conditional releases without incident. The burden of persuasion for any person committed to a mental health facility under the provisions of this section upon acquittal on the grounds of mental disease or defect excluding responsibility shall be on the party seeking release to prove by clear and convincing evidence that the person for whom release is sought is not likely to be dangerous to others while on conditional release.

13. The court shall enter an order either denying the application for a conditional release or granting conditional release. An order denying the application shall be without prejudice to the filing of another application after the expiration of one year from the denial of the last application.

14. No committed person shall be conditionally released until it is determined that the committed person is not likely to be dangerous to others while on conditional release.

15. If, in the opinion of the head of a facility where a committed person is being detained, that person can be released without danger to others, that person may be released from the facility for a trial release of up to ninety-six hours under the following procedure:

(1) The head of the facility where the person is committed shall notify the prosecutor of the jurisdiction where the committed person was tried and acquitted and the prosecutor of the jurisdiction into which the committed person is to be released at least thirty days before the date of the proposed trial release;

(2) The notice shall specify the conditions and duration of the release;

(3) If no prosecutor to whom notice is required objects to the trial release, the committed person shall be released according to conditions and duration specified in the notice;

(4) If any prosecutor objects to the trial release, the head of the facility may file an application with the court having probate jurisdiction over the facility where the person is detained for a hearing under the procedures set out in subsections 5 and 10 of this section with the following additional requirements:

(a) A copy of the application shall also be served upon the prosecutor of the jurisdiction into which the committed person is to be released; and

(b) The prosecutor or prosecutors who objected to the trial release shall represent the public safety interest at the hearing; and

(5) The release criteria of subsections 12 to 14 of this section shall apply at such a hearing.

16. The department shall provide or shall arrange for follow-up care and monitoring for all persons conditionally released under this section and shall make or arrange for reviews and visits with the client at least monthly, or more frequently as set out in the release plan, and whether the client is receiving care, treatment, habilitation or rehabilitation consistent with his needs, condition and public safety. The department shall identify the facilities, programs or specialized services operated or funded by the department which shall provide necessary levels of follow-up care, aftercare, rehabilitation or treatment to the persons in geographical areas where they are released.

17. The director of the department of mental health, or the director's designee, may revoke the conditional release or the trial release and request the return of the committed person if such director or coordinator has reasonable cause to believe that the person has violated the conditions of such release. If requested to do so by the director or coordinator, a peace officer of a jurisdiction in which a patient on conditional release is found shall apprehend and return such patient to the facility. No peace officer responsible for apprehending and returning the committed person to the facility upon the request of the director or coordinator shall be civilly liable for apprehending or transporting such patient to the facility so long as such duties were performed in good faith and without negligence. If a person on conditional release is returned to a facility under the provisions of this subsection, a hearing shall be held within ninety-six hours, excluding Saturdays, Sundays and state holidays, to determine whether the person violated the conditions of the release or whether resumption of full-time hospitalization is the least restrictive alternative consistent with the person's needs and public safety. The director of the department of mental health, or the director's designee, shall conduct the hearing. The person shall be given notice at least twenty-four hours in advance of the hearing and shall have the right to have an advocate present.

18. At any time during the period of a conditional release or trial release, the court which ordered the release may issue a notice to the released person to appear to answer a charge of a violation of the terms of the release and the court may issue a warrant of arrest for the violation. Such notice shall be personally served upon the released person. The warrant shall authorize the return of the released person to the custody of the court or to the custody of the director of mental health or the director's designee.

19. The head of a mental health facility, upon any notice that a committed person has escaped confinement, or left the facility or its grounds without authorization, shall immediately notify the prosecutor and sheriff of the county wherein the committed person is detained of the escape or unauthorized leaving of grounds and the prosecutor and sheriff of the county where the person was tried and acquitted.

20. Any person committed to a mental health facility under the provisions of this section upon acquittal on the grounds of mental disease or defect excluding responsibility for a dangerous felony as defined in section 556.061, RSMo, murder in the first degree pursuant to section 565.020, RSMo, or sexual assault pursuant to section 566.040, RSMo, shall not be eligible for conditional or unconditional release under the provisions of this section unless, in addition to the requirements of this section, the court finds that the following criteria are met:

(1) Such person is not now and is not likely in the reasonable future to commit another violent crime against another person because of such person's mental illness; and

(2) Such person is aware of the nature of the violent crime committed against another person and presently possesses the capacity to appreciate the criminality of the violent crime against another person and the capacity to conform such person's conduct to the requirements of law in the future.

MO. REV. STAT. § 552.050 (2010). MENTAL ILLNESS DURING SERVICE OF SENTENCE, PROCEEDINGS RELATED THERETO

1. If the chief administrative officer of any correctional facility has reasonable cause to believe that any offender needs care in a mental hospital, he shall so certify to the division of classification and treatment, which shall then transfer the offender to a state mental hospital for custody, care and treatment. The hospital may detain and treat the offender for a period of time not to exceed ninety-six hours. At the expiration of the ninety-six hours, the offender shall be returned to a correctional facility designated by the department of corrections unless the individual admits himself as a voluntary patient or the mental health coordinator or head of the facility files for involuntary detention and treatment pursuant to chapter 632, RSMo. The petition filed pursuant to section 632.330, RSMo, shall be filed in the court having probate jurisdiction over the mental health facility in which the offender is being detained. The offender shall have the rights afforded respondents in sections 632.330 and 632.335, RSMo, except that at the conclusion of the hearing on the petition the court may order the offender detained for a period of time not to exceed ninety days. At the expiration of the ninety-day commitment period ordered by the court, the offender may be detained and treated involuntarily for up to an additional one year under sections 632.355 and 632.360, RSMo.

2. When an offender needs care in a mental hospital and is committed or transferred to a state mental hospital, the time spent at the mental hospital shall be calculated as a part of the sentence imposed upon him whether the sentence is an indeterminate one or for a definite period of time. The time spent at the mental hospital shall be deducted from the term of the sentence.

3. When an offender who has been transferred from a correctional facility to a state mental hospital recovers before the expiration of his sentence, the superintendent of the hospital shall so certify in writing to the division of classification and treatment. He shall thereupon be transferred to such correctional facility as the department may direct.

4. An offender who has been committed to or transferred to a state mental hospital and is still mentally ill at the expiration of his sentence may be discharged and delivered to any person who is able and willing to maintain him comfortably and to the satisfaction of the superintendent of the hospital, if, in the opinion of the superintendent, it is reasonably safe for the person to be at large. Before discharging the offender the superintendent shall receive verification of the expiration of the offender's sentence from the director of corrections. The person so discharged may, in the discretion of the superintendent, be provided with the whole or a portion of the allowances granted to discharged prisoners by section 217.285, RSMo. The cost of such allowance shall be paid from the same funds as are allowances granted to persons discharged directly from a correctional facility.

5. When the term of an offender who has been committed or transferred to a state mental hospital has expired and the person, in the opinion of the hospital superintendent, is still in need of care in a mental hospital and for the welfare and safety of himself and others should remain in the hospital for custody, care and treatment, he shall be retained in the hospital only if proper involuntary detention proceedings have been instituted and held as provided in chapter 632, RSMo. Thereafter this chapter and no other shall be applicable to his continued hospitalization and discharge.

MO. REV. STAT. § 552.060 (2010). MENTAL DISEASE OR DEFECT UPON SENTENCE TO DEATH

1. No person condemned to death shall be executed if as a result of mental disease or defect he lacks capacity to understand the nature and purpose of the punishment about to be imposed upon him or matters in extenuation, arguments for executive clemency or reasons why the sentence should not be carried out.

2. If the director of the department of corrections has reasonable cause to believe that any inmate then in confinement in a correctional facility and sentenced to death has a mental disease or defect excluding fitness for execution, he shall immediately notify the governor who shall forthwith order a stay of execution of the sentence if there is not sufficient time between such notification and time of execution for a determination of the mental condition of such person to be made in accordance with the provisions of this section without such stay. The director shall also, as soon as reasonably possible, notify the director of the department of mental health and the prosecuting or circuit attorney of the county where the defendant was tried, the attorney general and the circuit court of the county where the correctional facility is located.

3. As soon as reasonably possible, after the notification prescribed in subsection 2 of this section, the circuit court of the county shall conduct an inquiry into the mental condition of the offender after first granting any of the parties entitled to notification an examination by a physician of their own choosing on proper application made within five days of such notification.

4. If the court, after such inquiry, certifies to the governor and to the director that the prisoner does not have a mental disease or defect of the type referred to in subsection 1 of this section, the governor shall fix a new date for the execution, if a stay of execution had

previously been made, and shall issue a warrant for the new execution date to the chief administrative officer of the correctional facility, who shall then proceed with the execution as ordered. If the court, after such inquiry, certifies to the governor and to the director that the prisoner has a mental disease or defect of the type referred to in subsection 1 of this section, the offender shall not be executed but shall be held in the correctional facility subject to transfer to a mental hospital and further proceedings under section 552.050 if the provisions of section 552.050 are applicable. If any offender who has not been executed because of any certification by the director as herein provided is thereafter certified by the director as free of a mental disease or defect of the type referred to in subsection 1 of this section, the governor shall fix a new date for the execution and shall issue a warrant for the new execution date to the chief administrative officer of the correctional facility, who shall then take charge and custody of the offender and proceed with the execution as ordered in the warrant.

5. Nothing in this chapter shall be construed to limit the governor or any court in the exercise of any of their powers in any other manner under the law or Constitution of Missouri.

MO. REV. STAT. § 632.475 (2010). SEXUAL PSYCHOPATHS COMMITTED BEFORE AUGUST 13, 1980, EFFECT -- APPLICATION FOR RELEASE, HEARING PROCEDURE -- LAW OFFICERS TO BE GIVEN NOTICE OF PROBATION OR DISCHARGE

1. Persons committed to the department as criminal sexual psychopaths under statutes in effect before August 13, 1980, shall remain committed under those statutes, except as provided in this section.

2. At any time after commitment, a written application setting forth facts showing that the person committed as a criminal sexual psychopath has improved to the extent that his release will not be incompatible to the welfare of society may be filed with the committing court. The court shall issue an order returning the person to the jurisdiction of the court for a hearing. This hearing shall in all respects be like the original hearing under the statutes in effect before August 13, 1980, to determine the mental condition of the defendant. Following the hearing, the court shall issue an order to cause the defendant either to be placed on probation for a minimum period of three years, or to be returned to the department to continue his commitment; except that upon the expiration of the probationary period and after further hearing by the court, the person may be discharged. When the defendant is placed on probation or discharged, notice of such action shall be given immediately to the law enforcement authorities of the city and county of residence of the defendant, and the city and county where the defendant is to be released.

MO. REV. STAT. § 632.484 (2010). DETENTION AND EVALUATION OF PERSONS ALLEGED TO BE SEXUALLY VIOLENT PREDATORS -- DUTIES OF ATTORNEY GENERAL AND DEPARTMENT OF MENTAL HEALTH

1. When the attorney general receives written notice from any law enforcement agency that a person, who has pled guilty to or been convicted of a sexually violent offense and

who is not presently in the physical custody of an agency with jurisdiction has committed a recent overt act, the attorney general may file a petition for detention and evaluation with the probate division of the court in which the person was convicted, or committed pursuant to chapter 552, RSMo, alleging the respondent may meet the definition of a sexually violent predator and should be detained for evaluation for a period of up to nine days. The written notice shall include the previous conviction record of the person, a description of the recent overt act, if applicable, and any other evidence which tends to show the person to be a sexually violent predator. The attorney general shall provide notice of the petition to the prosecuting attorney of the county where the petition was filed.

2. Upon a determination by the court that the person may meet the definition of a sexually violent predator, the court shall order the detention and transport of such person to a secure facility to be determined by the department of mental health. The attorney general shall immediately give written notice of such to the department of mental health.

3. Upon receiving physical custody of the person and written notice pursuant to subsection 2 of this section, the department of mental health shall, through either a psychiatrist or psychologist as defined in section 632.005, make a determination whether or not the person meets the definition of a sexually violent predator. The department of mental health shall, within seven days of receiving physical custody of the person, provide the attorney general with a written report of the results of its investigation and evaluation. The attorney general shall provide any available records of the person that are retained by the department of corrections to the department of mental health for the purposes of this section. If the department of mental health is unable to make a determination within seven days, the attorney general may request an additional detention of ninety-six hours from the court for good cause shown.

4. If the department determines that the person may meet the definition of a sexually violent predator, the attorney general shall provide the results of the investigation and evaluation to the prosecutors' review committee. The prosecutors' review committee shall, by majority vote, determine whether or not the person meets the definition of a sexually violent predator within twenty-four hours of written notice from the attorney general's office. If the prosecutors' review committee determines that the person meets the definition of a sexually violent predator, the prosecutors' review committee shall provide written notice to the attorney general of its determination. The attorney general may file a petition pursuant to section 632.486 within forty-eight hours after obtaining the results from the department.

5. For the purposes of this section "recent overt act" means any act that creates a reasonable apprehension of harm of a sexually violent nature.

MO. REV. STAT. § 632.489 (2010). PROBABLE CAUSE DETERMINED--SEXUALLY VIOLENT PREDATOR TAKEN INTO CUSTODY, WHEN--HEARING, PROCEDURE--EXAMINATION BY DEPARTMENT OF MENTAL HEALTH

1. Upon filing a petition pursuant to section 632.484 or 632.486, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such probable cause determination is made, the judge shall direct that person be taken into custody and direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person under the provisions of section 632.495.

2. Within seventy-two hours after a person is taken into custody pursuant to subsection 1 of this section, excluding Saturdays, Sundays and legal holidays, such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall:

(1) Verify the detainee's identity; and

(2) Determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

3. At the probable cause hearing as provided in subsection 2 of this section, the detained person shall have the following rights in addition to the rights previously specified:

(1) To be represented by counsel;

(2) To present evidence on such person's behalf;

(3) To cross-examine witnesses who testify against such person; and

(4) To view and copy all petitions and reports in the court file, including the assessment of the multidisciplinary team.

4. If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility, which may include a county jail as set forth in section 632.495, to house the person. The court shall direct the director of the department of mental health to have the person examined by a psychiatrist or psychologist as defined in section 632.005 who was not a member of the multidisciplinary team that previously reviewed the person's records. In addition, such person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense. Any examination shall be conducted in the facility in which the person is confined. Any examinations ordered shall be made at such time and under such conditions as the court deems proper; except that, if the order directs the

director of the department of mental health to have the person examined, the director shall determine the time, place and conditions under which the examination shall be conducted. The psychiatrist or psychologist conducting such an examination shall be authorized to interview family and associates of the person being examined, as well as victims and witnesses of the person's offense or offenses, for use in the examination unless the court for good cause orders otherwise. The psychiatrist or psychologist shall have access to all materials provided to and considered by the multidisciplinary team and to any police reports related to sexual offenses committed by the person being examined. Any examination performed pursuant to this section shall be completed and filed with the court within sixty days of the date the order is received by the director or other evaluator unless the court for good cause orders otherwise. One examination shall be provided at no charge by the department. All costs of any subsequent evaluations shall be assessed to the party requesting the evaluation.

MO. REV. STAT. § 632.492 (2010). TRIAL -- PROCEDURE -- ASSISTANCE OF COUNSEL, RIGHT TO JURY, WHEN

Within sixty days after the completion of any examination held pursuant to section 632.489, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings pursuant to sections 632.480 to 632.513, any person subject to sections 632.480 to 632.513 shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. If the trial is held before a jury, the judge shall instruct the jury that if it finds that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment. If no demand for a jury is made, the trial shall be before the court. The court shall conduct all trials pursuant to this section in open court, except as otherwise provided for by the child victim witness protection law pursuant to sections 491.675 to 491.705, RSMo.

MO. REV. STAT. § 632.495 (2010). UNANIMOUS VERDICT REQUIRED--OFFENDER COMMITTED TO CUSTODY OF DEPARTMENT OF MENTAL HEALTH, WHEN--CONTRACTING WITH COUNTY JAILS, WHEN--RELEASE, WHEN--MISTRIAL PROCEDURES

1. The court or jury shall determine whether, by clear and convincing evidence, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Any determination as to whether a person is a sexually violent predator may be appealed.

2. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment until such time as the person's mental abnormality has so

changed that the person is safe to be at large. Such control, care and treatment shall be provided by the department of mental health.

3. At all times, persons ordered to the department of mental health after a determination by the court that such persons may meet the definition of a sexually violent predator, persons ordered to the department of mental health after a finding of probable cause under section 632.489, and persons committed for control, care and treatment by the department of mental health pursuant to sections 632.480 to 632.513 shall be kept in a secure facility designated by the director of the department of mental health and such persons shall be segregated at all times from any other patient under the supervision of the director of the department of mental health. The department of mental health shall not place or house a person ordered to the department of mental health after a determination by the court that such person may meet the definition of a sexually violent predator, a person ordered to the department of mental health after a finding of probable cause under section 632.489, or a person committed for control, care, and treatment by the department of mental health, pursuant to sections 632.480 to 632.513, with other mental health patients. The provisions of this subsection shall not apply to a person who has been conditionally released under section 632.505.

4. The department of mental health is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the department of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

5. The department of mental health is authorized to enter into a contract agreement with one or more county jails in Missouri for the confinement of persons ordered to the department of mental health after a determination by the court that such persons may meet the definition of a sexually violent predator or for the confinement of persons ordered to the department of mental health after a finding of probable cause under section 632.489. Such persons who are in the confinement of a county jail pursuant to a contract agreement shall be housed and managed separately from offenders in the custody of the county jail, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

6. If the court or jury is not satisfied by clear and convincing evidence that the person is a sexually violent predator, the court shall direct the person's release.

7. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued as provided in section 632.492.

MO. REV. STAT. § 632.498 (2010). ANNUAL EXAMINATION OF MENTAL CONDITION, NOT REQUIRED, WHEN -- ANNUAL REVIEW BY THE COURT -- PETITION FOR RELEASE, HEARING, PROCEDURES (WHEN DIRECTOR APPROVES)

1. Each person committed pursuant to sections 632.480 to 632.513 shall have a current examination of the person's mental condition made once every year by the director of the department of mental health or designee. The yearly report shall be provided to the court that committed the person pursuant to sections 632.480 to 632.513. The court shall conduct an annual review of the status of the committed person. The court shall not conduct an annual review of a person's status if he or she has been conditionally released pursuant to section 632.505.

2. Nothing contained in sections 632.480 to 632.513 shall prohibit the person from otherwise petitioning the court for release. The director of the department of mental health shall provide the committed person who has not been conditionally released with an annual written notice of the person's right to petition the court for release over the director's objection. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

3. If the committed person petitions the court for conditional release over the director's objection, the petition shall be served upon the court that committed the person, the director of the department of mental health, the head of the facility housing the person, and the attorney general.

4. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing. If the court at the hearing determines by a preponderance of the evidence that the person no longer suffers from a mental abnormality that makes the person likely to engage in acts of sexual violence if released, then the court shall set a trial on the issue.

5. The trial shall be governed by the following provisions:

(1) The committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding;

(2) The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by a psychiatrist or psychologist not employed by the department of mental health or the department of corrections. In addition, the person may be examined by a consenting psychiatrist or psychologist of the person's choice at the person's own expense;

(3) The burden of proof at the trial shall be upon the state to prove by clear and convincing evidence that the committed person's mental abnormality remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence. If such determination is made by a jury, the verdict must be unanimous;

(4) If the court or jury finds that the person's mental abnormality remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence, the person shall remain in the custody of the department of mental health in a secure facility designated by the director of the department of mental health. If the court or jury finds that the person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released, the person shall be conditionally released as provided in section 632.505.

MONTANA

MONT. CODE ANN. § 46-14-221 (2010). DETERMINATION OF FITNESS TO PROCEED -- EFFECT OF FINDING OF UNFITNESS -- EXPENSES.

(1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the

reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) Except as provided in subsection (6), the expenses of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services, of the care, custody, and treatment of the defendant at the facility, and of transporting the defendant back are payable by the court or, in district court proceedings, by the office of court administrator.

(6) The cost of care, custody, and treatment at a facility for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator.

MONT. CODE ANN. § 46-14-222 (2010). PROCEEDINGS IF FITNESS REGAINED.

When the court, on its own motion or upon the application of the director of the department of public health and human services, the prosecution, or the defendant or the defendant's legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate facility of the department of public health and human services.

MONT. CODE ANN. § 46-14-301 (2010). COMMITMENT UPON FINDING OF NOT GUILTY BY REASON OF LACK OF MENTAL STATE -- HEARING TO DETERMINE RELEASE OR DISCHARGE -- LIMITATION ON CONFINEMENT.

(1) When a defendant is found not guilty for the reason that due to a mental disease or

defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the director of the department of public health and human services must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(a) serious bodily injury or death to the person or others;

(b) an imminent threat of physical injury to the person or others; or

(c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment proceedings may be instituted in the manner provided in Title 53, chapter 21.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3).

MONT. CODE ANN. § 46-14-303 (2010). APPLICATION FOR DISCHARGE OR RELEASE BY COMMITTED PERSON.

A committed person may make application for discharge or release to the district court by which the person was committed unless that court transfers jurisdiction to the court in the district in which the person has been placed, and the procedure to be followed upon the application is the same as that prescribed in 46-14-302 in the case of an application by the director of the department of public health and human services. However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge.

MONT. CODE ANN. § 46-14-311 (2010). CONSIDERATION OF MENTAL DISEASE OR DEFECT OR DEVELOPMENTAL DISABILITY IN SENTENCING.

(1) Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims at the time of the omnibus hearing held pursuant to 46-13-110 or, if no omnibus hearing is held, at the time of any change of plea by the defendant that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect or developmental disability that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall also consider the results of the presentence investigation required pursuant to subsection (2).

(2) Under the circumstances referred to in subsection (1), the sentencing court shall order a presentence investigation and a report on the investigation pursuant to 46-18-111. The investigation must include a mental evaluation by a person appointed by the director of the department of public health and human services or the director's designee. The evaluation must include an opinion as to whether the defendant suffered from a mental

disease or defect or developmental disability with the effect as described in subsection (1). If the opinion concludes that the defendant did suffer from a mental disease or defect or developmental disability with the effect as described in subsection (1), the evaluation must also include a recommendation as to the care, custody, and treatment needs of the defendant.

MONT. CODE ANN. § 46-14-312 (2010). SENTENCE TO BE IMPOSED.

(1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect or developmental disability as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, in an appropriate correctional facility, mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental disabilities facility, as defined in 53-20-202, for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after considering the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, subsequently transfer the defendant to another correctional, mental health, residential, or developmental disabilities facility that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

(c) the defendant suffers from a mental disease or defect or developmental disability but is not a danger to the defendant or others; or

(d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the defendant or others, but:

(i) there is no treatment available for the mental disease or defect;

(ii) the defendant refuses to cooperate with treatment; or

(iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

MONT. CODE ANN. § 46-14-313 (2010). DISCHARGE OF DEFENDANT FROM SUPERVISION.

At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312, the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

NEBRASKA

NEB. REV. STAT. ANN. § 29-4003 (2010). APPLICABILITY OF ACT.

(1) (a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(F) Sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386;

(G) Incest of a minor pursuant to section 28-703;

(H) Pandering of a minor pursuant to section 28-802;

(I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

(K) Criminal child enticement pursuant to section 28-311;

(L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(M) Debauching a minor pursuant to section 28-805; or

(N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i) (A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(I) Murder in the first degree pursuant to section 28-303;

(II) Murder in the second degree pursuant to section 28-304;

(III) Manslaughter pursuant to section 28-305;

(IV) Assault in the first degree pursuant to section 28-308;

(V) Assault in the second degree pursuant to section 28-309;

(VI) Assault in the third degree pursuant to section 28-310;

(VII) Stalking pursuant to section 28-311.03;

(VIII) Unlawful intrusion on a minor pursuant to section 28-311.08;

(IX) Kidnapping pursuant to section 28-313;

(X) False imprisonment pursuant to section 28-314 or 28-315;

(XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;

(XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;

(XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;

(XIV) Incest pursuant to section 28-703;

(XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;

(XVI) Enticement by electronic communication device pursuant to section 28-833; or

(XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A) (I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other

jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

NEB. REV. STAT. ANN. § 71-919 (2010). MENTALLY ILL AND DANGEROUS PERSON; DANGEROUS SEX OFFENDER; EMERGENCY PROTECTIVE CUSTODY; EVALUATION BY MENTAL HEALTH PROFESSIONAL.

(1) A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender and that the harm described in section 71-908 or subdivision (1) of section 83-174.01 is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated to obtain custody of the person may take such person into emergency protective custody, cause him or her to be taken into emergency protective custody, or continue his or her custody if he or she is already in custody. Such person shall be admitted to an appropriate and available medical facility, jail, or Department of Correctional Services facility as provided in subsection (2) of this section. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities. A mental health professional who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender may cause such person to be taken into custody and shall have a limited privilege to hold such person until a law enforcement officer or other authorized person arrives to take custody of such person.

(2) (a) A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section 29-4003.

(b) A person taken into emergency protective custody under this section who has a prior conviction for a sex offense listed in section 29-4003 shall be admitted to a jail or Department of Correctional Services facility unless a medical or psychiatric emergency exists for which treatment at a medical facility is required. The person in emergency protective custody shall remain at the medical facility until the medical or psychiatric emergency has passed and it is safe to transport such person, at which time the person shall be transferred to an available jail or Department of Correctional Services facility.

(3) Upon admission to a facility of a person taken into emergency protective custody by a law enforcement officer under this section, such officer shall execute a written certificate

prescribed and provided by the Department of Health and Human Services. The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender and shall contain a summary of the person's behavior supporting such allegations. A copy of such certificate shall be immediately forwarded to the county attorney.

(4) The administrator of the facility shall have such person evaluated by a mental health professional as soon as reasonably possible but not later than thirty-six hours after admission. The mental health professional shall not be the mental health professional who causes such person to be taken into custody under this section and shall not be a member or alternate member of the mental health board that will preside over any hearing under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act with respect to such person. A person shall be released from emergency protective custody after completion of such evaluation unless the mental health professional determines, in his or her clinical opinion, that such person is mentally ill and dangerous or a dangerous sex offender.

NEB. REV. STAT. ANN. § 71-1202 (2010). PURPOSE OF ACT

The purpose of the Sex Offender Commitment Act is to provide for the court-ordered treatment of sex offenders who have completed their sentences but continue to pose a threat of harm to others. It is the public policy of the State of Nebraska that dangerous sex offenders be encouraged to obtain voluntary treatment. If voluntary treatment is not obtained, such persons shall be subject to involuntary custody and treatment only after mental health board proceedings as provided by the Sex Offender Commitment Act. Such persons shall be subjected to emergency protective custody under limited conditions and for a limited period of time.

NEB. REV. STAT. ANN. § 71-1209 (2010). BURDEN OF PROOF; MENTAL HEALTH BOARD; HEARING; ORDERS AUTHORIZED; CONDITIONS; REHEARING

(1) The state has the burden to prove by clear and convincing evidence that (a) the subject is a dangerous sex offender and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01.

(2) If the mental health board finds that the subject is not a dangerous sex offender, the board shall dismiss the petition and order the unconditional discharge of the subject.

(3) If the mental health board finds that the subject is a dangerous sex offender but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than treatment ordered by the mental health board are available and would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the board shall (a) dismiss the petition and order the unconditional discharge of the subject or (b) suspend further proceedings for a period of up to ninety days to permit the subject to obtain voluntary treatment. At any time during such ninety-day period, the county attorney may

apply to the board for reinstatement of proceedings with respect to the subject, and after notice to the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, the board shall hear the application. If no such application is filed or pending at the conclusion of such ninety-day period, the board shall dismiss the petition and order the unconditional discharge of the subject.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the board shall, within forty-eight hours, (a) order the subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment. If the subject is ordered by the board to receive inpatient treatment, the order shall commit the subject to the custody of the Department of Health and Human Services for such treatment.

(5) A subject who (a) is ordered by the mental health board to receive inpatient treatment and (b) has not yet been admitted for such treatment pursuant to such order may petition for a rehearing by the mental health board based on improvement in the subject's condition such that inpatient treatment ordered by the board would no longer be necessary or appropriate.

(6) A treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. The county attorney and the subject may jointly offer a proposed treatment order for adoption by the board. The board may enter the proposed order without a full hearing.

(7) The mental health board may request the assistance of the Department of Health and Human Services or any other person or public or private entity to advise the board prior to the entry of a treatment order pursuant to this section and may require the subject to submit to reasonable psychiatric and psychological evaluation to assist the board in preparing such order. Any mental health professional conducting such evaluation at the request of the mental health board shall be compensated by the county or counties served by such board at a rate determined by the district judge and reimbursed for mileage at the rate provided in section 81-1176.

NEB. REV. STAT. ANN. § 83-174 (2010). REGISTERED SEX OFFENDER; RELEASE OR TERMINATION OF SUPERVISION; NOTICE REQUIRED; COUNTY ATTORNEY; DUTIES

(1) At least ninety days prior to the release from incarceration or civil commitment or the termination of probation or parole supervision of an individual who is required to register under section 29-4003, the agency with jurisdiction over the individual shall provide

notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which an individual is incarcerated, supervised, or committed.

(2) The Board of Parole shall also provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which such individual is incarcerated or committed within five days after scheduling a parole hearing for an individual who is required to register under section 29-4003.

(3) A county attorney shall, no later than forty-five days after receiving notice of the pending release of an individual pursuant to this section, notify the Attorney General whether the county attorney intends to initiate civil commitment proceedings against such individual upon his or her release from custody.

NEB. REV. STAT. ANN. § 83-174.01 (2010). DANGEROUS SEX OFFENDER; TERMS, DEFINED

For purposes of sections 83-174 to 83-174.05:

(1) Dangerous sex offender means (a) a person who suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses, and who is substantially unable to control his or her criminal behavior or (b) a person with a personality disorder which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of two or more sex offenses, and who is substantially unable to control his or her criminal behavior;

(2) Likely to engage in repeat acts of sexual violence means the person's propensity to commit sex offenses resulting in serious harm to others is of such a degree as to pose a menace to the health and safety of the public;

(3) Person who suffers from a mental illness means an individual who has a mental illness as defined in section 71-907;

(4) Person with a personality disorder means an individual diagnosed with a personality disorder;

(5) Sex offense means any of the offenses listed in section 29-4003 for which registration as a sex offender is required; and

(6) Substantially unable to control his or her criminal behavior means having serious difficulty in controlling or resisting the desire or urge to commit sex offenses.

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NEV. REV. STAT. ANN. § 175.533 (2010). FINDING OF GUILTY BUT MENTALLY ILL UPON PLEA OF NOT GUILTY BY REASON OF INSANITY; REQUIRED FINDINGS; EFFECT OF FINDING.

1. During a trial, upon a plea of not guilty by reason of insanity, the trier of fact may find the defendant guilty but mentally ill if the trier of fact finds all of the following:

(a) The defendant is guilty beyond a reasonable doubt of an offense;

(b) The defendant has established by a preponderance of the evidence that due to a disease or defect of the mind, the defendant was mentally ill at the time of the commission of the offense; and

(c) The defendant has not established by a preponderance of the evidence that the defendant is not guilty by reason of insanity pursuant to subsection 5 of NRS 174.035.

2. Except as otherwise provided by specific statute, a defendant who is found guilty but mentally ill is subject to the same criminal, civil and administrative penalties and procedures as a defendant who is found guilty.

3. If the trier of fact finds a defendant guilty but mentally ill pursuant to subsection 1, the court shall cause, on a form prescribed by the Department of Public Safety, a record of the finding to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

4. As used in this section:

(a) "Disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

(b) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

NEV. REV. STAT. ANN. § 175.539 (2010). ACQUITTAL BY REASON OF INSANITY: DEFENDANT TO BE EXAMINED; HEARING TO BE HELD TO DETERMINE WHETHER DEFENDANT IS MENTALLY ILL; PROCEDURE FOR COMMITTING DEFENDANT TO CUSTODY OF DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL SERVICES.

1. Where on a trial a defense of insanity is interposed by the defendant and the defendant is acquitted by reason of that defense, the finding of the jury pending the judicial determination pursuant to subsection 2 has the same effect as if the defendant were regularly adjudged insane, and the judge must:

(a) Order a peace officer to take the person into protective custody and transport the

person to a forensic facility for detention pending a hearing to determine the person's mental health;

(b) Order the examination of the person by two psychiatrists, two psychologists, or one psychiatrist and one psychologist who are employed by a division facility; and

(c) At a hearing in open court, receive the report of the examining advisers and allow counsel for the State and for the person to examine the advisers, introduce other evidence and cross-examine witnesses.

2. If the court finds, after the hearing:

(a) That there is not clear and convincing evidence that the person is a person with mental illness, the court must order the person's discharge; or

(b) That there is clear and convincing evidence that the person is a person with mental illness, the court must order that the person be committed to the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services until the person is discharged or conditionally released therefrom in accordance with NRS 178.467 to 178.471, inclusive.

The court shall issue its finding within 90 days after the defendant is acquitted.

3. The Administrator shall make the reports and the court shall proceed in the manner provided in NRS 178.467 to 178.471, inclusive.

4. If the court accepts a verdict acquitting a defendant by reason of insanity pursuant to this section, the court shall cause, on a form prescribed by the Department of Public Safety, a record of that verdict to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

5. As used in this section, unless the context otherwise requires:

(a) "Division facility" has the meaning ascribed to it in NRS 433.094.

(b) "Forensic facility" means a secure facility of the Division of Mental Health and Developmental Services of the Department of Health and Human Services for offenders and defendants with mental disorders. The term includes, without limitation, Lakes Crossing Center.

(c) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

(d) "Person with mental illness" has the meaning ascribed to it in NRS 178.3986.

NEV. REV. STAT. ANN. § 178.405 (2010). SUSPENSION OF TRIAL OR PRONOUNCEMENT OF JUDGMENT WHEN DOUBT ARISES AS TO COMPETENCE OF DEFENDANT; NOTICE OF SUSPENSION TO BE PROVIDED TO OTHER DEPARTMENTS

1. Any time after the arrest of a defendant, including, without limitation, proceedings before trial, during trial, when upon conviction the defendant is brought up for judgment or when a defendant who has been placed on probation or whose sentence has been suspended is brought before the court, if doubt arises as to the competence of the defendant, the court shall suspend the proceedings, the trial or the pronouncing of the judgment, as the case may be, until the question of competence is determined.

2. If the proceedings, the trial or the pronouncing of the judgment are suspended, the court must notify any other departments of the court of the suspension in writing. Upon receiving such notice, the other departments of the court shall suspend any other proceedings relating to the defendant until the defendant is determined to be competent.

NEV. REV. STAT. ANN. § 178.425 (2010). PROCEDURE ON FINDING DEFENDANT INCOMPETENT.

1. If the court finds the defendant incompetent, and dangerous to himself or herself or to society and that commitment is required for a determination of the defendant's ability to receive treatment to competency and to attain competence, the judge shall order the sheriff to convey the defendant forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, into the custody of the Administrator or the Administrator's designee for detention and treatment at a division facility that is secure. The order may include the involuntary administration of medication if appropriate for treatment to competency.

2. The defendant must be held in such custody until a court orders the defendant's release or until the defendant is returned for trial or judgment as provided in NRS 178.450, 178.455 and 178.460.

3. If the court finds the defendant incompetent but not dangerous to himself or herself or to society, and finds that commitment is not required for a determination of the defendant's ability to receive treatment to competency and to attain competence, the judge shall order the defendant to report to the Administrator or the Administrator's designee as an outpatient for treatment, if it might be beneficial, and for a determination of the defendant's ability to receive treatment to competency and to attain competence. The court may require the defendant to give bail for any periodic appearances before the Administrator or the Administrator's designee.

4. Except as otherwise provided in subsection 5, proceedings against the defendant must be suspended until the Administrator or the Administrator's designee or, if the defendant is charged with a misdemeanor, the judge finds the defendant capable of standing trial or opposing pronouncement of judgment as provided in NRS 178.400.

5. Whenever the defendant has been found incompetent, with no substantial probability of attaining competency in the foreseeable future, and released from custody or from obligations as an outpatient pursuant to paragraph (d) of subsection 4 of NRS 178.460, the proceedings against the defendant which were suspended must be dismissed. No new charge arising out of the same circumstances may be brought after a period, equal to the maximum time allowed by law for commencing a criminal action for the crime with which the defendant was charged, has lapsed since the date of the alleged offense.

6. If a defendant is found incompetent pursuant to this section, the court shall cause, on a form prescribed by the Department of Public Safety, a record of that finding to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

7. As used in this section, "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

NEV. REV. STAT. ANN. § 178.430 (2010). COMMITMENT OF DEFENDANT EXONERATES BAIL.

The commitment of the defendant, as mentioned in NRS 178.425, shall exonerate any bail the defendant may have given, or shall entitle any person authorized to receive the property of the defendant to a return of any money the defendant may have deposited instead of bail.

NEV. REV. STAT. ANN. § 178.461 (2010). MOTION FOR HEARING TO DETERMINE WHETHER TO COMMIT INCOMPETENT DEFENDANT TO CUSTODY OF ADMINISTRATOR; RISK ASSESSMENT; LENGTH OF COMMITMENT; REVIEW OF ELIGIBILITY FOR CONDITIONAL RELEASE.

1. If the proceedings against a defendant who is charged with any category A felony or a category B felony listed in subsection 6 are dismissed pursuant to subsection 5 of NRS 178.425, the prosecuting attorney may, within 10 judicial days after the dismissal, file a motion with the court for a hearing to determine whether to commit the person to the custody of the Administrator pursuant to subsection 3. The court shall hold the hearing within 10 judicial days after the motion is filed with the court.

2. If the prosecuting attorney files a motion pursuant to subsection 1, the prosecuting attorney shall, not later than the date on which the prosecuting attorney files the motion, request from the Division a comprehensive risk assessment which indicates whether the person requires the level of security provided by a forensic facility. The Division shall provide the requested comprehensive risk assessment to the court, the prosecuting attorney and counsel for the person not later than three judicial days before the hearing.

3. At a hearing held pursuant to subsection 1, if the court finds by clear and convincing evidence that the person has a mental disorder, that the person is a danger to himself or

herself or others and that the person's dangerousness is such that the person requires placement at a forensic facility, the court may order:

(a) The sheriff to take the person into protective custody and transport the person to a forensic facility; and

(b) That the person be committed to the custody of the Administrator and kept under observation until the person is eligible for conditional release pursuant to NRS 178.463 or until the maximum length of commitment described in subsection 4 has expired.

4. The length of commitment of a person pursuant to subsection 3 must not exceed 10 years, including any time that the person has been on conditional release pursuant to NRS 178.463.

5. At least once every 12 months, the court shall review the eligibility of the defendant for conditional release.

6. The provisions of subsection 1 apply to any of the following category B felonies:

(a) Voluntary manslaughter pursuant to NRS 200.050;

(b) Mayhem pursuant to NRS 200.280;

(c) Kidnapping in the second degree pursuant to NRS 200.330;

(d) Assault with a deadly weapon pursuant to NRS 200.471;

(e) Battery with a deadly weapon pursuant to NRS 200.481;

(f) Aggravated stalking pursuant to NRS 200.575;

(g) First degree arson pursuant to NRS 205.010;

(h) Burglary with a deadly weapon pursuant to NRS 205.060;

(i) Invasion of the home with a deadly weapon pursuant to NRS 205.067;

(j) Any category B felony involving the use of a firearm; and

(k) Any attempt to commit a category A felony.

NEV. REV. STAT. ANN. § 178.468 (2010). PERSON COMMITTED TO CUSTODY OF ADMINISTRATOR; ELIGIBILITY FOR DISCHARGE OR CONDITIONAL RELEASE; RECOMMITMENT FOR FAILURE TO COMPLY WITH CONDITIONS.

1. The Administrator or the Administrator's designee shall keep each person with a mental illness committed to his or her custody pursuant to NRS 175.539 under

observation.

2. A person committed to the custody of the Administrator pursuant to NRS 175.539 is eligible for:

(a) Discharge from commitment if the person establishes by a preponderance of the evidence that the person would not be a danger, as a result of any mental disorder, to himself or herself or to the person or property of another if discharged; or

(b) Conditional release from commitment if the person establishes by a preponderance of the evidence that the person would not be a danger, as a result of any mental disorder, to himself or herself or to the person or property of another if released from commitment with conditions imposed by the court in consultation with the Division.

3. If a person who is conditionally released from the custody of the Administrator fails to comply with any condition imposed by the court, the court shall issue an order to have the person recommitted to the custody of the Administrator.

NEV. REV. STAT. ANN. § 178.469 (2010). PETITION FOR DISCHARGE OR CONDITIONAL RELEASE BY PERSON COMMITTED TO CUSTODY OF ADMINISTRATOR.

1. A person committed to the custody of the Administrator pursuant to NRS 175.539 may petition the court for discharge or conditional release not sooner than 1 year after the person is committed to the custody of the Administrator and not more than once each year thereafter.

2. The Division may file a petition for the discharge or conditional release of a person committed to the custody of the Administrator pursuant to NRS 175.539 at any time if the petition is accompanied by an affidavit of a physician or licensed psychologist which states that the mental disorder of the person has improved since the date of the most recent hearing concerning the discharge or conditional release of the person such that the physician or licensed psychologist recommends the discharge or conditional release of the person.

3. A person who is committed to the custody of the Administrator pursuant to NRS 175.539 may apply for discharge or conditional release pursuant to subsection 1 by:

(a) Filing a petition for discharge or conditional release with the court that ordered the person committed pursuant to NRS 175.539; and

(b) Providing a copy of the petition to the Division and the prosecuting attorney.

4. The Division may file a petition for discharge or conditional release pursuant to subsection 2 by:

(a) Filing the petition with the court that ordered the person committed to the custody

of the Administrator pursuant to NRS 175.539;

(b) Including with the petition an affidavit of a physician or licensed psychologist pursuant to subsection 2; and

(c) Providing a copy of the petition to the person committed to the custody of the Administrator, the person's attorney and the prosecuting attorney.

NEW HAMPSHIRE

N.H. REV. STAT. ANN. § 135:17 (2010). COMPETENCY; COMMITMENT FOR EVALUATION.

I. (a) When a person is charged or indicted for any offense, or is bound over by any district or superior court to await the action of the grand jury, the district or superior court before which he or she is to be tried, if a plea of insanity is made in court, or said court is notified by either party that there is a question as to the competency or sanity of the person, may make such order for a pre-trial examination of such person by a qualified psychiatrist or psychologist on the staff of any public institution or by a private qualified psychiatrist or psychologist as the circumstances of the case may require, which order may include, though without limitation, examination at the secure psychiatric unit on an out-patient basis, the utilization of local mental health clinics on an in- or out-patient basis, or the examination of such person, should he or she be incarcerated for any reason, at his or her place of detention by qualified psychiatrists or psychologists assigned to a state or local mental health facility. Such pre-trial examination shall be completed within 45 days in the case of a person being held at a county correctional facility, otherwise 90 days after the date of the order for such examination, unless either party requests an extension of this period. For the purposes of this paragraph and RSA 135:17-a, III, "qualified" means board-eligible or board-certified in forensic psychiatry or psychology, or demonstrated competence and experience in completing court-ordered forensic criminal evaluations. A licensed out-of-state psychiatrist or psychologist who meets the definition of qualified may also conduct evaluations under this paragraph and RSA 135:17-a, III.

(b) In cases where the person is being held at a county correctional facility, the facility may request a pre-trial examination of such person for the purpose of determining if the person is competent to stand trial. Such request shall be reviewed, and a decision rendered by the district or superior court before which he or she is to be tried.

(c) In cases where the person is incarcerated and a pre-trial examination has not been performed within 45 days of the court's order, the court shall, upon request of the person, order an evaluation by a qualified psychiatrist or psychologist. The court shall favorably consider a request that the psychiatrist or psychologist be treated as a defense expert who shall be compensated pursuant to RSA 604-A:6.

(d) In cases where the person is incarcerated and an examination has not been performed, the court before which he or she is to be tried shall review the person's bail status on a monthly basis.

II. The district or superior court may allow the parties to obtain separate competency evaluations if such request is made and the circumstances require it. The competency evaluations shall address:

(a) Whether the defendant suffers from a mental disease or defect; and

(b) Whether the defendant has a rational and factual understanding of the proceedings against him or her, and sufficient present ability to consult with and assist his or her lawyer on the case with a reasonable degree of rational understanding.

III. If the examiner concludes that the defendant is not competent to stand trial under the definition set forth in II(b), the evaluation shall include the examiner's findings as to whether there is a course of treatment which is reasonably likely to restore the defendant to competency.

N.H. REV. STAT. ANN. § 135:17-A (2010). COMPETENCY HEARING; COMMITMENT FOR TREATMENT.

I. If, after hearing, the district court or superior court determines that the defendant is not competent to stand trial, the court shall order treatment for the restoration of competency unless it determines, by clear and convincing evidence, that there is no reasonable likelihood that the defendant can be restored to competency through appropriate treatment within 12 months. If the court finds, by clear and convincing evidence, that the defendant cannot be restored to competency within 12 months, the case against the defendant shall be dismissed without prejudice and the court shall proceed as provided in paragraph V.

II. If the defendant is to undergo treatment to restore competency, he or she may be treated in the state mental health system or at the secure psychiatric unit only under an order for involuntary admission or involuntary emergency admission ordered by the district court or probate court having jurisdiction pursuant to RSA 135-C. In all other cases, the accused shall, if otherwise qualified, be admitted to bail. The court may order bail supervision by the division of field services and impose such conditions, in addition to the appropriate course of treatment to restore competency, as the court deems necessary to ensure the appearance of the defendant for further proceedings in the case, and the safety of the defendant and the community.

III. Except for good cause shown, a further hearing to determine the defendant's competency shall be held no later than 12 months after the order committing the defendant for treatment. The hearing may be held earlier if the court is notified that the defendant has been restored to competency, or that there is no longer a reasonable likelihood of such restoration. Prior to the scheduled hearing, the qualified psychiatrist or psychologist who conducted the initial competency evaluation shall conduct a further

evaluation pursuant to RSA 135:17, and furnish a copy of the report of such evaluation to the court and the parties. If that qualified psychiatrist or psychologist is unavailable or unable to conduct such further evaluation, the court may order that the evaluation be conducted by another qualified psychiatrist or psychologist other than the treating qualified psychiatrist or psychologist.

IV. If following the hearing, the court determines that the defendant has regained competency, the court shall docket the matter for trial. If the court finds that the defendant has not regained competency, the case against the defendant shall be dismissed without prejudice.

V. If the court has determined that the defendant has not regained competency, and the court determines that he or she is dangerous to himself or herself or others, the court shall order the person to remain in custody for a reasonable period of time, not to exceed 90 days, to be evaluated for the appropriateness of involuntary treatment pursuant to RSA 135-C:34 or RSA 171-B:2. The court may order the person to submit to examinations by a physician, psychiatrist, or psychologist designated by the state for the purpose of evaluating appropriateness and completing the certificate for involuntary admission into the state mental health services system, the state developmental services delivery system, or the secure psychiatric unit, as the case may be. If a defendant who was charged with a sexually violent offense, as defined in RSA 135-E:2, XI, has not regained competency, the court shall proceed pursuant to RSA 135-E.

VI. If the person is ordered to be involuntarily committed following proceedings pursuant to RSA 135-C or RSA 171-B, the court may, upon motion of the attorney general or county attorney at any time during the period of the involuntary commitment and before expiration of the limitations period applicable to the underlying criminal offense, order a further competency evaluation, to be conducted as prescribed in paragraph III. Such further competency evaluations may be ordered if the court finds that there is a reasonable basis to believe that the person's condition has changed such that competency to stand trial may have been affected. During proceedings authorized by this paragraph, the person is entitled to the assistance of counsel, including appointed counsel under RSA 135-C:22.

VII. Upon a finding that the defendant is not competent to stand trial, the court, at the competency hearing, shall determine if the competency report shall be available to the receiving facility, as defined in RSA 135-C:26, or the secure psychiatric unit. Before the court determines whether to provide the competency report to the receiving facility or the secure psychiatric unit, the court shall provide the defendant with an opportunity to object. The court shall consider the defendant's privacy interest in the content of the competency report and the receiving facility's, or the secure psychiatric unit's, need to review the competency report for purposes of treatment.

N.H. REV. STAT. ANN. § 135-E:1 (2010). FINDINGS AND INTENT.

The general court finds that a small but extremely dangerous number of sexually violent predators exist who have antisocial personality features which are unamenable to existing

mental illness treatment modalities, and those features render them likely to engage in criminal, sexually violent behavior. The general court further finds that the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedures for the treatment and care of mentally ill persons are inadequate to address the risk these sexually violent predators pose to society. The general court further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from the traditional treatment modalities for people appropriate for commitment under existing law. It is therefore the intent of the general court to create a civil commitment procedure for the long-term care and treatment of sexually violent predators. This procedure primarily targets individuals who are nearing completion of their maximum sentence of imprisonment, having been refused parole, who pose a high risk of repeated acts of predatory behavior if released to the community.

N.H. REV. STAT. ANN. § 135-E:4 (2010). RELEASE FROM TOTAL CONFINEMENT; TRANSFERS; PETITION TO HOLD IN CUSTODY.

I. In the event that a person who has been convicted of a sexually violent offense is eligible for immediate release on parole pursuant to RSA 651-A:6, I(c), or upon completion of the maximum term of incarceration, the agency with jurisdiction shall provide immediate notice to the county attorney or attorney general of the person's release. The county attorney or attorney general or the agency with jurisdiction may file a petition for an emergency hearing in the superior court requesting that the person subject to immediate release be evaluated by the multidisciplinary team to determine whether the person is a sexually violent predator. The hearing shall be held within 24 hours of the filing of the petition, excluding Saturdays, Sundays, and holidays. The person shall not be released from total confinement until after the hearing has been held. At the hearing, the court shall determine whether there is probable cause to believe that the person is a sexually violent predator. If the court finds probable cause, the person shall be held in an appropriate secure facility.

II. Within 72 hours after finding probable cause, excluding Saturdays, Sundays, and holidays, the multidisciplinary team shall assess whether the person meets the definition of a sexually violent predator. If the multidisciplinary team determines that the person does not meet the definition of a sexually violent predator, the department of health and human services shall provide notice to the county attorney or attorney general and that person shall be immediately released. If the multidisciplinary team determines that the person meets the definition of a sexually violent predator, the team shall provide the county attorney or attorney general with its written assessment and recommendation within the 72-hour period or, if the 72-hour period ends on a weekend or holiday, within the next business day thereafter.

III. Within 48 hours after receipt of the written assessment and recommendation from the multidisciplinary team, excluding Saturdays, Sundays, and holidays, the county attorney or attorney general may file a petition with the superior court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. If a

petition is not filed within the prescribed time period by the county attorney or attorney general, the person shall be immediately released. If a petition is filed pursuant to this section, the person shall be held in an appropriate secure facility for further proceedings in accordance with this chapter.

IV. A person shall be released if the multidisciplinary team or the county attorney or attorney general do not comply with the time limitations in this section. Failure to comply with the time limitations, which results in the release of a person who has been convicted of a sexually violent offense, is not dispositive of the case and does not prevent the county attorney or attorney general from filing a petition against a person otherwise subject to the provisions of this chapter. Notwithstanding RSA 135-E:24, II, the court shall not consider any petition filed more than 6 months after the person's release from incarceration unless the timing of the petition is due to newly discovered material facts, which shall be alleged in the petition.

N.H. REV. STAT. ANN. § 135-E:5 (2010). PERSONS FOUND INCOMPETENT TO STAND TRIAL.

I. If the county attorney or attorney general seeks to civilly commit a person charged with a sexually violent offense and found incompetent to stand trial, the court shall order the person to remain in custody for a reasonable period of time, not to exceed 90 days, for proceedings pursuant to this section.

II. The court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue shall comply with all the procedures specified in this section. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged beyond a reasonable doubt. In determining whether the state has met its burden, the court shall consider the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including the person's ability to assist his or her counsel by recounting the facts, identifying witnesses, testifying in his or her own defense, or providing other relevant information or assistance to counsel or the court. If the person's incompetence substantially interferes with the person's ability to assist his or her counsel, the court shall not find the person committed the act or acts charged unless the court can conclude beyond a reasonable doubt that the acts occurred, and that the strength of the state's case, including physical evidence, eyewitness testimony, and corroborating evidence, is such that the person's limitations could not have had a substantial impact on the proceedings. If, after the conclusion of the hearing, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable to the supreme court on that issue. If the person appeals, the person shall be held in an appropriate secure facility. If the person does not appeal or if the appeal is unsuccessful, the court shall proceed as specified in this section.

III. Within 90 days after the court finds that the person committed the act or acts charged or after appeal, the multidisciplinary team shall conduct an evaluation pursuant to the procedures outlined in RSA 135-E:3 to determine whether the person meets the definition of a sexually violent predator and the department of health and human services shall

provide to the county attorney or attorney general a written report of the multidisciplinary team's findings as to whether the person meets the definition of a sexually violent predator.

N.H. REV. STAT. ANN. § 135-E:6 (2010). PETITION; CONTENTS.

If the multidisciplinary team finds the person meets the definition of a sexually violent predator, the county attorney or attorney general may file a petition within 14 days with the superior court alleging that the person is a sexually violent predator and stating facts sufficient to support such allegation. At the time of the filing, and in lieu of the court issuing an order of notice, the county attorney or attorney general shall forward a copy of the petition to the person who is the subject of the petition, or to that person's attorney if one was appointed to represent the person pursuant to RSA 135-E:23. If the county attorney or attorney general does not file a petition within 14 days, and the person is otherwise subject to release, the person shall be released.

N.H. REV. STAT. ANN. § 135-E:7 (2010). DETERMINATION OF PROBABLE CAUSE.

I. When the county attorney or attorney general files a petition seeking to have a person declared a sexually violent predator, within 10 days of the filing of the petition, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the court determines based on the content of the petition that there is probable cause to believe that the person is a sexually violent predator, the court shall order that the person remain in custody and be held in an appropriate secure facility for further proceedings in accordance with this chapter. The court shall schedule a preliminary pre-trial conference within 10 business days of its probable cause determination.

II. If the offender's incarcerative sentence expires before a hearing on the merits of a petition for civil commitment pursuant to this chapter, the court shall conduct a probable cause hearing within 2 days of the expiration of the person's incarcerative sentence. If the court concludes following the hearing that there is probable cause to believe that the person is a sexually violent predator, the court shall order that the person remain in custody and held in an appropriate secure facility for further proceedings in accordance with this chapter.

III. A probable cause hearing shall not be required under this section if the court has already made a probable cause determination pursuant to RSA 135-E:4, I.

N.H. REV. STAT. ANN. § 135-E:12 (2010). EXAMINATIONS; RELEASE OF COMMITTED PERSONS.

I. Prior to the expiration of the initial commitment order or any recommittal order, the county attorney or attorney general may file a petition to recommit the person.

II. If the state petitions to renew the committal, the court shall hold a hearing. The person is entitled to be present and is entitled to the benefit of all procedural protections afforded the person at the initial trial, except for the right to a jury. The state has the right to have

the person examined by professionals chosen by the state. At the hearing, the state bears the burden of proving, by clear and convincing evidence, that the person remains a sexually violent predator. Any recommittal order shall be valid for a period of up to 5 years.

N.H. REV. STAT. ANN. § 135-E:13 (2010). AUTHORIZED PETITION FOR RELEASE.

I. If the commissioner, or designee, at any time determines that the person is not likely to commit acts of sexual violence if discharged, the commissioner or his or her designee shall notify the court and the court shall hold a hearing. The petition shall be served upon the court and the county attorney or attorney general. The court, upon receipt of such notice, shall schedule a hearing within 60 days, unless continued for good cause.

II. The county attorney or attorney general shall represent the state, and has the right to have the person examined by professionals of the county attorney's or attorney general's choice. The state bears the burden of proving, by clear and convincing evidence, that the person remains a sexually violent predator.

NEW JERSEY

N.J. STAT. ANN. § 2C:4-6 (2010). DETERMINATION OF FITNESS TO PROCEED; EFFECT OF FINDING OF UNFITNESS; PROCEEDINGS IF FITNESS IS REGAINED; POST-COMMITMENT HEARING

a. When the issue of the defendant's fitness to proceed is raised, the issue shall be determined by the court. If neither the prosecutor nor counsel for the defendant contests the finding of the report filed pursuant to section 2C:4-5, the court may make the determination on the basis of such report. If the finding is contested or if there is no report, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, either party shall have the right to summon and examine the psychiatrists or licensed psychologists who joined in the report and to offer evidence upon the issue.

b. If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection c. of this section. At this time, the court may commit him to the custody of the Commissioner of Human Services to be placed in an appropriate institution if it is found that the defendant is so dangerous to himself or others as to require institutionalization, or it shall proceed to determine whether placement in an out-patient setting or release is appropriate; provided, however, that no commitment to any institution shall be in excess of such period of time during which it can be determined whether it is substantially probable that the defendant could regain his competence within the foreseeable future.

If the court determines that the defendant is fit to proceed, but suffers from mental illness,

as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), that does not require institutionalization, the court shall order the defendant to be provided appropriate treatment in the jail or prison in which the defendant is incarcerated. Where the defendant is incarcerated in a county correctional facility, the county shall provide or arrange for this treatment. The Department of Corrections shall reimburse the county for the reasonable costs of treatment, as determined by the Commissioner of Corrections, provided that the county has submitted to the commissioner such documentation and verification as the commissioner shall require.

c. If the defendant has not regained his fitness to proceed within three months, the court shall hold a hearing on the issue of whether the charges against him shall be dismissed with prejudice or held in abeyance.

The hearing shall be held only upon notice to the prosecutor and with an opportunity for the prosecutor to be heard. When the charges are not dismissed, each defendant's case shall be specifically reviewed by the court at six-month intervals until an order is made by the court that the defendant stand trial or that the charges be dismissed.

There shall be a presumption that charges against a defendant who is not competent to proceed shall be held in abeyance. The presumption can be overcome only if the court determines, using the factors set forth in this subsection, that continuing the criminal prosecution under the particular circumstances of the case would constitute a constitutionally significant injury to the defendant attributable to undue delay in being brought to trial.

In determining whether the charges shall be held in abeyance or dismissed, the court shall weigh the following factors: the defendant's prospects for regaining competency; the period of time during which the defendant has remained incompetent; the nature and extent of the defendant's institutionalization; the nature and gravity of the crimes charged; the effects of delay on the prosecution; the effects of delay on the defendant, including any likelihood of prejudice to the defendant in the trial arising out of the delay; and the public interest in prosecuting the charges.

d. When the court, on its own motion or upon application of the commissioner, his designee or either party, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceedings shall be resumed.

e. (Deleted by amendment, P.L.1996, c.133).

f. The fact that the defendant is unfit to proceed does not preclude determination of any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

N.J. STAT. ANN. § 2C:4-8 (2010). COMMITMENT OF A PERSON BY REASON OF INSANITY

a. After acquittal by reason of insanity, the court shall order that the defendant undergo a

psychiatric examination by a psychiatrist of the prosecutor's choice. If the examination cannot take place because of the unwillingness of the defendant to participate, the court shall proceed as in section 2C:4-5c. The defendant, pursuant to this section, may also be examined by a psychiatrist of his own choice.

b. The court shall dispose of the defendant in the following manner:

(1) If the court finds that the defendant may be released without danger to the community or himself without supervision, the court shall so release the defendant; or

(2) If the court finds that the defendant may be released without danger to the community or to himself under supervision or under conditions, the court shall so order; or

(3) If the court finds that the defendant cannot be released with or without supervision or conditions without posing a danger to the community or to himself, it shall commit the defendant to a mental health facility approved for this purpose by the Commissioner of Human Services to be treated as a person civilly committed. In all proceedings conducted pursuant to this section and pursuant to section N.J.S.2C:4-6 concerning a defendant who lacks the fitness to proceed, including any periodic review proceeding, the prosecuting attorney shall have the right to appear and be heard. The defendant's continued commitment, under the law governing civil commitment, shall be established by a preponderance of the evidence, during the maximum period of imprisonment that could have been imposed, as an ordinary term of imprisonment, for any charge on which the defendant has been acquitted by reason of insanity. Expiration of that maximum period of imprisonment shall be calculated by crediting the defendant with any time spent in confinement for the charge or charges on which the defendant has been acquitted by reason of insanity.

c. No person committed under this section shall be confined within any penal or correctional institution or any part thereof.

N.J. STAT. ANN. § 2C:4-9 (2010). RELEASE OF PERSONS COMMITTED BY REASON OF INSANITY

a. If a person has been committed pursuant to section 2C:4-8 or section 2C:4-6 and if the commissioner, or his designee, or the superintendent of the institution to which the person has been committed, is of the view that a person committed to his custody, pursuant to section 2C:4-8 or section 2C:4-6, may be discharged or released on condition without danger to himself or to others, or that he may be transferred to a less restrictive setting for treatment, the commissioner or superintendent shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the prosecutor, the court, and defense counsel. The court may, in its discretion, appoint at least two qualified psychiatrists, neither of whom may be on the staff of the hospital to which the defendant had been committed, to examine such person and to report within 30 days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his mental condition.

b. The court shall hold a hearing to determine whether the committed person may be safely discharged, released on condition without danger to himself or others, or treated as in civil commitment. The hearing shall be held upon notice to the prosecutor and with the prosecutor's opportunity to be heard. Any such hearing shall be deemed a civil proceeding. According to the determination of the court upon the hearing, the court shall proceed as in section 2C:4-8b. (1), (2) or (3).

c. A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the commissioner.

d. Each defendant's case shall be specifically reviewed as provided by the law governing civil commitment.

N.J. STAT. ANN. § 30:1-2.4 (2010). DESIGNATION OF HOSPITAL TO ADMIT PERSONS INVOLUNTARILY COMMITTED

a. In order to ensure the safety of patients, employees and the general public as well as appropriate treatment, a criminal defendant, sentenced inmate, person being examined or treated for fitness to proceed pursuant to N.J.S.2C:4-5 and N.J.S.2C:4-6, person acquitted of a criminal charge by reason of insanity pursuant to N.J.S.2C:4-9, or person who is committed pursuant to section 4 of P.L.1994,c.134 (C.30:4-82.4), who is in need of involuntary commitment shall not be admitted to a State psychiatric hospital, unless the Commissioner of Human Services has specifically designated the hospital to admit these persons. The court shall commit these persons to the custody of the Commissioner of Human Services for placement in an appropriate, designated hospital.

b. Within 30 days of the date of enactment of this act, the commissioner shall designate those State psychiatric hospitals which may admit one or more of the persons specified in subsection a. of this section. The designation of a hospital shall be subject to renewal every five years. In the event the commissioner proposes changes either upon renewal of a designation or during the five year period that would result in a State psychiatric hospital being designated for an additional category of person specified in subsection a. of this section, the commissioner shall provide notice of the proposed change to the legislators of a district in which that State psychiatric facility either borders upon or is contained within.

c. The commissioner shall:

(1) arrange for a public hearing in the vicinity of the affected State psychiatric hospital concerning the proposed change; and

(2) review and consider a summary of all comments made at the public hearing prior to making a final decision regarding the proposed change.

N.J. STAT. ANN. § 30:4-27.3 (2010). INVOLUNTARY COMMITMENT [EFFECTIVE UNTIL AUGUST 11, 2010]

The standards and procedures in this act apply to all adults involuntarily committed to a short-term care facility, psychiatric facility or special psychiatric hospital and all adults voluntarily admitted from a screening service to a short-term care facility or psychiatric facility. The standards and procedures in this act shall not apply to adults voluntarily admitted to psychiatric units in general hospitals or special psychiatric hospitals, except as provided in section 11 or 20 of this amendatory and supplementary act.

N.J. STAT. ANN. § 30:4-27.3 (2010). INVOLUNTARY COMMITMENT TO TREATMENT [EFFECTIVE AUGUST 11, 2010]

The standards and procedures in this act apply to all adults involuntarily committed to treatment, including those assigned to an outpatient treatment provider or admitted to a short-term care facility, psychiatric facility or special psychiatric hospital and all adults voluntarily admitted from a screening service to a short-term care facility or psychiatric facility. The standards and procedures in this act shall not apply to adults voluntarily admitted to psychiatric units in general hospitals or special psychiatric hospitals, except as provided in section 11 or 20 of P.L.1987, c.116 (C.30:4-27.11 or C.30:4-27.20).

N.J. STAT. ANN. § 30:4-27.15 (2010). COURT FINDINGS RELATIVE TO INVOLUNTARY COMMITMENT [EFFECTIVE UNTIL AUGUST 11, 2010]

a. If the court finds by clear and convincing evidence that the patient needs continued involuntary commitment, it shall issue an order authorizing the involuntary commitment of the patient and shall schedule a subsequent court hearing in the event the patient is not administratively discharged pursuant to section 17 of P.L. 1987, c. 116 (C. 30:4-27.17) prior thereto.

b. If the court finds that the patient does not need continued involuntary commitment, the court shall so order. A patient who is serving a term of incarceration shall be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and any other patient shall be discharged by the facility within 48 hours of the court's verbal order or by the end of the next working day, whichever is longer, with a discharge plan prepared pursuant to section 18 of P.L. 1987, c. 116 (C. 30:4-27.18).

c. (1) The court may discharge the patient subject to conditions, if the court finds that the person does not need involuntary or continued involuntary commitment and the court finds:

(a) that the patient's history indicates a high risk of rehospitalization because of the patient's failure to comply with discharge plans; or

(b) that there is substantial likelihood that by reason of mental illness the patient will be dangerous to himself, others or property if the patient does not receive other appropriate and available services that render involuntary commitment unnecessary.

(2) Conditions imposed pursuant to this section shall include those recommended by the facility and mental health agency staff and developed with the participation of the patient. Conditions imposed on the patient shall be specific and their duration shall not exceed 90 days unless the court determines, in a case in which the Attorney General or a county prosecutor participated, that the conditions should be imposed for a longer period. If the court imposes conditions for a period exceeding six months, the court shall provide for a review hearing on a date the court deems appropriate but in no event later than six months from the date of the order. The review hearing shall be conducted in the manner provided in this section, and the court may impose any order authorized pursuant to this section.

(3) The designated mental health agency staff person shall notify the court if the patient fails to meet the conditions of the discharge plan, and the court shall issue an order directing that the person be taken to a screening service for an assessment. The court shall determine, in conjunction with the findings of a screening service, if the patient needs to be rehospitalized and, if so, the patient shall be returned to the facility. The court shall hold a hearing within 20 days of the day the patient was returned to the facility to determine if the order of conditional discharge should be vacated.

d. Notwithstanding subsection a. of this section, or any provision of section 16, 17 or 18 of P.L. 1987, c. 116 (C. 30:4-27.16, 30:4-27.17, or 30:4-27.18), no person committed while serving a term of incarceration shall be discharged by the court or administratively discharged prior to the date on which the person's maximum term would have expired had he not been committed. If the person is no longer in need of involuntary commitment, the person shall be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and the person shall be given day for day credit for all time during which the person was committed.

e. Notwithstanding subsection a. of this section, or any provision of section 16, 17 or 18 of P.L. 1987, c. 116 (C. 30:4-27.16, 30:4-27.17, or 30:4-27.18), no person committed pursuant to N.J.S. 2C:4-8 concerning acquittal of a criminal charge by reason of insanity or pursuant to N.J.S. 2C:4-6 concerning lack of mental competence to stand trial shall be discharged by the court or administratively discharged unless the prosecuting attorney in the case receives prior notice and an opportunity to be heard.

N.J. STAT. ANN. § 30:4-27.15 (2010). COURT FINDINGS RELATIVE TO INVOLUNTARY COMMITMENT TO TREATMENT [EFFECTIVE AUGUST 11, 2010]

a. If the court finds by clear and convincing evidence that the patient needs continued involuntary commitment to treatment, it shall issue an order authorizing the involuntary commitment of the patient and the assignment or admission of the patient pursuant to section 17 of P.L.2009, c.112 (C.30:4-27.15a) and shall schedule a subsequent court hearing in the event the patient is not administratively discharged pursuant to section 17 of P.L.1987, c.116 (C.30:4-27.17) prior thereto.

b. If the court finds that the patient does not need continued involuntary commitment to treatment, the court shall so order. A patient who is serving a term of incarceration shall be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and any other patient shall be discharged by the facility within 48 hours of the court's verbal order or by the end of the next working day, whichever is longer, with a discharge plan prepared pursuant to section 18 of P.L.1987, c.116 (C.30:4-27.18).

c. (1) The court may discharge the patient subject to conditions, if the court finds that the person does not need involuntary or continued involuntary commitment to treatment and the court finds:

(a) that the patient's history indicates a high risk of rehospitalization because of the patient's failure to comply with discharge plans; or

(b) that there is substantial likelihood that by reason of mental illness the patient will be dangerous to himself, others or property if the patient does not receive other appropriate and available services that render involuntary commitment to treatment unnecessary.

(2) Conditions imposed pursuant to this section shall include those recommended by the facility and mental health agency and developed with the participation of the patient. Conditions imposed on the patient shall be specific and their duration shall not exceed 90 days unless the court determines, in a case in which the Attorney General or a county prosecutor participated, that the conditions should be imposed for a longer period. If the court imposes conditions for a period exceeding six months, the court shall provide for a review hearing on a date the court deems appropriate but in no event later than six months from the date of the order. The review hearing shall be conducted in the manner provided in this section, and the court may impose any order authorized pursuant to this section.

(3) The designated mental health agency staff person shall notify the court if the patient fails to meet the conditions of the discharge plan, and the court shall issue an order directing that the person be taken to a screening service for an assessment. The court shall determine, in conjunction with the findings of a screening service, if the patient needs to be rehospitalized and, if so, the patient shall be returned to the facility. The court shall hold a hearing within 20 days of the day the patient was returned to the facility to determine if the order of conditional discharge should be vacated.

d. Notwithstanding subsection a. of this section, or any provision of section 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27.16, 30:4-27.17 or 30:4-27.18), no person committed while serving a term of incarceration shall be discharged by the court or administratively discharged prior to the date on which the person's maximum term would have expired had he not been committed. If the person is no longer in need of involuntary commitment to treatment, the person shall be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in

accordance with law, and the person shall be given day for day credit for all time during which the person was committed.

e. Notwithstanding subsection a. of this section, or any provision of section 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27.16, 30:4-27.17 or 30:4-27.18), no person committed pursuant to N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of insanity or pursuant to N.J.S.2C:4-6 concerning lack of mental competence to stand trial shall be discharged by the court or administratively discharged unless the prosecuting attorney in the case receives prior notice and an opportunity to be heard.

N.J. STAT. ANN. § 30:4-27.17 (2010). DISCHARGE DETERMINATION [EFFECTIVE UNTIL AUGUST 11, 2010]

a. The treatment team at a short-term care or psychiatric facility or special psychiatric hospital shall, subject to the limitations set forth in subsections b. and c. of this section, administratively discharge a patient from involuntary commitment status if the treatment team determines that the patient no longer needs involuntary commitment. If a discharge plan has not been developed pursuant to section 18 of this act, it shall be developed forthwith.

b. If the patient is confined pursuant to an order entered under section 15 of P.L. 1987, c. 116 (C. 30:4-27.15) in a case in which the Attorney General or a county prosecutor participated, the treatment team shall, no less than 10 days prior to the proposed date of administrative discharge, provide written notice to the committing court and to the person or persons who presented the case for involuntary commitment. If, within five days of receipt of such notice, a person who presented the case for commitment files a request for a hearing on the issue of continuing need for commitment and serves notice of that request, in accordance with the provisions of section 13 of P.L. 1987, c. 116 (C. 30:4-27.13), the treatment team shall delay the administrative discharge and the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 15 of P.L. 1987, c. 116 (C. 30:4-27.15).

c. If the patient is confined pursuant to an order entered under N.J.S. 2C:4-8 concerning acquittal of a criminal charge by reason of insanity or under N.J.S. 2C:4-6 concerning lack of mental competence to stand trial, the treatment team shall, no less than 10 days prior to the proposed date of administrative discharge, provide written notice to the committing court and to the prosecutor. If, within five days of receipt of such notice, the prosecutor files a request for a hearing on the issue of continuing need for commitment and serves notice of that request, in accordance with the provisions of section 13 of P.L. 1987, c. 116 (C. 30:4-27.13), the treatment team shall delay the administrative discharge and the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 15 of P.L. 1987, c. 116 (C. 30:4-27.15).

N.J. STAT. ANN. § 30:4-27.17 (2010). DISCHARGE DETERMINATION [EFFECTIVE AUGUST 11, 2010]

a. The treatment team at an outpatient treatment provider, short-term care or psychiatric facility or special psychiatric hospital shall, subject to the limitations set forth in

subsections b. and c. of this section, administratively discharge a patient from involuntary commitment status if the treatment team determines that the patient no longer needs involuntary commitment to treatment. If a discharge plan has not been developed pursuant to section 18 of P.L.1987, c.116 (C.30:4-27.18), it shall be developed forthwith.

b. If the patient is confined pursuant to an order entered under section 15 of P.L.1987, c.116 (C.30:4-27.15) in a case in which the Attorney General or a county prosecutor participated, the treatment team shall, no less than 10 days prior to the proposed date of administrative discharge, provide written notice to the committing court and to the person or persons who presented the case for involuntary commitment to treatment. If, within five days of receipt of such notice, a person who presented the case for commitment files a request for a hearing on the issue of continued need for commitment and serves notice of that request, in accordance with the provisions of section 13 of P.L.1987, c.116 (C.30:4-27.13), the treatment team shall delay the administrative discharge and the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 15 of P.L.1987, c.116 (C.30:4-27.15).

c. If the patient is confined pursuant to an order entered under N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of insanity or under N.J.S.2C:4-6 concerning lack of mental competence to stand trial, the treatment team shall, no less than 10 days prior to the proposed date of administrative discharge, provide written notice to the committing court and to the prosecutor. If, within five days of receipt of such notice, the prosecutor files a request for a hearing on the issue of continued need for commitment and serves notice of that request, in accordance with the provisions of section 13 of P.L.1987, c.116 (C.30:4-27.13), the treatment team shall delay the administrative discharge and the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 15 of P.L.1987, c.116 (C.30:4-27.15).

N.J. STAT. ANN. § 30:4-27.26 (2010). DEFINITIONS RELATIVE TO SEXUALLY VIOLENT PREDATORS

As used in this act:

"Agency with jurisdiction" means the agency which releases upon lawful order or authority a person who is serving a sentence or term of confinement, or is otherwise being detained or maintained in custody. This term includes the Department of Corrections or a county correctional facility, the Juvenile Justice Commission or a county juvenile detention facility, and the Department of Human Services. "Attorney General" means the Attorney General or a county prosecutor to whom the Attorney General has delegated authority under this act.

"Clinical certificate for a sexually violent predator" means a form prepared by the Division of Mental Health Services in the Department of Human Services and approved by the Administrative Office of the Courts, that is completed by the psychiatrist or other physician who has examined the person who is subject to commitment within three days of presenting the person for admission to a facility for treatment, and which states that the person is a sexually violent predator in need of involuntary commitment. The form shall

also state the specific facts upon which the examining physician has based that conclusion and shall be certified in accordance with the Rules Governing the Courts of the State of New Jersey. A clinical certificate for a sexually violent predator may not be executed by an individual who is a relative by blood or marriage to the person who is being examined.

"Likely to engage in acts of sexual violence" means the propensity of a person to commit acts of sexual violence is of such a degree as to pose a threat to the health and safety of others.

"Mental abnormality" means a mental condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence.

"Person" means an individual 18 years of age or older who is a potential or actual subject of proceedings under this act.

"Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

"Sexually violent offense" means:

(a) aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to subparagraph (b) of paragraph (2) of subsection c. of N.J.S.2C:13-1; criminal sexual contact; felony murder pursuant to paragraph (3) of N.J.S.2C:11-3 if the underlying crime is sexual assault; an attempt to commit any of these enumerated offenses; or a criminal offense with substantially the same elements as any offense enumerated above, entered or imposed under the laws of the United States, this State or another state; or

(b) any offense for which the court makes a specific finding on the record that, based on the circumstances of the case, the person's offense should be considered a sexually violent offense.

"Sexually violent predator" means a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment.

"Treatment team" means the individuals, agencies or firms which provide treatment, supervision or other services at a facility designated for the custody, care and treatment of sexually violent predators.

N.J. STAT. ANN. § 30:4-27.27 (2010). WRITTEN NOTICE TO ATTORNEY GENERAL OF ANTICIPATED RELEASE, DISCHARGE

a. When it appears that a person may meet the criteria of a sexually violent predator as defined in this act, the agency with jurisdiction shall give written notice to the Attorney General 90 days, or as soon as practicable, prior to:

(1) the anticipated release from total confinement of a person who has been convicted of or adjudicated delinquent for a sexually violent offense;

(2) any commitment status review hearing at which the Department of Human Services intends to recommend discharge or believes that discharge may be likely, for a person who has been civilly committed pursuant to N.J.S.2C:4-8 following acquittal by reason of insanity for a sexually violent offense; or

(3) any hearing at which the Department of Human Services intends to recommend discharge or believes that discharge may be likely, for any person civilly committed based upon a determination that the person lacked mental competence to stand trial pursuant to N.J.S.2C:4-6, if the person had been charged with a sexually violent offense.

b. When such notice is given, the agency with jurisdiction shall provide the Attorney General with all information relevant to a determination of whether the person may be a sexually violent predator, including, without regard to classification as confidential pursuant to regulations of the agency with jurisdiction, any preparole report, psychological and medical records, any statement of the reasons for denial of parole and a statement from the agency with jurisdiction of the reasons for its determination that the person may be a sexually violent predator.

c. All information, documents and records concerning the person's mental condition or which are classified as confidential pursuant to statute or regulations of the agency with jurisdiction that are received or provided pursuant to this section shall be deemed confidential. Unless authorized or required by court order or except as required in the course of judicial proceedings relating to the person's commitment or release, disclosure of such information, documents and records shall be limited to a professional evaluating the person's condition pursuant to this section, the Attorney General and a member of the Attorney General's staff as necessary to the performance of duties imposed pursuant to this section and, if the person is committed, to the staff at the institution providing treatment.

d. Any individual acting in good faith who has provided information relevant to a person's need for involuntary commitment under this act or has taken steps in good faith to assess a person's need of involuntary commitment under this act is immune from civil or criminal liability.

e. The provisions of this section are not jurisdictional, and failure to comply with them in no way prevents the Attorney General from initiating a proceeding against a person otherwise subject to the provisions of this act, nor do the provisions of this act in any way

foreclose a proceeding under the provisions of P.L. 1987, c. 116 (C. 30:4-27.1 et seq.) for the involuntary commitment of any person charged with or convicted of a sexual offense.

N.J. STAT. ANN. § 30:4-27.28 (2010). INITIATION OF COURT PROCEEDING FOR INVOLUNTARY COMMITMENT

a. The Attorney General may initiate a court proceeding for involuntary commitment under this act of a person who is currently a patient in a short-term care facility, State or county psychiatric facility or special psychiatric hospital, by submitting to the court a clinical certificate for a sexually violent predator completed by a psychiatrist at the facility at which the person is a patient and the screening certificate which authorized admission of the person to the facility; but both certificates shall not be signed by the same psychiatrist unless the psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

b. If civil commitment is not initiated pursuant to subsection a. of this section, the Attorney General may initiate a court proceeding for the involuntary commitment of a person by the submission to the court of two clinical certificates for a sexually violent predator, at least one of which is prepared by a psychiatrist. The person shall not be involuntarily committed pursuant to this act before the court issues a temporary court order. When the Attorney General determines that the public safety requires initiation of a proceeding pursuant to this subsection, the Attorney General may apply to the court for an order compelling the psychiatric evaluation of the person. The court shall grant the Attorney General's application if the court finds that there is reasonable cause to believe that the person named in the petition is a sexually violent predator.

c. The Attorney General may initiate a court proceeding for involuntary commitment under this act of an inmate who is scheduled for release upon expiration of a maximum term of incarceration by submission to the court of two clinical certificates for a sexually violent predator, at least one of which is prepared by a psychiatrist.

d. The Attorney General, in exercise of the State's authority as parens patriae, may initiate a court proceeding for the involuntary commitment of any person in accordance with the procedures set forth in this section by filing the required submission with the court in the jurisdiction in which the person whose commitment is sought is located.

e. Any individual who is a relative by blood or marriage of the person being examined who executes a clinical certificate for a sexually violent predator, or any individual who signs such a clinical certificate for any purpose or motive other than for purposes of care, treatment and confinement of a person in need of involuntary commitment, shall be guilty of a crime of the fourth degree.

f. Upon receiving these documents, the court shall immediately review them in order to determine whether there is probable cause to believe that the person is a sexually violent predator.

g. If the court finds that there is probable cause to believe that the person is a sexually

violent predator in need of involuntary commitment, it shall issue an order setting a date for a final hearing and authorizing temporary commitment to a secure facility designated for the custody, care and treatment of sexually violent predators pending the final hearing. In no event shall the person be released from confinement prior to the final hearing.

h. In the case of a person committed to a short-term care facility or special psychiatric hospital, after the facility's treatment team conducts a mental and physical examination, administers appropriate treatment and prepares a discharge assessment, the facility shall transfer the person to a secure facility designated for the custody, care and treatment of sexually violent predators pending the final hearing upon providing the person, the person's guardian if any, the person's next-of-kin and the person's attorney 24 hours' advance notice of the pending transfer. Such transfer is to be accomplished in a manner which will give the receiving facility adequate time to examine the person, become familiar with the person's behavior and condition, and prepare for the hearing.

N.J. STAT. ANN. § 30:4-27.29 (2010). COURT HEARING

a. A person who is involuntarily committed pursuant to section 5 of this act shall receive a court hearing with respect to the issue of continuing need for involuntary commitment as a sexually violent predator within 20 days from the date of the temporary commitment order.

b. The Attorney General is responsible for presenting the case for the person's involuntary commitment as a sexually violent predator to the court.

c. A person subject to involuntary commitment shall have counsel present at the hearing and shall not be permitted to appear at the hearing without counsel.

N.J. STAT. ANN. § 30:4-27.32 (2010). ORDER AUTHORIZING CONTINUED INVOLUNTARY COMMITMENT

a. If the court finds by clear and convincing evidence that the person needs continued involuntary commitment as a sexually violent predator, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for the custody, care and treatment of sexually violent predators. The court shall also schedule a subsequent court hearing pursuant to section 12 [C.30:4-27.35] of this act.

b. If the court finds that the person is not a sexually violent predator, the court shall so order. A person who is serving a term of incarceration shall be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and any other person shall be discharged by the facility within 48 hours of the court's verbal order or by the end of the next working day, whichever is longer, with a discharge plan prepared pursuant to section 14 [C.30:4-27.37] of this act.

c. (1) If the Department of Human Services recommends conditional discharge of the person and the court finds that the person will not be likely to engage in acts of sexual

violence because the person is amenable to and highly likely to comply with a plan to facilitate the person's adjustment and reintegration into the community so as to render involuntary commitment as a sexually violent predator unnecessary for that person, the court may order that the person be conditionally discharged in accordance with such plan.

(2) Conditions imposed pursuant to this subsection shall include those recommended by the person's treatment team and developed with the participation of the person and shall be approved by the Department of Human Services. Conditions imposed on the person shall be specific and shall be for the purpose of ensuring that the person participates in necessary treatment and that the person does not represent a risk to public safety. If the court imposes conditions for a period exceeding six months, the court shall provide for a review hearing on a date the court deems appropriate but in no event later than six months from the date of the order. The review hearing shall be conducted in the manner provided in this section, and the court may impose any order authorized pursuant to this section.

(3) A designated staff member on the person's treatment team shall notify the court if the person fails to meet the conditions of the discharge plan, and the court shall issue an order directing that the person be taken to a facility designated for the custody, care and treatment of sexually violent predators for an assessment. The court shall determine, in conjunction with the findings of the assessment, if the person needs to be returned to custody and, if so, the person shall be returned to the designated facility for the custody, care and treatment of sexually violent predators. The court shall hold a hearing within 20 days of the day the person was returned to custody to determine if the order of conditional discharge should be vacated.

d. Notwithstanding the provisions of this section, or any provision of section 12, 13 or 14 of this act to the contrary, no person committed while serving a term of incarceration shall be discharged by the court prior to the date on which the person's maximum term would have expired had he not been committed. If the court determines that the person's mental condition has so changed that the person is safe to be at large, the court shall order that the person be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and the person shall be given day for day credit for all time during which the person was committed.

e. Notwithstanding the provisions of this section, or any provision of section 12, 13 or 14 of this act to the contrary, no person committed pursuant to N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of insanity or pursuant to N.J.S.2C:4-6 concerning lack of mental competence to stand trial shall be discharged by the court unless the prosecuting attorney in the case receives prior notice and an opportunity to be heard.

N.J. STAT. ANN. § 30:4-27.33 (2010). INVOLUNTARY COMMITMENT OF PERSON LACKING MENTAL COMPETENCE TO STAND TRIAL

If a person who has been civilly committed based upon a determination that the person

lacked mental competence to stand trial pursuant to N.J.S.2C:4-6 is about to be released, and the person's involuntary commitment is sought pursuant to this act, the court shall first hear evidence and determine whether the person did commit the act charged.

a. The rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to a defendant at a criminal trial, other than the right to a trial by jury and the right not to be tried while incompetent, shall apply.

b. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act charged, the extent to which the person's lack of mental competence affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case.

c. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person did commit the act charged, the court shall enter a final order, appealable by the person, on that issue and may proceed to consider whether the person should be committed pursuant to this act.

N.J. STAT. ANN. § 30:4-27.35 (2010). ANNUAL COURT REVIEW HEARING

A person committed under this act shall be afforded an annual court review hearing of the need for involuntary commitment as a sexually violent predator. The review hearing shall be conducted in the manner provided in section 7 [C.30:4-27.30] of this act. If the court determines at a review hearing that involuntary commitment as a sexually violent predator shall be continued, it shall execute a new order. The court shall conduct the first review hearing 12 months from the date of the first hearing, and subsequent review hearings annually thereafter. The court may schedule additional review hearings but, except in extraordinary circumstances, not more often than once every 30 days.

N.J. STAT. ANN. § 30:4-31 (2010). COMMITMENT OF NONRESIDENTS

A nonresident of this State may be committed to a mental hospital in this State in the same manner as residents may be admitted and committed.

N.J. STAT. ANN. § 30:4-82.4 (2010). PROCEDURES FOR INMATES "IN NEED OF INVOLUNTARY COMMITMENT"

a. In order to ensure that adult and juvenile inmates who are dangerous to themselves or others because of mental illness and who are "in need of involuntary commitment" within the meaning of section 2 of P.L. 1987, c. 116 (C. 30:4-27.2) or who are "sexually violent predators" within the meaning of section 3 of P.L. 1998, c. 71 (C. 30:4-27.26), are not released without appropriate supervision and treatment, the board, the Commissioner of the Department of Corrections, the Attorney General, the Juvenile Justice Commission established pursuant to section 2 of P.L. 1995, c. 284 (C. 52:17B-170) and county prosecutors shall follow the procedures set forth in this section.

b. When an adult or juvenile inmate is scheduled for release due to expiration of the

inmate's maximum term, the commissioner or the Juvenile Justice Commission shall notify the Attorney General and the prosecutor of the county from which the person was committed if:

(1) The adult inmate's term includes a sentence imposed for conviction of aggravated sexual assault, sexual assault or aggravated criminal sexual contact and the court imposing sentence found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior;

(2) The parole board or the superintendent of the facility in which the inmate has been confined has advised the commissioner or the Juvenile Justice Commission that the conduct of the inmate during the period of confinement, the inmate's mental condition or the inmate's past history indicates that the inmate may be "in need of involuntary commitment" within the meaning of section 2 of P.L. 1987, c. 116 (C. 30:4-27.2); or

(3) The inmate's term includes a sentence imposed for conviction of a "sexually violent offense" as defined in section 3 of P.L. 1998, c. 71 (C. 30:4-27.26).

c. Notice required by subsection b. shall be given no less than 90 days before the date on which the inmate's maximum term is scheduled to expire.

d. When such notice is given, the board, the Juvenile Justice Commission or the commissioner shall provide the Attorney General and county prosecutor with all information relevant to a determination of whether the inmate may be "in need of involuntary commitment" or may be a "sexually violent predator", including, without regard to classification as confidential pursuant to regulations of the board, of the Department of Corrections or the Juvenile Justice Commission, any preparole report, psychological and medical records, any statement of the reasons for denial of parole and, if applicable, a statement of the reasons for the determination that the inmate may be "in need of involuntary commitment" or may be a "sexually violent predator".

e. If the Attorney General or county prosecutor determines, on the basis of the information provided pursuant to this section or N.J.S. 2C:47-5, that the inmate may be "in need of involuntary commitment" or may be a "sexually violent predator", the Commissioner of Corrections or the Juvenile Justice Commission, upon request of the Attorney General or county prosecutor shall:

(1) Permit persons qualified to execute clinical certificates necessary for civil commitment to examine the inmate in the institution in which he is confined; or

(2) Pursuant to section 2 of P.L. 1986, c. 71 (C. 30:4-82.2), arrange for persons qualified to execute clinical certificates necessary for civil commitment to examine the inmate.

f. In the interests of the public safety and the well-being of the inmate, the Attorney General or county prosecutor may exercise discretion to obtain an assessment of the inmate's condition by one or more of the means set forth in subsection e. of this section.

g. The Attorney General or county prosecutor shall provide a psychiatrist or physician assessing or examining an inmate pursuant to this section with all information relevant to the inmate's need of involuntary commitment, including information concerning the inmate's condition, history, recent behavior and any recent act or threat. Any person who assesses or examines an inmate pursuant to this section shall provide the Attorney General and county prosecutor with a written report detailing the person's findings and conclusions.

h. (1) All information, documents and records concerning the inmate's mental condition or classified as confidential pursuant to regulations of the board, of the Department of Corrections or the Juvenile Justice Commission that are received or provided pursuant to this section or N.J.S. 2C:47-5 shall be deemed confidential.

(2) Unless authorized or required by court order or except as required in the course of judicial proceedings relating to the inmate's commitment or release, disclosure of such information, documents and records shall be limited to professionals evaluating the inmate's condition pursuant to this section, the Attorney General, county prosecutor and members of their respective staffs as necessary to the performance of duties imposed pursuant to this section.

i. Any person acting in good faith who has provided information relevant to an inmate's need of involuntary commitment or as to whether the inmate is a sexually violent predator or has taken good faith steps to assess an inmate's need of involuntary commitment or whether the inmate is a sexually violent predator is immune from civil and criminal liability.

NEW MEXICO

N.M. STAT. ANN. § 31-9-1.2 (2010). DETERMINATION OF COMPETENCY; COMMITMENT; REPORT

A. When, after hearing, a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, the court may dismiss the criminal case without prejudice in the interests of justice. Upon dismissal, the court may advise the district attorney to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978] and order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

B. When a district court determines that a defendant charged with a felony is incompetent to proceed in the criminal case, but does not dismiss the criminal case, and the district court at that time makes a specific finding that the defendant is dangerous, the district court may commit the defendant as provided in this section for treatment to attain competency to proceed in a criminal case. The court shall enter an appropriate transport

order that also provides for return of the defendant to the local facilities of the court upon completion of the treatment. The defendant so committed shall be provided with treatment available to involuntarily committed persons, and:

(1) the defendant shall be detained by the department of health in a secure, locked facility; and

(2) the defendant, during the period of commitment, shall not be released from that secure facility except pursuant to an order of the district court that committed him.

C. Within thirty days of receipt of the court's order of commitment of an incompetent defendant and of the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or his designee, the defendant shall be admitted to a facility designated for the treatment of defendants who are incompetent to stand trial and dangerous. If, after conducting an investigation, the secretary determines that the department of health does not have the ability to meet the medical needs of a defendant ordered committed to a facility, the secretary or his designee may refuse admission to the defendant upon written certification to the committing court and the parties of the lack of ability to meet the medical needs of the defendant. The certification must be made within fourteen days of the receipt of the court's order of commitment and necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary or his designee. Within ten days of filing of the certification the court shall conduct a hearing for further disposition of the criminal case.

D. As used in Sections 31-9-1 through 31-9-1.5 NMSA 1978, "dangerous" means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.

E. Within thirty days of an incompetent defendant's admission to a facility to undergo treatment to attain competency to proceed in a criminal case, the person supervising the defendant's treatment shall file with the district court, the state and the defense an initial assessment and treatment plan and a report on the defendant's amenability to treatment to render him competent to proceed in a criminal case, an assessment of the facility's or program's capacity to provide appropriate treatment for the defendant and an opinion as to the probability of the defendant's attaining competency within a period of nine months from the date of the original finding of incompetency to proceed in a criminal case.

N.M. STAT. ANN. § 31-9-1.3 (2010). DETERMINATION OF COMPETENCY; NINETY-DAY REVIEW; REPORTS; CONTINUING TREATMENT

A. Within ninety days of the entry of the order committing an incompetent defendant to undergo treatment, the district court, sitting without a jury, shall conduct a hearing, unless waived by the defense, and shall determine:

(1) whether the defendant is competent to proceed in the criminal case; and, if not,

(2) whether the defendant is making progress under treatment toward attainment of competency within nine months from the date of the original finding of incompetency; and

(3) whether the defendant remains dangerous as that term is defined in Section 31-9-1.2 NMSA 1978.

B. At least seven days prior to the review hearing, the treatment supervisor shall submit a written progress report to the court, the state and the defense indicating:

(1) the clinical findings of the treatment supervisor and the facts upon which the findings are based;

(2) the opinion of the treatment supervisor as to whether the defendant has attained competency or as to whether the defendant is making progress under treatment toward attaining competency within nine months from the date of the original finding of incompetency and whether there is a substantial probability that the defendant will attain competency within nine months from the date of the original finding of incompetency;

(3) whether the defendant is dangerous as that term is defined in Section 31-9-1.2 NMSA 1978 or whether the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978]; and

(4) if the defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the defendant's appearance, actions and demeanor.

C. If the district court finds the defendant to be competent, the district court shall set the matter for trial, provided that if the defendant is in need of continued care or treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment of the defendant by the facility or program pending the conclusion of the criminal proceedings.

D. If the district court finds that the defendant is still not competent to proceed in a criminal case but that he is making progress toward attaining competency, the district court may continue or modify its original treatment order entered pursuant to Section 31-9-1.2 NMSA 1978, provided that:

(1) the question of the defendant's competency shall be reviewed again not later than nine months from the original determination of incompetency to proceed in a criminal case; and

(2) the treatment supervisor shall submit a written progress report as specified in Subsection B of this section at least seven days prior to such hearing.

E. If the district court finds that the defendant is still not competent, that he is not making progress toward attaining competency and that there is not a substantial probability that he will attain competency within nine months from the date of the original finding of incompetency, the district court shall proceed pursuant to Section 3l-9-1.4 NMSA 1978. However, if the defendant is in need of continued care and treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment by the facility or program pending the conclusion of the proceedings.

N.M. STAT. ANN. § 31-9-1.4 (2010). DETERMINATION OF COMPETENCY; INCOMPETENT DEFENDANTS

If at any time the district court determines that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, the district court may:

A. hear the matter pursuant to Section 31-9-1.5 NMSA 1978 within three months if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

B. release the defendant from custody and dismiss with prejudice the charges against him; or

C. dismiss the criminal case without prejudice in the interest of justice. If the treatment supervisor has issued a report finding that the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978], the department of health shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978, and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to the Mental Health and Developmental Disabilities Code. The district court may refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code.

N.M. STAT. ANN. § 31-9-1.5 (2010). DETERMINATION OF COMPETENCY; EVIDENTIARY HEARING

A. As provided for in Subsection A of Section 31-9-1.4 NMSA 1978, a hearing to determine the sufficiency of the evidence shall be held if the case is not dismissed and if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978. Such hearing shall be conducted by the district court without a jury. The

state and the defendant may introduce evidence relevant to the question of the defendant's guilt of the crime charged. The district court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, district court and business records and public documents.

B. If the evidence does not establish by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978, the district court shall dismiss the criminal case with prejudice; however, nothing in this section shall prevent the state from initiating proceedings under the provisions of the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978], and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

C. If the district court finds by clear and convincing evidence that the defendant committed a crime and has not made a finding of dangerousness, pursuant to Section 31-9-1.2 NMSA 1978, the district court shall dismiss the charges without prejudice. The state may initiate proceedings pursuant to the provisions of the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978] and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

D. If the district court finds by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978 and enters a finding that the defendant remains incompetent to proceed and remains dangerous pursuant to Section 31-9-1.2 NMSA 1978:

(1) the defendant shall be detained by the department of health in a secure, locked facility;

(2) the defendant shall not be released from that secure facility except pursuant to an order of the district court which committed him or upon expiration of the period of time equal to the maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding;

(3) significant changes in the defendant's condition, including but not limited to trial competency and dangerousness, shall be reported in writing to the district court, state and defense; and

(4) at least every two years, the district court shall conduct a hearing upon notice to the

parties and the department of health charged with detaining the defendant. At the hearing, the court shall enter findings on the issues of trial competency and dangerousness:

(a) upon a finding that the defendant is competent to proceed in a criminal case, the court shall continue with the criminal proceeding;

(b) if the defendant continues to be incompetent to proceed in a criminal case and dangerous pursuant to Section 31-9-1.2 NMSA 1978, the court shall review the defendant's competency and dangerousness every two years until expiration of the period of commitment equal to the maximum sentence to which the defendant would have been subject had he or she been convicted in a criminal proceeding; provided, that if the treatment supervisor recommends that the defendant be committed pursuant to the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978], the court may at any time proceed pursuant to Subsection C of Section 31-9-1.4 NMSA 1978; and

(c) if the defendant is not committed pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or if the court finds upon its two-year review hearing that the defendant is no longer dangerous, as defined in Section 31-9-1.2 NMSA 1978, the defendant shall be released.

N.M. STAT. ANN. § 31-9-1.6 (2010). HEARING TO DETERMINE MENTAL RETARDATION

A. Upon motion of the defense requesting a ruling, the court shall hold a hearing to determine whether the defendant has mental retardation as defined in Subsection E of this section.

B. If the court finds by a preponderance of the evidence that the defendant has mental retardation and that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, then no later than sixty days from notification to the secretary of health or his designee of the court's findings the department of health shall perform an evaluation to determine whether the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others.

C. If the department of health evaluation results in a finding that the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others, within sixty days of the department's evaluation the department shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with murder in the first degree, first degree criminal sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others.

D. The criminal charges shall be dismissed without prejudice after the hearing pursuant to Chapter 43, Article 1 NMSA 1978 or upon expiration of fourteen months from the court's

initial determination that the defendant is incompetent to proceed in a criminal case.

E. As used in this section, "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of mental retardation.

NEW YORK

N.Y. CORRECT. LAW § 402 (2010). COMMITMENT OF MENTALLY ILL INMATES

1. Whenever the physician of any correctional facility, any county penitentiary, county jail or workhouse, any reformatory for women, or of any other correctional institution, shall report in writing to the superintendent that any person undergoing a sentence of imprisonment or adjudicated to be a youthful offender or juvenile delinquent confined therein is, in his opinion, mentally ill, such superintendent shall apply to a judge of the county court or justice of the supreme court in the county to cause an examination to be made of such person by two examining physicians. Such physicians shall be designated by the judge to whom the application is made. Each such physician, if satisfied, after a personal examination, that such inmate is mentally ill and in need of care and treatment, shall make a certificate to such effect. Before making such certificate, however, he shall consider alternative forms of care and treatment available during confinement in such correctional facility, penitentiary, jail, reformatory or correctional institution that might be adequate to provide for such inmate's needs without requiring hospitalization. If the examining physician knows that the person he is examining has been under prior treatment, he shall, insofar as possible, consult with the physician or psychologist furnishing such prior treatment prior to making his certificate.

2. In the city of New York, if the physician of a workhouse, city prison, jail, penitentiary or reformatory reports in writing to the superintendent of such institution that a prisoner confined therein, serving a sentence of imprisonment, is in his opinion mentally ill, the superintendent of said institution shall either transfer said prisoner to Bellevue or Kings county hospital for observation as to his mental condition by two examining physicians or shall secure two examining physicians to make such examination in his institution. Each such physician, if satisfied after a personal examination and observation that the prisoner is mentally ill and in need of care and treatment, shall make a certificate to such effect. Before making such certificate, however, he shall consider alternative forms of care and treatment available during confinement in such correctional facility, penitentiary, jail, reformatory or correctional institution that might be adequate to provide for such inmate's needs without requiring hospitalization. If the examining physician knows that the person he is examining has been under prior treatment, he shall, insofar as possible, consult with the physician or psychologist furnishing such prior treatment prior to making his certificate.

3. Upon such certificates of the examining physicians being so made, it shall be delivered to the superintendent who shall thereupon apply by petition forthwith to a judge of the county court or justice of the supreme court in the county, annexing such certificate to his petition, for an order committing such inmate to a hospital for the mentally ill. Upon every such application for such an order of commitment, notice thereof in writing, of at least five days, together with a copy of the petition, shall be served personally upon the alleged mentally ill person, and in addition thereto such notice and a copy of the petition shall be served upon either the wife, the husband, the father or mother or other nearest relative of such alleged mentally ill person, if there be any such known relative within the state; and if not, such notice shall be served upon any known friend of such alleged mentally ill person within the state. If there be no such known relative or friend within the state, the giving of such notice shall be dispensed with, but in such case the petition for the commitment shall recite the reasons why service of such notice on a relative or friend of the alleged mentally ill person was dispensed with and, in such case, the order for commitment shall recite why service of such a notice on a relative or friend of the alleged mentally ill person was dispensed with. Copies of the notice, the petition and the certificates of the examining physicians shall also be given the mental hygiene legal service. The mental hygiene legal service shall inform the inmate and, in proper cases, others interested in the inmate's welfare, of the procedures for placement in a hospital and of the inmate's right to have a hearing, to have judicial review with a right to a jury trial, to be represented by counsel and to seek an independent medical opinion. The mental hygiene legal service shall have personal access to such inmate for such purposes.

4. The judge to whom such application for the commitment of the alleged mentally ill person is made may, if no demand is made for a hearing on behalf of the alleged mentally ill person, proceed forthwith on the return day of such notice to determine the question of mental illness and, if satisfied that the alleged mentally ill person is mentally ill and in need of care and treatment, may immediately issue an order for the commitment of such alleged mentally ill person to a hospital for a period not to exceed six months from the date of the order.

5. Upon the demand for a hearing by any relative or near friend on behalf of such alleged mentally ill person, the judge shall, or he may upon his own motion where there is no demand for a hearing, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon such day or upon such other day to which the proceedings shall be regularly adjourned, he shall hear the testimony introduced by the parties and shall examine the alleged mentally ill person, if deemed advisable in or out of court, and render a decision in writing as to such person's mental illness and need for care and treatment. If such judge cannot hear the application, he may, in his order directing the hearing, name some referee who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall, if satisfied with such report, render his decision accordingly. If it be determined that such person is mentally ill and in need of care and treatment, the judge shall forthwith issue his order committing him to a hospital for a period not to exceed six months from the date of the order. Such superintendent

shall thereupon cause such mentally ill person to be delivered to the director of the appropriate hospital as designated by the commissioner of mental hygiene and such mentally ill person shall be received into such hospital and retained there until he is determined to be no longer in need of care and treatment by the director of such hospital or legally discharged or for the period specified in the order of commitment or in any subsequent order authorizing continued retention of such person in said hospital. Such superintendent, before delivering said mentally ill person, shall see that he is bodily clean. If such judge shall refuse to issue an order of commitment, he shall certify in writing his reasons for such refusal.

6. When an order of commitment is made, such order and all papers in the proceeding shall be presented to the director of the appropriate hospital at the time when the mentally ill person is delivered to such institution and a copy of the order and of each such paper shall be filed with the department of mental hygiene and also in the office of the county clerk of the county wherein the court is located which made the order of commitment. The judge shall order all such papers so filed in the county clerk's office to be sealed and exhibited only to parties to the proceedings, or someone properly interested, upon order of the court.

7. The costs necessarily incurred in determining the question of mental illness, including the fees of the medical examiners, shall be a charge upon the state or the municipality, as the case may be, at whose expense the institution is maintained, which has custody of the alleged mentally ill person at the time of the application for his commitment to the hospital under the provisions of this section.

8. During the pendency of such proceeding the judge may forthwith commit such alleged mentally ill person to a hospital for the mentally ill upon petition and the affidavit of two examining physicians that the superintendent is not able to properly care for such person at the institution where he is confined and that such person is in immediate need of care and treatment. Any person so committed shall be delivered to the director of the appropriate hospital as designated in the rules and regulations of the department of mental hygiene.

9. Except as provided in subdivision two pertaining to prisoners confined in the city of New York, an inmate of a correctional facility or a county jail may be admitted on an emergency basis to the Central New York Psychiatric Center upon the certification by two examining physicians, including physicians employed by the office of mental health and associated with the correctional facility in which such inmate is confined, that the inmate suffers from a mental illness which is likely to result in serious harm to himself or others as defined in subdivision (a) of section 9.39 of the mental hygiene law. Any person so committed shall be delivered by the superintendent within a twenty-four hour period, to the director of the appropriate hospital as designated in the rules and regulations of the office of mental health. Upon delivery of such person to a hospital operated by the office of mental health, a proceeding under this section shall immediately be commenced.

10. If the director of a hospital for the mentally ill shall deem that the condition of such

mentally ill person requires his further retention in a hospital he shall, during the period of retention authorized by the last order of the court, apply to the supreme court or county court in the county where such hospital is located, for an order authorizing continued retention of such mentally ill person. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with the provisions of the mental hygiene law for the retention of involuntary patients.

11. If a mentally ill person whose commitment, retention or continued retention has been authorized pursuant to this section, or any relative or friend in his behalf, be dissatisfied with any such order, he may, within thirty days after the making of any such order, obtain a rehearing and a review of the proceedings already had and of such order, upon a petition to a justice of the supreme court other than the judge or justice presiding over the court making such order. Such justice shall cause a jury to be summoned and shall try the question of the mental illness and the need for care and treatment of the person so committed or so authorized to be retained. Any such mentally ill person or the person applying on his behalf for such review may waive the trial of the fact by a jury and consent in writing to trial of such fact by the court. No such petition for the hearing and review shall be made by anyone other than the person so committed or authorized to be retained or the father, mother, husband, wife or child of such person, unless the petitioner shall have first obtained the leave of the court upon good cause shown. If the verdict of the jury, or the decision of the court when jury trial has been waived, be that such person is not mentally ill, the justice shall order the removal of such person from the hospital and such person shall forthwith be transferred to a state correctional facility, or returned to the superintendent of the institution from which he was received if such institution was not a state correctional facility. Where the verdict of the jury, or the decision of the court where a jury trial has been waived, be that such person is mentally ill, the justice shall certify that fact and make an order authorizing continued retention under the original order. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon notice and after hearing, with provision made therein for such temporary care and confinement of the alleged mentally ill person as may be deemed necessary.

12. The notice provided for herein shall be served by the sheriff of the counties of the state of New York, in which case the charges of such sheriff shall be a disbursement in such proceeding, or by registered mail on all persons required to be served, except that the superintendent of a correctional facility or the director of a hospital for the mentally ill, or their designees, shall be authorized to personally serve notice upon an alleged mentally ill person or a mentally ill person, as provided in this section.

13. Notwithstanding any provision of law to the contrary, when an inmate is being examined in anticipation of his or her conditional release, release to parole supervision, or when his or her sentence to a term of imprisonment expires, the provisions of subdivision one of section four hundred four of this article shall be applicable and such commitment shall be effectuated in accordance with the provisions of article nine or ten of the mental hygiene law, as appropriate.

N.Y. MEN. HYG. LAW § 10.01 (2010). LEGISLATIVE FINDING

The legislature finds as follows:

(a) That recidivistic sex offenders pose a danger to society that should be addressed through comprehensive programs of treatment and management. Civil and criminal processes have distinct but overlapping goals, and both should be part of an integrated approach that is based on evolving scientific understanding, flexible enough to respond to current needs of individual offenders, and sufficient to provide meaningful treatment and to protect the public.

(b) That some sex offenders have mental abnormalities that predispose them to engage in repeated sex offenses. These offenders may require long-term specialized treatment modalities to address their risk to reoffend. They should receive such treatment while they are incarcerated as a result of the criminal process, and should continue to receive treatment when that incarceration comes to an end. In extreme cases, confinement of the most dangerous offenders will need to be extended by civil process in order to provide them such treatment and to protect the public from their recidivistic conduct.

(c) That for other sex offenders, it can be effective and appropriate to provide treatment in a regimen of strict and intensive outpatient supervision. Accordingly, civil commitment should be only one element in a range of responses to the need for treatment of sex offenders. The goal of a comprehensive system should be to protect the public, reduce recidivism, and ensure offenders have access to proper treatment.

(d) That some of the goals of civil commitment - protection of society, supervision of offenders, and management of their behavior - are appropriate goals of the criminal process as well. For some recidivistic sex offenders, appropriate criminal sentences, including long-term post-release supervision, may be the most appropriate way to achieve those goals.

(e) That the system for responding to recidivistic sex offenders with civil measures must be designed for treatment and protection. It should be based on the most accurate scientific understanding available, including the use of current, validated risk assessment instruments. Ideally, effective risk assessment should begin to occur prior to sentencing in the criminal process, and it should guide the process of civil commitment.

(f) That the system should offer meaningful forms of treatment to sex offenders in all criminal and civil phases, including during incarceration, civil commitment, and outpatient supervision.

(g) That sex offenders in need of civil commitment are a different population from traditional mental health patients, who have different treatment needs and particular vulnerabilities. Accordingly, civil commitment of sex offenders should be implemented in ways that do not endanger, stigmatize, or divert needed treatment resources away from such traditional mental health patients.

N.Y. MEN. HYG. LAW § 10.03 (2010). DEFINITIONS

As used in this article, the following terms shall have the following meanings:

(a) "Agency with jurisdiction" as to a person means that agency which, during the period in question, would be the agency responsible for supervising or releasing such person, and can include the department of correctional services, the office of mental health, the office [fig 1] for people with developmental disabilities, and the division of parole.

(b) "Commissioner" means the commissioner of mental health or the commissioner of [fig 1] developmental disabilities.

(c) "Correctional facility" means a correctional facility as that term is defined in section two of the correction law.

(d) "Counsel for respondent" means any counsel that has been retained or appointed for respondent, or if no other counsel has been retained or appointed, or prior counsel cannot be located with reasonable efforts, then the mental hygiene legal service.

(e) "Dangerous sex offender requiring confinement" means a person who is a detained sex offender suffering from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility.

(f) "Designated felony" means any felony offense defined by any of the following provisions of the penal law: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, strangulation in the second degree as defined in section 121.12, strangulation in the first degree as defined in section 121.13, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined

in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

(g) "Detained sex offender" means a person who is in the care, custody, control, or supervision of an agency with jurisdiction, with respect to a sex offense or designated felony, in that the person is either:

(1) A person who stands convicted of a sex offense as defined in subdivision (p) of this section, and is currently serving a sentence for, or subject to supervision by the division of parole, whether on parole or on post-release supervision, for such offense or for a related offense;

(2) A person charged with a sex offense who has been determined to be an incapacitated person with respect to that offense and has been committed pursuant to article seven hundred thirty of the criminal procedure law, but did engage in the conduct constituting such offense;

(3) A person charged with a sex offense who has been found not responsible by reason of mental disease or defect for the commission of that offense;

(4) A person who stands convicted of a designated felony that was sexually motivated and committed prior to the effective date of this article;

(5) A person convicted of a sex offense who is, or was at any time after September first, two thousand five, a patient in a hospital operated by the office of mental health, and who was admitted directly to such facility pursuant to article nine of this title or section four hundred two of the correction law upon release or conditional release from a correctional facility, provided that the provisions of this article shall not be deemed to shorten or lengthen the time for which such person may be held pursuant to such article or section respectively; or

(6) A person who has been determined to be a sex offender requiring civil management pursuant to this article.

(h) "Licensed psychologist" means a person who is registered as a psychologist under article one hundred fifty-three of the education law.

(i) "Mental abnormality" means a congenital or acquired condition, disease or disorder that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct.

(j) "Psychiatric examiner" means a qualified psychiatrist or a licensed psychologist who has been designated to examine a person pursuant to this article; such designee may, but need not, be an employee of the office of mental health or the office [fig 1] for people with developmental disabilities.

(k) "Qualified psychiatrist" means a physician licensed to practice medicine in New York state who: (1) is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or (2) is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

(l) "Related offenses" include any offenses that are prosecuted as part of the same criminal action or proceeding, or which are part of the same criminal transaction, or which are the bases of the orders of commitment received by the department of correctional services in connection with an inmate's current term of incarceration.

(m) "Release" and "released" means release, conditional release or discharge from confinement, from supervision by the division of parole, or from an order of observation, commitment, recommitment or retention.

(n) "Respondent" means a person referred to a case review team for evaluation, a person as to whom a sex offender civil management petition has been recommended by a case review team and not yet filed, or filed by the attorney general and not dismissed, or sustained by procedures under this article.

(o) "Secure treatment facility" means a facility or a portion of a facility, designated by the commissioner, that may include a facility located on the grounds of a correctional facility, that is staffed with personnel from the office of mental health or the office [fig 1] for people with developmental disabilities for the purposes of providing care and treatment to persons confined under this article, and persons defined in paragraph five of subdivision (g) of this section. Personnel from these same agencies may provide security services, provided that such staff are adequately trained in security methods and so equipped as to minimize the risk or danger of escape.

(p) "Sex offense" means an act or acts constituting: (1) any felony defined in article one hundred thirty of the penal law, including a sexually motivated felony; (2) patronizing a prostitute in the first degree as defined in section 230.06 of the penal law, incest in the second degree as defined in section 255.26 of the penal law, or incest in the first degree as defined in section 255.27 of the penal law; (3) a felony attempt or conspiracy to commit any of the foregoing offenses set forth in this subdivision; or (4) a designated felony, as defined in subdivision (f) of this section, if sexually motivated and committed prior to the effective date of this article.

(q) "Sex offender requiring civil management" means a detained sex offender who suffers from a mental abnormality. A sex offender requiring civil management can, as determined by procedures set forth in this article, be either (1) a dangerous sex offender requiring confinement or (2) a sex offender requiring strict and intensive supervision.

(r) "Sex offender requiring strict and intensive supervision" means a detained sex offender who suffers from a mental abnormality but is not a dangerous sex offender requiring confinement.

(s) "Sexually motivated" means that the act or acts constituting a designated felony were committed in whole or in substantial part for the purpose of direct sexual gratification of the actor.

N.Y. MEN. HYG. LAW § 10.06 (2010). PETITION AND HEARING

(a) If the case review team finds that a respondent is a sex offender requiring civil management, then the attorney general may file a sex offender civil management petition in the supreme court or county court of the county where the respondent is located. In determining whether to file such a petition, the attorney general shall consider information about any continuing supervision to which the respondent will be subject as a result of criminal conviction, and shall take such supervision into account when assessing the need for further management as provided by this article. If the attorney general elects to file a sex offender civil management petition, he or she shall serve a copy of the petition upon the respondent. The petition shall contain a statement or statements alleging facts of an evidentiary character tending to support the allegation that the respondent is a sex offender requiring civil management. The attorney general shall seek to file the petition within thirty days after receiving notice of the case review team's finding, but failure to do so within that period shall not affect the validity of the petition.

(b) Within ten days after the attorney general files a sex offender civil management petition, the respondent may file in the same court a notice of removal to the county of the underlying criminal sex offense charges. The attorney general may, in the court in which the petition is pending, move for a retention of venue. Such motion shall be made within five days after the attorney general is served with a notice of removal, which time may be extended for good cause shown. The court shall grant the motion if the attorney general shows good cause for such retention. If the attorney general does not timely move for a retention of venue, or does so move and the motion is denied, then the proceedings shall be transferred to the county of the underlying criminal sex offense charges. If the respondent does not timely file a notice of removal, or the attorney general moves for retention of venue and such motion is granted, then the proceedings shall continue where the petition was filed.

(c) Promptly upon the filing of a sex offender civil management petition, or upon a request to the court by the attorney general for an order pursuant to subdivision (d) of this section that a respondent submit to an evaluation by a psychiatric examiner, whichever occurs earlier, the court shall appoint counsel in any case where the respondent is financially unable to obtain counsel. The court shall appoint the mental hygiene legal service if possible. In the event that the court determines that the mental hygiene legal service cannot accept appointment, the court shall appoint an attorney eligible for appointment pursuant to article eighteen-B of the county law, or an entity, if any, that has contracted for the delivery of legal representation services under subdivision (c) of section 10.15 of this article. Counsel for the respondent shall be provided with copies of the written notice made by the case review team, the petition and the written reports of the psychiatric examiners.

(d) At any time after receiving notice pursuant to subdivision (b) of section 10.05 of this article, and prior to trial, the attorney general may request the court in which the sex offender civil management petition could be filed, or is pending, to order the respondent to submit to an evaluation by a psychiatric examiner. Upon such a request, the court shall order that the respondent submit to an evaluation by a psychiatric examiner chosen by the

attorney general and, if the respondent is not represented by counsel, the court shall appoint counsel for the respondent. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the attorney general, to counsel for the respondent, and to the court.

(e) At any time after the filing of a sex offender civil management petition, and prior to trial, the respondent may request the court in which the petition is pending to order that he or she be evaluated by a psychiatric examiner. Upon such a request, the court shall order an evaluation by a psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following the evaluation, such psychiatric examiner shall report his or her findings in writing to the respondent or counsel for the respondent, to the attorney general, and to the court.

(f) Notwithstanding any other provision of this article, if it appears that the respondent may be released prior to the time the case review team makes a determination, and the attorney general determines that the protection of public safety so requires, the attorney general may file a securing petition at any time after receipt of written notice pursuant to subdivision (b) of section 10.05 of this article. In such circumstance, there shall be no probable cause hearing until such time as the case review team may find that the respondent is a sex offender requiring civil management. If the case review team determines that the respondent is not a sex offender requiring civil management, the attorney general shall so advise the court and the securing petition shall be dismissed.

(g) Within thirty days after the sex offender civil management petition is filed, or within such longer period as to which the respondent may consent, the supreme court or county court before which the petition is pending shall conduct a hearing without a jury to determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management.

(h) If the respondent was released subsequent to notice under subdivision (b) of section 10.05 of this article, and is therefore at liberty when the petition is filed, the court shall order the respondent's return to confinement, observation, commitment, recommitment or retention, as applicable, for purposes of the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's return. If the respondent is not at liberty when the petition is filed, but becomes eligible to be released prior to the probable cause hearing, the court shall order the stay of such release pending the probable cause hearing. When a court issues such an order, the hearing shall commence no later than seventy-two hours from the date of the respondent's anticipated release date. In either case, the release of the respondent shall be in accordance with other provisions of law if the hearing does not commence within such period of seventy-two hours, unless: (i) the failure to commence the hearing was due to the respondent's request, action or condition, or occurred with his or her consent; or (ii) the court is satisfied that the attorney general has shown good cause why the hearing could not so commence. Any failure to commence the probable cause hearing within the time periods specified shall not result in the dismissal of the petition and shall not affect

the validity of the hearing or the probable cause determination.

(i) The provisions of subdivision (g) of section 10.08 of this article shall be applicable to the hearing. The hearing should be completed in one session but, in the interest of justice, may be adjourned by the court.

(j) The respondent's commission of a sex offense shall be deemed established and shall not be relitigated at the probable cause hearing, whenever it appears that: (i) the respondent stands convicted of such offense; (ii) the respondent previously has been found not responsible by reason of mental disease or defect for the commission of such offense or for an act or acts constituting such offense; or (iii) the respondent was indicted for such offense by a grand jury but found to be incompetent to stand trial for such offense. Whenever the petition alleges the respondent's commission of a designated felony prior to the effective date of this article, the issue of whether there is probable cause to believe that the commission of such offense was sexually motivated shall be determined by the court.

(k) At the conclusion of the hearing, the court shall determine whether there is probable cause to believe that the respondent is a sex offender requiring civil management. If the court determines that probable cause has not been established, the court shall issue an order dismissing the petition, and the respondent's release shall be in accordance with other applicable provisions of law. If the court determines that probable cause has been established: (i) the court shall order that the respondent be committed to a secure treatment facility designated by the commissioner for care, treatment and control upon his or her release, provided, however, that a respondent who otherwise would be required to be transferred to a secure treatment facility may, upon a written consent signed by the respondent and his or her counsel, consent to remain in the custody of the department of correctional services pending the outcome of the proceedings under this article, and that such consent may be revoked in writing at any time; (ii) the court shall set a date for trial in accordance with subdivision (a) of section 10.07 of this article; and (iii) the respondent shall not be released pending the completion of such trial.

N.Y. MEN. HYG. LAW § 10.08 (2010). PROCEDURES UNDER THIS ARTICLE

(a) When a respondent submits to an examination pursuant to an order issued in accordance with this article, any statement made by the respondent for the purpose of the examination shall be kept confidential in accordance with the provisions of section 33.13 of this chapter and shall be inadmissible in evidence against him or her in any criminal action or proceeding, provided that such statements may be used in proceedings under this article.

(b) A psychiatric examiner chosen by the attorney general shall have reasonable access to the respondent for the purpose of such examination, as well as to the respondent's relevant medical, clinical, criminal or other records and reports. A psychiatric examiner chosen by or appointed on behalf of the respondent shall have reasonable access to the respondent's relevant medical, clinical or criminal records and reports, except that such psychiatric examiner shall not have access without court order and for good cause shown

to the name of, address of, or any other identifying information about the victim or victims. To the extent possible, such identifying information should be redacted so as to provide the examiner with access to the balance of the document. In conducting examinations under this article, psychiatric examiners may employ any method that is accepted by the medical profession for the examination of persons alleged to be suffering from a mental disability or mental abnormality.

(c) Notwithstanding any other provision of law, the commissioner, the case review panel and the attorney general shall be entitled to request from any agency, office, department or other entity of the state, and such entity shall be authorized to provide upon such request, any and all records and reports relating to the respondent's commission or alleged commission of a sex offense, the institutional adjustment and any treatment received by such respondent, and any medical, clinical or other information relevant to a determination of whether the respondent is a sex offender requiring civil management. Otherwise confidential materials obtained for purposes of proceedings pursuant to this article shall not be further disseminated or otherwise used except for such purposes. Nothing in this article shall be construed to restrict any right of a respondent to obtain his or her own records pursuant to other provisions of law.

(d) The attorney general shall make records in his or her possession and relevant to the respondent available for inspection or copying by counsel for the respondent for purposes of hearing, trial, and appeal provided, however, that counsel shall not have access to the name of, address of, or any other identifying information about the victim or victims, or to any investigative or other reports that relate to matters beyond the scope of the proceedings and are confidential or privileged from disclosure. To the extent possible, such identifying information should be redacted so as to provide counsel with access to the balance of the document.

(e) At any hearing or trial pursuant to the provisions of this article, the court may change the venue of the trial to any county for good cause, which may include considerations relating to the convenience of the parties or witnesses or the condition of the respondent.

(e-1) Records or reports provided to the respondent in accordance with this article shall be disclosed in the circumstances and in the same manner as records and reports disclosed pursuant to the provisions of section 33.16 of this chapter.

(f) Time periods specified by provisions of this article for actions by state agencies are goals that the agencies shall try to meet, but failure to act within such periods shall not invalidate later agency action except as explicitly provided by the provision in question. The court may extend any time period at the request, or on the consent, of the respondent. No provision of this article shall be interpreted so as to prevent a respondent, after opportunity to consult with counsel for respondent, from consenting to the relief which could be sought by an agency with jurisdiction by means of a court proceeding under this article.

(g) In preparing for or conducting any hearing or trial pursuant to the provisions of this

article, and in preparing any petition under the provisions of this article, the respondent shall have the right to have counsel represent him or her, provided that the respondent shall not be entitled to appointment of counsel prior to the time provided in section 10.06 of this article. The attorney general shall represent the state. Any relevant written reports of psychiatric examiners shall be admissible, regardless of whether the author of the report is called to testify, so long as they are certified pursuant to subdivision (c) of rule forty-five hundred eighteen of the civil practice law and rules, in any proceeding or hearing held pursuant to subdivision (g) or (h) of section 10.06 of this article, paragraph two of subdivision (a), or paragraph four of subdivision (d), or subdivision (e), (g) or (h) of section 10.11 of this article. In all other proceedings or hearings held pursuant to this article, such admissibility shall require a showing of the author's unavailability to testify, or other good cause. All plea minutes and prior trial testimony from the underlying criminal proceeding, and records from previous proceedings under this article, shall be admissible. Each witness, whether called by the attorney general or the respondent, must, unless he or she would be authorized to give unsworn evidence at a trial, testify under oath, and may be cross-examined. The respondent may, as a matter of right, testify in his or her own behalf, call and examine other witnesses, and produce other evidence in his or her behalf. The respondent may not, however, cause a subpoena to be served on the person against whom the sex offense was committed or alleged to have been committed by the respondent, except upon order of the court for good cause shown. Either party may request closure of the courtroom, or sealing of papers, for good cause shown.

(h) The procedures and standards set forth in this article governing the imposition of conditions upon the respondent are intended to be the minimum required to provide for the protection of the public and treatment of the respondent. Nothing in this article shall be construed to require the availability or imposition of forms of treatment or supervision other than those for which this article specifically provides.

N.Y. MEN. HYG. LAW § 10.09 (2010). ANNUAL EXAMINATIONS AND PETITIONS FOR DISCHARGE

(a) The commissioner shall provide the respondent and counsel for respondent with an annual written notice of the right to petition the court for discharge. The notice shall contain a form for the waiver of the right to petition for discharge.

(b) The commissioner shall also assure that each respondent committed under this article shall have an examination for evaluation of his or her mental condition made at least once every year by a psychiatric examiner who shall report to the commissioner his or her written findings as to whether the respondent is currently a dangerous sex offender requiring confinement. At such time, the respondent also shall have the right to be evaluated by an independent psychiatric examiner. If the respondent is financially unable to obtain an examiner, the court shall appoint an examiner of the respondent's choice to be paid within the limits prescribed by law. Following such evaluation, each psychiatric examiner shall report his or her findings in writing to the commissioner and to counsel for respondent. The commissioner shall review relevant records and reports, along with the findings of the psychiatric examiners, and shall make a determination in writing as to whether the respondent is currently a dangerous sex offender requiring confinement.

(c) The commissioner shall annually forward the notice and waiver form, along with a report including the commissioner's written determination and the findings of the psychiatric examination, to the supreme or county court where the respondent is located.

(d) The court shall hold an evidentiary hearing as to retention of the respondent within forty-five days if it appears from one of the annual submissions to the court under subdivision (c) of this section (i) that the respondent has petitioned, or has not affirmatively waived the right to petition, for discharge, or (ii) that even if the respondent has waived the right to petition, and the commissioner has determined that the respondent remains a dangerous sex offender requiring confinement, the court finds on the basis of the materials described in subdivision (b) of this section that there is a substantial issue as to whether the respondent remains a dangerous sex offender requiring confinement. At an evidentiary hearing on that issue under this subdivision, the attorney general shall have the burden of proof.

(e) If, at any time, the commissioner determines that the respondent no longer is a dangerous sex offender requiring confinement, the commissioner shall petition the court for discharge of the respondent or for the imposition of a regimen of strict and intensive supervision and treatment. The petition shall be served upon the attorney general and the respondent, and filed in the supreme or county court where the person is located. The court, upon review of the petition, shall either order the requested relief or order that an evidentiary hearing be held.

(f) The respondent may at any time petition the court for discharge and/or release to the community under a regimen of strict and intensive supervision and treatment. Upon review of the respondent's petition, other than in connection with annual reviews as described in subdivisions (a), (b) and (d) of this section, the court may order that an evidentiary hearing be held, or may deny an evidentiary hearing and deny the petition upon a finding that the petition is frivolous or does not provide sufficient basis for reexamination prior to the next annual review. If the court orders an evidentiary hearing under this subdivision, the attorney general shall have the burden of proof as to whether the respondent is currently a dangerous sex offender requiring confinement.

(g) In connection with any evidentiary hearing held pursuant to subdivision (d), (e), or (f) of this section, upon the request of either party or upon its own motion, the court may direct the submission of evidence, and may order a psychiatric evaluation if the court finds that any available examination reports are not current or otherwise not sufficient.

(h) At the conclusion of an evidentiary hearing, if the court finds by clear and convincing evidence that the respondent is currently a dangerous sex offender requiring confinement, the court shall continue the respondent's confinement. Otherwise the court, unless it finds that the respondent no longer suffers from a mental abnormality, shall issue an order providing for the discharge of the respondent to a regimen of strict and intensive supervision and treatment pursuant to section 10.11 of this article.

N.Y. MEN. HYG. LAW § 10.10 (2010). TREATMENT AND CONFINEMENT

(a) If the respondent is found to be a dangerous sex offender requiring confinement and committed to a secure treatment facility, that facility shall provide care, treatment, and control of the respondent until such time that a court discharges the respondent in accordance with the provisions of this article.

(b) The commissioner shall, for persons committed pursuant to this article, develop and implement a treatment plan in accordance with the provisions of section 29.13 of this chapter. The commissioner shall give due regard to any relevant standards, guidelines, and best practices recommended by the office of sex offender management.

(c) The commissioner, or the commissioner of the department of correctional services, or other government entity responsible for the care and custody of respondents, shall be authorized to employ appropriate safety and security measures, as he or she deems necessary to ensure the safety of the public, during court proceedings and in the transport of persons committed or undergoing any proceedings under this article. Such commissioner shall provide training in the use of safe and appropriate security interventions to employees responsible for transporting persons under this article.

(d) The commissioner shall have the discretion to enter into agreements with the department of correctional services for the provision of security services relating to this article.

(e) Persons in the custody of the commissioner pursuant to this article shall be kept separate from other persons in the care, custody and control of the commissioner, and shall be segregated from such other persons, provided, however, that persons committed or subject to proceedings under this article need not be segregated from other sex offenders committed or subject to proceedings under this article, article nine of this title, or section four hundred two of the correction law. If any dangerous sex offenders requiring confinement are committed to a secure treatment facility located on the grounds of a correctional facility, they shall be kept separate from persons in custody as a result of criminal cases, and shall be segregated from such persons. Occasional instances of supervised, incidental contact between persons required by this subdivision to be segregated shall not be considered a violation of such segregation requirements.

(f) In accordance with security procedures developed by the commissioner, a person committed under this article may be granted an escorted privilege by the director of the secure treatment facility in which he or she is receiving care and treatment but only for the purposes of allowing the person to receive medical or dental care or treatment not available at the facility, to visit a family member who is seriously ill or to attend the funeral of a family member. A person granted an escorted privilege shall be under the constant supervision of one or more facility employees who have been designated by the commissioner or other specially trained personnel approved by the commissioner to provide care and supervision of such persons.

(g) If a person is in the custody of the commissioner pursuant to an order issued under

this article, and such person escapes from custody, notice of such escape shall be given as soon as the facility staff learns of such escape, and shall include such information as will adequately identify the escaped individual, any person or persons believed to be in danger, and the nature of the danger. Such notice shall be given by any means reasonably calculated to give prompt actual notice, and shall be given to:

(1) the district attorney of the county where the person was convicted, adjudicated, or charged; the attorney general; and counsel for respondent or the mental hygiene legal service;

(2) the superintendent of the state police;

(3) the sheriff of the county where the escape occurred;

(4) the police department having jurisdiction of the area where the escape occurred;

(5) any victim or victims who submitted the notification form described in subdivision four of section 380.50 of the criminal procedure law;

(6) any person the facility staff reasonably believes could be in danger;

(7) any law enforcement agency and any person the facility staff believes would be able to apprise such victim or victims that the person escaped from the facility; and

(8) any other person the committing court may designate.

(h) The person may be apprehended, restrained, transported, and returned to the facility from which he or she escaped by any police officer or peace officer, and it shall be the duty of such officer to assist any representative of the commissioner to take the person into custody upon the request of such representative.

(i) The commissioner shall submit to the governor and the legislature no later than December first of each year, a report on the implementation of this article. Such report shall include, but not be limited to, the census of each existing treatment facility, the number of persons reviewed by the case review teams for proceedings under this article, the number of persons committed pursuant to this article, their crimes of conviction, and projected future capacity needs.

NORTH CAROLINA

N.C. GEN. STAT. § 15A-1002 (2010).DETERMINATION OF INCAPACITY TO PROCEED; EVIDENCE; TEMPORARY COMMITMENT; TEMPORARY ORDERS

(a) The question of the capacity of the defendant to proceed may be raised at any time on motion by the prosecutor, the defendant, the defense counsel, or the court. The motion

shall detail the specific conduct that leads the moving party to question the defendant's capacity to proceed.

(b) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to subdivision (1) or (2) of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence. The court:

(1) May appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental health; reports so prepared are admissible at the hearing and the court may call any expert so appointed to testify at the hearing; any expert so appointed may be called to testify at the hearing by the court at the request of either party; or

(2) In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at any time in the case of a defendant charged with a felony, may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to proceed; in the case of a defendant charged with a felony, if a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's capacity; the sheriff shall return the defendant to the county when notified that the evaluation has been completed; the director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the court; the report is admissible at the hearing.

(3) Repealed by Session Laws 1989, c. 486, s. 1.

(b1) If the report pursuant to subdivision (1) or (2) of subsection (b) of this section indicates that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the question of the capacity of the defendant to proceed.

(d) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the defendant and any conclusion as to whether the defendant has or lacks capacity to proceed. A copy of the

full report shall be forwarded to defense counsel, or to the defendant if he is not represented by counsel provided, if the question of the defendant's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the district attorney. Until such report becomes a public record, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except as directed by the court. Any report made to the court pursuant to this section shall not be a public record unless introduced into evidence.

N.C. GEN. STAT. § 15A-1003 (2010).REFERRAL OF INCAPABLE DEFENDANT FOR CIVIL COMMITMENT PROCEEDINGS

(a) When a defendant is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a violent crime and that he was found incapable of proceeding.

(b) The court may make appropriate orders for the temporary detention of the defendant pending that proceeding.

(c) Evidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings.

N.C. GEN. STAT. § 15A-1004 (2010).ORDERS FOR SAFEGUARDING OF DEFENDANT AND RETURN TO TRIAL

(a) When a defendant is found to be incapable of proceeding, the trial court must make appropriate orders to safeguard the defendant and to ensure his return for trial in the event that he subsequently becomes capable of proceeding.

(b) If the defendant is not placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, appropriate orders may include any of the procedures, orders, and conditions provided in Article 26 of this Chapter, Bail, specifically including the power to place the defendant in the custody of a designated person or organization agreeing to supervise him.

(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The

original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate.

(d) If the defendant is placed in the custody of a hospital or institution pursuant to proceedings for involuntary civil commitment, or if the defendant is placed in the custody of another person pursuant to subsection (b), the orders of the trial court must require that the hospital, institution, or individual report the condition of the defendant to the clerk at the same times that reports on the condition of the defendant-respondent are required under Part 7 of Article 5 of Chapter 122C of the General Statutes, or more frequently if the court requires, and immediately if the defendant gains capacity to proceed. The order must also require the report to state the likelihood of the defendant's gaining capacity to proceed, to the extent that the hospital, institution, or individual is capable of making such a judgment.

(e) The orders must require and provide for the return of the defendant to stand trial in the event that he gains capacity to proceed, unless the charges have been dismissed pursuant to G.S. 15A-1008, and may also provide for the confinement or pretrial release of the defendant in that event.

(f) The orders of the court may be amended or supplemented from time to time as changed conditions require.

N.C. GEN. STAT. § 15A-1321 (2010).AUTOMATIC CIVIL COMMITMENT OF DEFENDANTS FOUND NOT GUILTY BY REASON OF INSANITY

(a) When a defendant charged with a crime, wherein it is not alleged that the defendant inflicted or attempted to inflict serious physical injury or death, is found not guilty by reason of insanity by verdict or upon motion pursuant to G.S. 15A-959(c), the presiding judge shall enter an order finding that the defendant has been found not guilty by reason of insanity of a crime and committing the defendant to a State 24-hour facility designated pursuant to G.S. 122C-252. The court order shall also grant custody of the defendant to a law enforcement officer who shall take the defendant directly to that facility. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes.

(b) When a defendant charged with a crime, wherein it is alleged that the defendant inflicted or attempted to inflict serious physical injury or death, is found not guilty by reason of insanity, by verdict, or upon motion pursuant to G.S. 15A-959(c), notwithstanding any other provision of law, the presiding judge shall enter an order finding that the defendant has been found not guilty by reason of insanity of a crime and committing the defendant to a Forensic Unit operated by the Department of Health and

Human Services, where the defendant shall reside until the defendant's release in accordance with Chapter 122C of the General Statutes. The court order shall also grant custody of the defendant to a law enforcement officer who shall take the defendant directly to the facility. Proceedings not inconsistent with this section shall thereafter be in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes.

N.C. GEN. STAT. § 15A-1322 (2010).TEMPORARY RESTRAINT

If the judge finds that there are reasonable grounds to believe that the defendant-respondent is mentally ill, as defined in G.S. 122C-3, and is dangerous to himself or others, and the judge determines upon appropriate findings of fact that it is appropriate to proceed under the provisions of this Article, he may order that the respondent be held under appropriate restraint pending proceedings under G.S. 15A-1321.

NORTH DAKOTA

N.D. CENT. CODE § 12.1-04.1-20 (2010). JURISDICTION OF COURT.

1. Unless earlier discharged by order of the court pursuant to section 12.1-04.1-22, 12.1-04.1-24, or 12.1-04.1-25, an individual found not guilty by reason of lack of criminal responsibility is subject to the jurisdiction of the court for a period equal to the maximum term of imprisonment that could have been imposed for the most serious crime of which the individual was charged but found not guilty by reason of lack of criminal responsibility.

2. Upon expiration of its jurisdiction under this chapter or earlier discharge by its order, the court may order that a proceeding for involuntary commitment be initiated pursuant to chapter 25-03.1.

N.D. CENT. CODE § 12.1-04.1-21 (2010). PROCEEDING FOLLOWING VERDICT OR FINDING.

After entry of a verdict, finding, or an unresisted plea, that an individual committed the crime charged, but is not guilty by reason of lack of criminal responsibility, the court shall:

1. Make a finding, based upon the verdict or finding provided in section 12.1-04.1-18, of the expiration date of the court's jurisdiction; and

2. Order the individual committed to a treatment facility, as defined under chapter 25-03.1, for examination. The order of the court may set terms of custody during the period of examination.

N.D. CENT. CODE § 12.1-04.1-22 (2010). INITIAL ORDER OF DISPOSITION -- COMMITMENT TO TREATMENT FACILITY -- CONDITIONAL RELEASE -- DISCHARGE.

1. The court shall conduct a dispositional hearing within ninety days after an order of commitment pursuant to section 12.1-04.1-21 is entered, unless the court, upon application of the prosecuting attorney or the individual committed, for cause shown, extends the time for the hearing. The court shall enter an initial order of disposition within ten days after the hearing is concluded.

2. In a proceeding under this section, unless excused by order of the court, defense counsel at the trial shall represent the individual committed.

3. If the court finds that the individual lacks sufficient financial resources to retain the services of a mental health professional and that those services are not otherwise available, it shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition.

4. In a proceeding under this section, the individual committed has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:

a. If the court finds that the individual is not mentally ill or defective or that there is not a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act, it shall order the person discharged from further constraint under this chapter.

b. If the court finds that the individual is mentally ill or defective and that there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act of violence threatening another individual with bodily injury or inflicting property damage and that the individual is not a proper subject for conditional release, it shall order the individual committed to a treatment facility for custody and treatment. If the court finds that the risk that the individual will commit an act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment if the individual is conditionally released and that necessary supervision and treatment are available, it shall order the person released subject to conditions it considers appropriate for the protection of society.

c. If the court finds that the individual is mentally ill or defective and that there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act not included in subdivision b, it shall order the individual to report to a treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

N.D. CENT. CODE § 12.1-04.1-23 (2010). TERMS OF COMMITMENT – PERIODIC REVIEW OF COMMITMENT.

1. Unless an order of commitment of an individual to a treatment facility provides for special terms as to custody during commitment, the director or superintendent of the treatment facility may determine from time to time the nature of the constraints necessary within the treatment facility to carry out the court's order. In an order of commitment, the court may authorize the director or superintendent to allow the individual a limited leave of absence from the treatment facility on terms the court may direct.

2. In an order of commitment of an individual to a treatment facility under this chapter, the court shall set a date for review of the status of the individual. The date set must be within one year after the date of the order.

3. At least sixty days before a date for review fixed in a court order, the director or superintendent of the treatment facility shall inquire as to whether the individual is presently represented by counsel and file with the court a written report of the facts ascertained. If the individual is not represented by counsel, counsel must be provided at public expense to consult with the individual and, if the individual is indigent, to seek arrangement of counsel at public expense to represent the individual in a proceeding for conditional release or discharge.

4. If the court finds in a review that the individual lacks sufficient financial resources to retain the services of a mental health professional and that those services are otherwise not available, the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition. In proceedings brought before the next date for review, the court may authorize expenditures from public funds for that purpose.

5. If an application for review of the status of the individual has not been filed by the date for review, the director or superintendent shall file a motion for a new date for review to be set by the court. The date set must be within one year after the previous date for review.

N.D. CENT. CODE § 25-03.3-01(2010). DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Committed individual" means an individual committed for custody and treatment pursuant to this chapter.

2. "Executive director" means the executive director of the department of human services or the executive director's designee.

3. "Mental retardation" means mental retardation as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fourth edition (1994).

4. "Qualified expert" means an individual who has an expertise in sexual offender evaluations and who is a psychiatrist or psychologist trained in a clinical program and licensed pursuant to this state's law or a psychologist approved for exemption by the North Dakota board of psychologist examiners. For purposes of evaluating an individual with mental retardation, the qualified expert must have specialized knowledge in sexual offender evaluations of individuals with mental retardation.

5. "Respondent" means an individual subject to a commitment proceeding pursuant to this chapter.

6. "Sexual act" means sexual contact between human beings, including contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the vulva and the vulva; or the use of an object that comes in contact with the victim's anus, vulva, or penis. Sexual contact between the penis and the vulva, or between the penis and the anus, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.

7. "Sexual contact" means any touching of the sexual or other intimate parts of an individual for the purpose of arousing or satisfying sexual or aggressive desires.

8. "Sexually dangerous individual" means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. For these purposes, mental retardation is not a sexual disorder, personality disorder, or other mental disorder or dysfunction.

9. "Sexually predatory conduct" means:

a. Engaging or attempting to engage in a sexual act or sexual contact with another individual, or causing or attempting to cause another individual to engage in a sexual act or sexual contact, if:

(1) The victim is compelled to submit by force or by threat of imminent death, serious bodily injury, or kidnapping directed toward the victim or any human being, or the victim is compelled to submit by any threat that would render an individual of reasonable firmness incapable of resisting;

(2) The victim's power to appraise or control the victim's conduct has been substantially impaired by the administration or employment, without the victim's knowledge, of intoxicants or other means for purposes of preventing resistance;

(3) The actor knows or should have known that the victim is unaware that a sexual act is being committed upon the victim;

(4) The victim is less than fifteen years old;

(5) The actor knows or should have known that the victim has a disability that substantially impairs the victim's understanding of the nature of the sexual act or contact;

(6) The victim is in official custody or detained in a treatment facility, health care facility, correctional facility, or other institution and is under the supervisory authority, disciplinary control, or care of the actor; or

(7) The victim is a minor and the actor is an adult; or

b. Engaging in or attempting to engage in sexual contact with another individual or causing or attempting to cause another individual to have sexual contact, if:

(1) The actor knows or should have known that the contact is offensive to the victim; or

(2) The victim is a minor, fifteen years of age or older, and the actor is the minor's parent, guardian, or is otherwise responsible for general supervision of the victim's welfare.

10. "Should have known" means a reasonable individual without a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction in the actor's circumstances would have known.

11. "Superintendent" means the superintendent of the state hospital or the superintendent's designee.

12. "Treatment facility" means any hospital, including the state hospital, or any treatment facility, including the developmental center at westwood park, Grafton, which can provide directly, or by direct arrangement with other public or private agencies, evaluation and treatment of sexually dangerous individuals.

N.D. CENT. CODE § 25-03.3-03.1 (2010). REFERRAL OF INMATES TO STATE'S ATTORNEYS -- IMMUNITY.

1. The department of corrections and rehabilitation shall maintain treatment records for any inmate who has been convicted of an offense that includes sexually predatory conduct. Approximately six months before the projected release date of the inmate, the department shall complete an assessment of the inmate to determine whether a recommendation is to be made to a state's attorney for civil commitment of the inmate under this chapter. The assessment must be based on actuarial and clinical evaluations or any other information determined by the director to be relevant, including inmate behavior and whether the inmate participated in sexual offender treatment while

incarcerated.

2. If, upon the completion of the assessment, the department determines the inmate may meet the definition of a sexually dangerous individual, the department shall refer the inmate to a state's attorney of an appropriate county as provided for in section 25-03.3-02. The department may make a referral of an inmate to more than one county.

3. Any referral from the department must include a summary of the factors considered material to the determination that the inmate is appropriate for referral. The department shall provide a copy of the referral and summary to the attorney general and the superintendent of the developmental center and the state hospital.

4. Following the receipt of a referral, but at least sixty days before the release date of the inmate, the state's attorney shall notify the department and the attorney general of the state's attorney's intended disposition of the referral.

5. Any person participating in good faith in the assessment and referral of an inmate is immune from any civil or criminal liability. For the purpose of any civil or criminal proceeding, the good faith of any person required to participate in the assessment and referral of an inmate is presumed.

N.D. CENT. CODE § 25-03.3-08(2010). SEXUALLY DANGEROUS INDIVIDUAL -- PROCEDURE ON PETITION -- DETENTION.

1. Upon the filing of a petition pursuant to this chapter, the court shall determine whether to issue an order for detention of the respondent named in the petition. The petition may be heard ex parte. The court shall issue an order for detention if there is cause to believe that the respondent is a sexually dangerous individual. If the court issues an order for detention, the order must direct that the respondent be taken into custody and transferred to an appropriate treatment facility or local correctional facility to be held for subsequent hearing pursuant to this chapter. Under this section, the department of human services shall pay for any expense incurred in the detention or evaluation of the respondent.

2. If the state's attorney knows or believes the respondent named in the petition is an individual with mental retardation, the state's attorney shall notify the court in the petition and shall advise the court of the name of the legal guardian of the respondent or, if none is known, the court may appoint a guardian ad litem for the respondent. Before service of the notice required in section 25-03.3-10, the court shall appoint an attorney for the respondent. An individual with mental retardation may be detained in a correctional facility before the probable cause hearing only when no other secure facility is accessible, and then only under close supervision.

N.D. CENT. CODE § 25-03.3-13 (2010). SEXUALLY DANGEROUS INDIVIDUAL -- COMMITMENT PROCEEDING -- REPORT OF FINDINGS.

Within sixty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment

proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless expert evidence is admitted establishing that the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

OHIO

OHIO REV. CODE ANN. § 2945.371 (2010). EVALUATIONS OF DEFENDANT'S MENTAL CONDITION AT RELEVANT TIME; SEPARATE MENTAL RETARDATION EVALUATION

(A) If the issue of a defendant's competence to stand trial is raised or if a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. An examiner shall conduct the evaluation.

(B) If the court orders more than one evaluation under division (A) of this section, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to perform one of the evaluations. If a defendant enters a plea of not guilty by reason of insanity and if the court does not designate an examiner recommended by the defendant, the court shall inform the defendant that the defendant may have independent expert evaluation and that, if the defendant is unable to obtain independent expert evaluation, it will be obtained for the defendant at public expense if the defendant is indigent.

(C) If the court orders an evaluation under division (A) of this section, the defendant shall

be available at the times and places established by the examiners who are to conduct the evaluation. The court may order a defendant who has been released on bail or recognizance to submit to an evaluation under this section. If a defendant who has been released on bail or recognizance refuses to submit to a complete evaluation, the court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by the department of mental health or the department of developmental disabilities where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days.

(D) A defendant who has not been released on bail or recognizance may be evaluated at the defendant's place of detention. Upon the request of the examiner, the court may order the sheriff to transport the defendant to a program or facility operated by the department of mental health or the department of developmental disabilities, where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days, and to return the defendant to the place of detention after the evaluation. A municipal court may make an order under this division only upon the request of a certified forensic center examiner.

(E) If a court orders the evaluation to determine a defendant's mental condition at the time of the offense charged, the court shall inform the examiner of the offense with which the defendant is charged.

(F) In conducting an evaluation of a defendant's mental condition at the time of the offense charged, the examiner shall consider all relevant evidence. If the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered woman syndrome."

(G) The examiner shall file a written report with the court within thirty days after entry of a court order for evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the following:

(1) The examiner's findings;

(2) The facts in reasonable detail on which the findings are based;

(3) If the evaluation was ordered to determine the defendant's competence to stand trial, all of the following findings or recommendations that are applicable:

(a) Whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense;

(b) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, whether the defendant presently is mentally ill or mentally retarded

and, if the examiner's opinion is that the defendant presently is mentally retarded, whether the defendant appears to be a mentally retarded person subject to institutionalization by court order;

(c) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner's opinion as to the likelihood of the defendant becoming capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense within one year if the defendant is provided with a course of treatment;

(d) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or mentally retarded, the examiner's recommendation as to the least restrictive treatment alternative, consistent with the defendant's treatment needs for restoration to competency and with the safety of the community.

(4) If the evaluation was ordered to determine the defendant's mental condition at the time of the offense charged, the examiner's findings as to whether the defendant, at the time of the offense charged, did not know, as a result of a severe mental disease or defect, the wrongfulness of the defendant's acts charged.

(H) If the examiner's report filed under division (G) of this section indicates that in the examiner's opinion the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that in the examiner's opinion the defendant appears to be a mentally retarded person subject to institutionalization by court order, the court shall order the defendant to undergo a separate mental retardation evaluation conducted by a psychologist designated by the director of developmental disabilities. Divisions (C) to (F) of this section apply in relation to a separate mental retardation evaluation conducted under this division. The psychologist appointed under this division to conduct the separate mental retardation evaluation shall file a written report with the court within thirty days after the entry of the court order requiring the separate mental retardation evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the information described in divisions (G)(1) to (4) of this section. If the court orders a separate mental retardation evaluation of a defendant under this division, the court shall not conduct a hearing under divisions (B) to (H) of section 2945.37 of the Revised Code regarding that defendant until a report of the separate mental retardation evaluation conducted under this division has been filed. Upon the filing of that report, the court shall conduct the hearing within the period of time specified in division (C) of section 2945.37 of the Revised Code.

(I) An examiner appointed under divisions (A) and (B) of this section or under division (H) of this section to evaluate a defendant to determine the defendant's competence to stand trial also may be appointed to evaluate a defendant who has entered a plea of not

guilty by reason of insanity, but an examiner of that nature shall prepare separate reports on the issue of competence to stand trial and the defense of not guilty by reason of insanity.

(J) No statement that a defendant makes in an evaluation or hearing under divisions (A) to (H) of this section relating to the defendant's competence to stand trial or to the defendant's mental condition at the time of the offense charged shall be used against the defendant on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated the defendant or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the prosecutor or defense counsel from calling other witnesses or presenting other evidence on competency or insanity issues.

(K) Persons appointed as examiners under divisions (A) and (B) of this section or under division (H) of this section shall be paid a reasonable amount for their services and expenses, as certified by the court. The certified amount shall be paid by the county in the case of county courts and courts of common pleas and by the legislative authority, as defined in section 1901.03 of the Revised Code, in the case of municipal courts.

OHIO REV. CODE ANN. § 2945.38 (2010). DISPOSITION OF DEFENDANT AFTER COMPETENCY HEARING; TREATMENT AND EVALUATION ORDERS

(A) If the issue of a defendant's competence to stand trial is raised and if the court, upon conducting the hearing provided for in section 2945.37 of the Revised Code, finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law. If the court finds the defendant competent to stand trial and the defendant is receiving psychotropic drugs or other medication, the court may authorize the continued administration of the drugs or medication or other appropriate treatment in order to maintain the defendant's competence to stand trial, unless the defendant's attending physician advises the court against continuation of the drugs, other medication, or treatment.

(B) (1) (a) If, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order the defendant to undergo treatment. If the defendant has been charged with a felony offense and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial, but the court is unable at that time to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order continuing evaluation and treatment of the defendant for a period not to exceed four months to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment.

(b) The court order for the defendant to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall specify that the treatment or continuing evaluation and treatment shall occur at a facility operated by the department of mental health or the department of developmental disabilities, at a facility certified by either of those departments as being qualified to treat mental illness or mental retardation, at a public or private community mental health or mental retardation facility, or by a psychiatrist or another mental health or mental retardation professional. The order may restrict the defendant's freedom of movement as the court considers necessary. The prosecutor in the defendant's case shall send to the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed copies of relevant police reports and other background information that pertains to the defendant and is available to the prosecutor unless the prosecutor determines that the release of any of the information in the police reports or any of the other background information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person.

In determining placement alternatives, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that is consistent with public safety and treatment goals. In weighing these factors, the court shall give preference to protecting public safety.

(c) If the defendant is found incompetent to stand trial, if the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed for treatment or continuing evaluation and treatment under division (B)(1)(b) of this section determines that medication is necessary to restore the defendant's competency to stand trial, and if the defendant lacks the capacity to give informed consent or refuses medication, the chief clinical officer, managing officer, director, or person to which the defendant is committed for treatment or continuing evaluation and treatment may petition the court for authorization for the involuntary administration of medication. The court shall hold a hearing on the petition within five days of the filing of the petition if the petition was filed in a municipal court or a county court regarding an incompetent defendant charged with a misdemeanor or within ten days of the filing of the petition if the petition was filed in a court of common pleas regarding an incompetent defendant charged with a felony offense. Following the hearing, the court may authorize the involuntary administration of medication or may dismiss the petition.

(2) If the court finds that the defendant is incompetent to stand trial and that, even if the defendant is provided with a course of treatment, there is not a substantial probability that the defendant will become competent to stand trial within one year, the court shall order the discharge of the defendant, unless upon motion of the prosecutor or on its own motion, the court either seeks to retain jurisdiction over the defendant pursuant to section 2945.39 of the Revised Code or files an affidavit in the probate court for the civil commitment of the defendant pursuant to Chapter 5122. or 5123. of the Revised Code

alleging that the defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. If an affidavit is filed in the probate court, the trial court shall send to the probate court copies of all written reports of the defendant's mental condition that were prepared pursuant to section 2945.371 [2945.37.1] of the Revised Code.

The trial court may issue the temporary order of detention that a probate court may issue under section 5122.11 or 5123.71 of the Revised Code, to remain in effect until the probable cause or initial hearing in the probate court. Further proceedings in the probate court are civil proceedings governed by Chapter 5122. or 5123. of the Revised Code.

(C) No defendant shall be required to undergo treatment, including any continuing evaluation and treatment, under division (B)(1) of this section for longer than whichever of the following periods is applicable:

(1) One year, if the most serious offense with which the defendant is charged is one of the following offenses:

(a) Aggravated murder, murder, or an offense of violence for which a sentence of death or life imprisonment may be imposed;

(b) An offense of violence that is a felony of the first or second degree;

(c) A conspiracy to commit, an attempt to commit, or complicity in the commission of an offense described in division (C)(1)(a) or (b) of this section if the conspiracy, attempt, or complicity is a felony of the first or second degree.

(2) Six months, if the most serious offense with which the defendant is charged is a felony other than a felony described in division (C)(1) of this section;

(3) Sixty days, if the most serious offense with which the defendant is charged is a misdemeanor of the first or second degree;

(4) Thirty days, if the most serious offense with which the defendant is charged is a misdemeanor of the third or fourth degree, a minor misdemeanor, or an unclassified misdemeanor.

(D) Any defendant who is committed pursuant to this section shall not voluntarily admit the defendant or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code.

(E) Except as otherwise provided in this division, a defendant who is charged with an offense and is committed to a hospital or other institution by the court under this section shall not be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status. The court may grant a defendant supervised off-grounds movement to obtain medical treatment or specialized habilitation treatment services if the

person who supervises the treatment or the continuing evaluation and treatment of the defendant ordered under division (B)(1)(a) of this section informs the court that the treatment or continuing evaluation and treatment cannot be provided at the hospital or the institution to which the defendant is committed. The chief clinical officer of the hospital or the managing officer of the institution to which the defendant is committed or a designee of either of those persons may grant a defendant movement to a medical facility for an emergency medical situation with appropriate supervision to ensure the safety of the defendant, staff, and community during that emergency medical situation. The chief clinical officer of the hospital or the managing officer of the institution shall notify the court within twenty-four hours of the defendant's movement to the medical facility for an emergency medical situation under this division.

(F) The person who supervises the treatment or continuing evaluation and treatment of a defendant ordered to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall file a written report with the court at the following times:

(1) Whenever the person believes the defendant is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense;

(2) For a felony offense, fourteen days before expiration of the maximum time for treatment as specified in division (C) of this section and fourteen days before the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, and, for a misdemeanor offense, ten days before the expiration of the maximum time for treatment, as specified in division (C) of this section;

(3) At a minimum, after each six months of treatment;

(4) Whenever the person who supervises the treatment or continuing evaluation and treatment of a defendant ordered under division (B)(1)(a) of this section believes that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment.

(G) A report under division (F) of this section shall contain the examiner's findings, the facts in reasonable detail on which the findings are based, and the examiner's opinion as to the defendant's capability of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense. If, in the examiner's opinion, the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense and there is a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense if the defendant is provided with a course of treatment, if in the examiner's opinion the defendant remains mentally ill or mentally retarded, and if the

maximum time for treatment as specified in division (C) of this section has not expired, the report also shall contain the examiner's recommendation as to the least restrictive treatment alternative that is consistent with the defendant's treatment needs for restoration to competency and with the safety of the community. The court shall provide copies of the report to the prosecutor and defense counsel.

(H) If a defendant is committed pursuant to division (B)(1) of this section, within ten days after the treating physician of the defendant or the examiner of the defendant who is employed or retained by the treating facility advises that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment, within ten days after the expiration of the maximum time for treatment as specified in division (C) of this section, within ten days after the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, within thirty days after a defendant's request for a hearing that is made after six months of treatment, or within thirty days after being advised by the treating physician or examiner that the defendant is competent to stand trial, whichever is the earliest, the court shall conduct another hearing to determine if the defendant is competent to stand trial and shall do whichever of the following is applicable:

(1) If the court finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law.

(2) If the court finds that the defendant is incompetent to stand trial, but that there is a substantial probability that the defendant will become competent to stand trial if the defendant is provided with a course of treatment, and the maximum time for treatment as specified in division (C) of this section has not expired, the court, after consideration of the examiner's recommendation, shall order that treatment be continued, may change the facility or program at which the treatment is to be continued, and shall specify whether the treatment is to be continued at the same or a different facility or program.

(3) If the court finds that the defendant is incompetent to stand trial, if the defendant is charged with an offense listed in division (C)(1) of this section, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, or if the maximum time for treatment relative to that offense as specified in division (C) of this section has expired, further proceedings shall be as provided in sections 2945.39, 2945.401 [2945.40.1], and 2945.402 [2945.40.2] of the Revised Code.

(4) If the court finds that the defendant is incompetent to stand trial, if the most serious offense with which the defendant is charged is a misdemeanor or a felony other than a felony listed in division (C)(1) of this section, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, or if the maximum time for treatment relative to that offense as specified in division (C) of this section has expired, the court

shall dismiss the indictment, information, or complaint against the defendant. A dismissal under this division is not a bar to further prosecution based on the same conduct. The court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment pursuant to Chapter 5122. or 5123. of the Revised Code. If an affidavit for civil commitment is filed, the court may detain the defendant for ten days pending civil commitment. All of the following provisions apply to persons charged with a misdemeanor or a felony other than a felony listed in division (C)(1) of this section who are committed by the probate court subsequent to the court's or prosecutor's filing of an affidavit for civil commitment under authority of this division:

(a) The chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed or admitted shall do all of the following:

(i) Notify the prosecutor, in writing, of the discharge of the defendant, send the notice at least ten days prior to the discharge unless the discharge is by the probate court, and state in the notice the date on which the defendant will be discharged;

(ii) Notify the prosecutor, in writing, when the defendant is absent without leave or is granted unsupervised, off-grounds movement, and send this notice promptly after the discovery of the absence without leave or prior to the granting of the unsupervised, off-grounds movement, whichever is applicable;

(iii) Notify the prosecutor, in writing, of the change of the defendant's commitment or admission to voluntary status, send the notice promptly upon learning of the change to voluntary status, and state in the notice the date on which the defendant was committed or admitted on a voluntary status.

(b) Upon receiving notice that the defendant will be granted unsupervised, off-grounds movement, the prosecutor either shall re-indict the defendant or promptly notify the court that the prosecutor does not intend to prosecute the charges against the defendant.

(I) If a defendant is convicted of a crime and sentenced to a jail or workhouse, the defendant's sentence shall be reduced by the total number of days the defendant is confined for evaluation to determine the defendant's competence to stand trial or treatment under this section and sections 2945.37 and 2945.371 [2945.37.1] of the Revised Code or by the total number of days the defendant is confined for evaluation to determine the defendant's mental condition at the time of the offense charged.

OHIO REV. CODE ANN. § 2945.40 (2010). PROCEDURE UPON ACQUITTAL BY REASON OF INSANITY

(A) If a person is found not guilty by reason of insanity, the verdict shall state that finding, and the trial court shall conduct a full hearing to determine whether the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. Prior to the hearing, if the trial judge

believes that there is probable cause that the person found not guilty by reason of insanity is a mentally ill person subject to hospitalization by court order or mentally retarded person subject to institutionalization by court order, the trial judge may issue a temporary order of detention for that person to remain in effect for ten court days or until the hearing, whichever occurs first.

Any person detained pursuant to a temporary order of detention issued under this division shall be held in a suitable facility, taking into consideration the place and type of confinement prior to and during trial.

(B) The court shall hold the hearing under division (A) of this section to determine whether the person found not guilty by reason of insanity is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order within ten court days after the finding of not guilty by reason of insanity. Failure to conduct the hearing within the ten-day period shall cause the immediate discharge of the respondent, unless the judge grants a continuance for not longer than ten court days for good cause shown or for any period of time upon motion of the respondent.

(C) If a person is found not guilty by reason of insanity, the person has the right to attend all hearings conducted pursuant to sections 2945.37 to 2945.402 [2945.40.2] of the Revised Code. At any hearing conducted pursuant to one of those sections, the court shall inform the person that the person has all of the following rights:

(1) The right to be represented by counsel and to have that counsel provided at public expense if the person is indigent, with the counsel to be appointed by the court under Chapter 120. of the Revised Code or under the authority recognized in division (C) of section 120.06, division (E) of section 120.16, division (E) of section 120.26, or section 2941.51 of the Revised Code;

(2) The right to have independent expert evaluation and to have that independent expert evaluation provided at public expense if the person is indigent;

(3) The right to subpoena witnesses and documents, to present evidence on the person's behalf, and to cross-examine witnesses against the person;

(4) The right to testify in the person's own behalf and to not be compelled to testify;

(5) The right to have copies of any relevant medical or mental health document in the custody of the state or of any place of commitment other than a document for which the court finds that the release to the person of information contained in the document would create a substantial risk of harm to any person.

(D) The hearing under division (A) of this section shall be open to the public, and the court shall conduct the hearing in accordance with the Rules of Civil Procedure. The court shall make and maintain a full transcript and record of the hearing proceedings. The

court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense in relation to which the person was found not guilty by reason of insanity, and any history of the person that is relevant to the person's ability to conform to the law.

(E) Upon completion of the hearing under division (A) of this section, if the court finds there is not clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the court shall discharge the person, unless a detainer has been placed upon the person by the department of rehabilitation and correction, in which case the person shall be returned to that department.

(F) If, at the hearing under division (A) of this section, the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, it shall commit the person to a hospital operated by the department of mental health, a facility operated by the department of developmental disabilities, or another medical or psychiatric facility, as appropriate, and further proceedings shall be in accordance with sections 2945.401 [2945.40.1] and 2945.402 [2945.40.2] of the Revised Code. In determining the place and nature of the commitment, the court shall order the least restrictive commitment alternative available that is consistent with public safety and the welfare of the person. In weighing these factors, the court shall give preference to protecting public safety.

(G) If a court makes a commitment of a person under division (F) of this section, the prosecutor shall send to the place of commitment all reports of the person's current mental condition, and, except as otherwise provided in this division, any other relevant information, including, but not limited to, a transcript of the hearing held pursuant to division (A) of this section, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the person and that the prosecutor possesses. The prosecutor shall send the reports of the person's current mental condition in every case of commitment, and, unless the prosecutor determines that the release of any of the other relevant information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person, the prosecutor also shall send the other relevant information. Upon admission of a person committed under division (F) of this section, the place of commitment shall send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the person were filed a copy of all reports of the person's current mental condition and a copy of the other relevant information provided by the prosecutor under this division, including, if provided, a transcript of the hearing held pursuant to division (A) of this section, the relevant police reports, and the prior arrest and conviction records that pertain to the person and that the prosecutor possesses.

(H) A person who is committed pursuant to this section shall not voluntarily admit the

person or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code.

OHIO REV. CODE ANN. § 2945.401 (2010). CONTINUING JURISDICTION OF COURT AFTER COMPETENCY FINDING OR INSANITY ACQUITTAL; APPLICATION OF OTHER LAWS; TERMINATION OF COMMITMENT OR CHANGE IN CONDITIONS

(A) A defendant found incompetent to stand trial and committed pursuant to section 2945.39 of the Revised Code or a person found not guilty by reason of insanity and committed pursuant to section 2945.40 of the Revised Code shall remain subject to the jurisdiction of the trial court pursuant to that commitment, and to the provisions of this section, until the final termination of the commitment as described in division (J)(1) of this section. If the jurisdiction is terminated under this division because of the final termination of the commitment resulting from the expiration of the maximum prison term or term of imprisonment described in division (J)(1)(b) of this section, the court or prosecutor may file an affidavit for the civil commitment of the defendant or person pursuant to Chapter 5122. or 5123. of the Revised Code.

(B) A hearing conducted under any provision of sections 2945.37 to 2945.402 [2945.40.2] of the Revised Code shall not be conducted in accordance with Chapters 5122. and 5123. of the Revised Code. Any person who is committed pursuant to section 2945.39 or 2945.40 of the Revised Code shall not voluntarily admit the person or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code. All other provisions of Chapters 5122. and 5123. of the Revised Code regarding hospitalization or institutionalization shall apply to the extent they are not in conflict with this chapter. A commitment under section 2945.39 or 2945.40 of the Revised Code shall not be terminated and the conditions of the commitment shall not be changed except as otherwise provided in division (D)(2) of this section with respect to a mentally retarded person subject to institutionalization by court order or except by order of the trial court.

(C) The hospital, facility, or program to which a defendant or person has been committed under section 2945.39 or 2945.40 of the Revised Code shall report in writing to the trial court, at the times specified in this division, as to whether the defendant or person remains a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order and, in the case of a defendant committed under section 2945.39 of the Revised Code, as to whether the defendant remains incompetent to stand trial. The hospital, facility, or program shall make the reports after the initial six months of treatment and every two years after the initial report is made. The trial court shall provide copies of the reports to the prosecutor and to the counsel for the defendant or person. Within thirty days after its receipt pursuant to this division of a report from a hospital, facility, or program, the trial court shall hold a hearing on the continued commitment of the defendant or person or on any changes in the conditions of the commitment of the defendant or person. The defendant or person may request a change in the conditions of confinement, and the trial court shall conduct a hearing on that request if six months or more have elapsed since the most

recent hearing was conducted under this section.

(D) (1) Except as otherwise provided in division (D)(2) of this section, when a defendant or person has been committed under section 2945.39 or 2945.40 of the Revised Code, at any time after evaluating the risks to public safety and the welfare of the defendant or person, the chief clinical officer of the hospital, facility, or program to which the defendant or person is committed may recommend a termination of the defendant's or person's commitment or a change in the conditions of the defendant's or person's commitment.

Except as otherwise provided in division (D)(2) of this section, if the chief clinical officer recommends on-grounds unsupervised movement, off-grounds supervised movement, or nonsecured status for the defendant or person or termination of the defendant's or person's commitment, the following provisions apply:

(a) If the chief clinical officer recommends on-grounds unsupervised movement or off-grounds supervised movement, the chief clinical officer shall file with the trial court an application for approval of the movement and shall send a copy of the application to the prosecutor. Within fifteen days after receiving the application, the prosecutor may request a hearing on the application and, if a hearing is requested, shall so inform the chief clinical officer. If the prosecutor does not request a hearing within the fifteen-day period, the trial court shall approve the application by entering its order approving the requested movement or, within five days after the expiration of the fifteen-day period, shall set a date for a hearing on the application. If the prosecutor requests a hearing on the application within the fifteen-day period, the trial court shall hold a hearing on the application within thirty days after the hearing is requested. If the trial court, within five days after the expiration of the fifteen-day period, sets a date for a hearing on the application, the trial court shall hold the hearing within thirty days after setting the hearing date. At least fifteen days before any hearing is held under this division, the trial court shall give the prosecutor written notice of the date, time, and place of the hearing. At the conclusion of each hearing conducted under this division, the trial court either shall approve or disapprove the application and shall enter its order accordingly.

(b) If the chief clinical officer recommends termination of the defendant's or person's commitment at any time or if the chief clinical officer recommends the first of any nonsecured status for the defendant or person, the chief clinical officer shall send written notice of this recommendation to the trial court and to the local forensic center. The local forensic center shall evaluate the committed defendant or person and, within thirty days after its receipt of the written notice, shall submit to the trial court and the chief clinical officer a written report of the evaluation. The trial court shall provide a copy of the chief clinical officer's written notice and of the local forensic center's written report to the prosecutor and to the counsel for the defendant or person. Upon the local forensic center's submission of the report to the trial court and the chief clinical officer, all of the following apply:

(i) If the forensic center disagrees with the recommendation of the chief clinical

officer, it shall inform the chief clinical officer and the trial court of its decision and the reasons for the decision. The chief clinical officer, after consideration of the forensic center's decision, shall either withdraw, proceed with, or modify and proceed with the recommendation. If the chief clinical officer proceeds with, or modifies and proceeds with, the recommendation, the chief clinical officer shall proceed in accordance with division (D)(1)(b)(iii) of this section.

(ii) If the forensic center agrees with the recommendation of the chief clinical officer, it shall inform the chief clinical officer and the trial court of its decision and the reasons for the decision, and the chief clinical officer shall proceed in accordance with division (D)(1)(b)(iii) of this section.

(iii) If the forensic center disagrees with the recommendation of the chief clinical officer and the chief clinical officer proceeds with, or modifies and proceeds with, the recommendation or if the forensic center agrees with the recommendation of the chief clinical officer, the chief clinical officer shall work with the board of alcohol, drug addiction, and mental health services or community mental health board serving the area, as appropriate, to develop a plan to implement the recommendation. If the defendant or person is on medication, the plan shall include, but shall not be limited to, a system to monitor the defendant's or person's compliance with the prescribed medication treatment plan. The system shall include a schedule that clearly states when the defendant or person shall report for a medication compliance check. The medication compliance checks shall be based upon the effective duration of the prescribed medication, taking into account the route by which it is taken, and shall be scheduled at intervals sufficiently close together to detect a potential increase in mental illness symptoms that the medication is intended to prevent.

The chief clinical officer, after consultation with the board of alcohol, drug addiction, and mental health services or the community mental health board serving the area, shall send the recommendation and plan developed under division (D)(1)(b)(iii) of this section, in writing, to the trial court, the prosecutor and the counsel for the committed defendant or person. The trial court shall conduct a hearing on the recommendation and plan developed under division (D)(1)(b)(iii) of this section. Divisions (D)(1)(c) and (d) and (E) to (J) of this section apply regarding the hearing.

(c) If the chief clinical officer's recommendation is for nonsecured status or termination of commitment, the prosecutor may obtain an independent expert evaluation of the defendant's or person's mental condition, and the trial court may continue the hearing on the recommendation for a period of not more than thirty days to permit time for the evaluation.

The prosecutor may introduce the evaluation report or present other evidence at the hearing in accordance with the Rules of Evidence.

(d) The trial court shall schedule the hearing on a chief clinical officer's recommendation for nonsecured status or termination of commitment and shall give

reasonable notice to the prosecutor and the counsel for the defendant or person. Unless continued for independent evaluation at the prosecutor's request or for other good cause, the hearing shall be held within thirty days after the trial court's receipt of the recommendation and plan.

(2) (a) Division (D)(1) of this section does not apply to on-grounds unsupervised movement of a defendant or person who has been committed under section 2945.39 or 2945.40 of the Revised Code, who is a mentally retarded person subject to institutionalization by court order, and who is being provided residential habilitation, care, and treatment in a facility operated by the department of developmental disabilities.

(b) If, pursuant to section 2945.39 of the Revised Code, the trial court commits a defendant who is found incompetent to stand trial and who is a mentally retarded person subject to institutionalization by court order, if the defendant is being provided residential habilitation, care, and treatment in a facility operated by the department of developmental disabilities, if an individual who is conducting a survey for the department of health to determine the facility's compliance with the certification requirements of the medicaid program under Chapter 5111. of the Revised Code and Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, cites the defendant's receipt of the residential habilitation, care, and treatment in the facility as being inappropriate under the certification requirements, if the defendant's receipt of the residential habilitation, care, and treatment in the facility potentially jeopardizes the facility's continued receipt of federal medicaid moneys, and if as a result of the citation the chief clinical officer of the facility determines that the conditions of the defendant's commitment should be changed, the department of developmental disabilities may cause the defendant to be removed from the particular facility and, after evaluating the risks to public safety and the welfare of the defendant and after determining whether another type of placement is consistent with the certification requirements, may place the defendant in another facility that the department selects as an appropriate facility for the defendant's continued receipt of residential habilitation, care, and treatment and that is a no less secure setting than the facility in which the defendant had been placed at the time of the citation. Within three days after the defendant's removal and alternative placement under the circumstances described in division (D)(2)(b) of this section, the department of developmental disabilities shall notify the trial court and the prosecutor in writing of the removal and alternative placement.

The trial court shall set a date for a hearing on the removal and alternative placement, and the hearing shall be held within twenty-one days after the trial court's receipt of the notice from the department of developmental disabilities. At least ten days before the hearing is held, the trial court shall give the prosecutor, the department of developmental disabilities, and the counsel for the defendant written notice of the date, time, and place of the hearing. At the hearing, the trial court shall consider the citation issued by the individual who conducted the survey for the department of health to be prima-facie evidence of the fact that the defendant's commitment to the particular facility was inappropriate under the certification requirements of the medicaid program under Chapter 5111. of the Revised Code and Title XIX of the "Social Security Act," 49 Stat. 620

(1935), 42 U.S.C.A. 301, as amended, and potentially jeopardizes the particular facility's continued receipt of federal medicaid moneys. At the conclusion of the hearing, the trial court may approve or disapprove the defendant's removal and alternative placement. If the trial court approves the defendant's removal and alternative placement, the department of developmental disabilities may continue the defendant's alternative placement. If the trial court disapproves the defendant's removal and alternative placement, it shall enter an order modifying the defendant's removal and alternative placement, but that order shall not require the department of developmental disabilities to replace the defendant for purposes of continued residential habilitation, care, and treatment in the facility associated with the citation issued by the individual who conducted the survey for the department of health.

(E) In making a determination under this section regarding nonsecured status or termination of commitment, the trial court shall consider all relevant factors, including, but not limited to, all of the following:

(1) Whether, in the trial court's view, the defendant or person currently represents a substantial risk of physical harm to the defendant or person or others;

(2) Psychiatric and medical testimony as to the current mental and physical condition of the defendant or person;

(3) Whether the defendant or person has insight into the defendant's or person's condition so that the defendant or person will continue treatment as prescribed or seek professional assistance as needed;

(4) The grounds upon which the state relies for the proposed commitment;

(5) Any past history that is relevant to establish the defendant's or person's degree of conformity to the laws, rules, regulations, and values of society;

(6) If there is evidence that the defendant's or person's mental illness is in a state of remission, the medically suggested cause and degree of the remission and the probability that the defendant or person will continue treatment to maintain the remissive state of the defendant's or person's illness should the defendant's or person's commitment conditions be altered.

(F) At any hearing held pursuant to division (C) or (D)(1) or (2) of this section, the defendant or the person shall have all the rights of a defendant or person at a commitment hearing as described in section 2945.40 of the Revised Code.

(G) In a hearing held pursuant to division (C) or (D)(1) of this section, the prosecutor has the burden of proof as follows:

(1) For a recommendation of termination of commitment, to show by clear and convincing evidence that the defendant or person remains a mentally ill person subject to

hospitalization by court order or a mentally retarded person subject to institutionalization by court order;

(2) For a recommendation for a change in the conditions of the commitment to a less restrictive status, to show by clear and convincing evidence that the proposed change represents a threat to public safety or a threat to the safety of any person.

(H) In a hearing held pursuant to division (C) or (D)(1) or (2) of this section, the prosecutor shall represent the state or the public interest.

(I) At the conclusion of a hearing conducted under division (D)(1) of this section regarding a recommendation from the chief clinical officer of a hospital, program, or facility, the trial court may approve, disapprove, or modify the recommendation and shall enter an order accordingly.

(J) (1) A defendant or person who has been committed pursuant to section 2945.39 or 2945.40 of the Revised Code continues to be under the jurisdiction of the trial court until the final termination of the commitment. For purposes of division (J) of this section, the final termination of a commitment occurs upon the earlier of one of the following:

(a) The defendant or person no longer is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, as determined by the trial court;

(b) The expiration of the maximum prison term or term of imprisonment that the defendant or person could have received if the defendant or person had been convicted of the most serious offense with which the defendant or person is charged or in relation to which the defendant or person was found not guilty by reason of insanity;

(c) The trial court enters an order terminating the commitment under the circumstances described in division (J)(2)(a)(ii) of this section.

(2) (a) If a defendant is found incompetent to stand trial and committed pursuant to section 2945.39 of the Revised Code, if neither of the circumstances described in divisions (J)(1)(a) and (b) of this section applies to that defendant, and if a report filed with the trial court pursuant to division (C) of this section indicates that the defendant presently is competent to stand trial or if, at any other time during the period of the defendant's commitment, the prosecutor, the counsel for the defendant, or the chief clinical officer of the hospital, facility, or program to which the defendant is committed files an application with the trial court alleging that the defendant presently is competent to stand trial and requesting a hearing on the competency issue or the trial court otherwise has reasonable cause to believe that the defendant presently is competent to stand trial and determines on its own motion to hold a hearing on the competency issue, the trial court shall schedule a hearing on the competency of the defendant to stand trial, shall give the prosecutor, the counsel for the defendant, and the chief clinical officer notice of the date, time, and place of the hearing at least fifteen days before the hearing, and shall

conduct the hearing within thirty days of the filing of the application or of its own motion. If, at the conclusion of the hearing, the trial court determines that the defendant presently is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense, the trial court shall order that the defendant is competent to stand trial and shall be proceeded against as provided by law with respect to the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code and shall enter whichever of the following additional orders is appropriate:

(i) If the trial court determines that the defendant remains a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the trial court shall order that the defendant's commitment to the hospital, facility, or program be continued during the pendency of the trial on the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code.

(ii) If the trial court determines that the defendant no longer is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the trial court shall order that the defendant's commitment to the hospital, facility, or program shall not be continued during the pendency of the trial on the applicable offenses described in division (C)(1) of section 2945.38 of the Revised Code. This order shall be a final termination of the commitment for purposes of division (J)(1)(c) of this section.

(b) If, at the conclusion of the hearing described in division (J)(2)(a) of this section, the trial court determines that the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the trial court shall order that the defendant continues to be incompetent to stand trial, that the defendant's commitment to the hospital, facility, or program shall be continued, and that the defendant remains subject to the jurisdiction of the trial court pursuant to that commitment, and to the provisions of this section, until the final termination of the commitment as described in division (J)(1) of this section.

OHIO REV. CODE ANN. § 2967.22 (2010). INVOLUNTARY COMMITMENT OF MENTALLY ILL OR RETARDED RELEASEE

Whenever it is brought to the attention of the adult parole authority or a department of probation that a parolee, person under a community control sanction, person under transitional control, or releasee appears to be a mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code, or a mentally retarded person subject to institutionalization by court order, as defined in section 5123.01 of the Revised Code, the parole or probation officer, subject to the approval of the chief of the adult parole authority, the designee of the chief of the adult parole authority, or the chief probation officer, may file an affidavit under section 5122.11 or 5123.71 of the Revised Code. A parolee, person under a community control sanction, or releasee who is involuntarily detained under Chapter 5122. or 5123. of the Revised Code shall receive credit against the period of parole or community control or

the term of post-release control for the period of involuntary detention.

If a parolee, person under a community control sanction, person under transitional control, or releasee escapes from an institution or facility within the department of mental health or the department of developmental disabilities, the superintendent of the institution immediately shall notify the chief of the adult parole authority or the chief probation officer. Notwithstanding the provisions of section 5122.26 of the Revised Code, the procedure for the apprehension, detention, and return of the parolee, person under a community control sanction, person under transitional control, or releasee is the same as that provided for the apprehension, detention, and return of persons who escape from institutions operated by the department of rehabilitation and correction. If the escaped parolee, person under transitional control, or releasee is not apprehended and returned to the custody of the department of mental health or the department of developmental disabilities within ninety days after the escape, the parolee, person under transitional control, or releasee shall be discharged from the custody of the department of mental health or the department of developmental disabilities and returned to the custody of the department of rehabilitation and correction. If the escaped person under a community control sanction is not apprehended and returned to the custody of the department of mental health or the department of developmental disabilities within ninety days after the escape, the person under a community control sanction shall be discharged from the custody of the department of mental health or the department of developmental disabilities and returned to the custody of the court that sentenced that person.

OKLAHOMA

OKLA. STAT. ANN. TIT. 10A, § 1-4-201 (2010). CIRCUMSTANCES AUTHORIZING TAKING A CHILD INTO CUSTODY--JOINT RESPONSE BY DEPARTMENT OF HUMAN SERVICES, LAW ENFORCEMENT, AND DISTRICT COURTS--SAFETY EVALUATION

A. Pursuant to the provisions of this section, a child may be taken into custody prior to the filing of a petition:

1. By a peace officer or employee of the court, without a court order if the officer or employee has reasonable suspicion that:

a. the child is in need of immediate protection due to an imminent safety threat, or

b. the circumstances or surroundings of the child are such that continuation in the child's home or in the care or custody of the parent, legal guardian, or custodian would present an imminent safety threat to the child; or

2. By an order of the district court issued upon the application of the office of the district attorney. The application presented by the district attorney may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that a continuation of the child in the home or with the caretaker of the child is contrary to the child's welfare and there is reasonable suspicion that:

a. the child is in need of immediate protection due to an imminent safety threat, or

b. the circumstances or surroundings of the child are such that continuation in the child's home or in the care or custody of the parent, legal guardian, or custodian would present an imminent safety threat to the child.

The application and order may be verbal and upon being advised by the district attorney or the court of the verbal order, law enforcement shall act on such order. If verbal, the district attorney shall submit a written application and proposed order to the district court within one (1) judicial day from the issuance of the verbal order. Upon approval, the application and order shall be filed with the court clerk; or

3. By order of the district court when the child is in need of medical or behavioral health treatment in order to protect the health, safety, or welfare of the child and the parent, legal guardian, or custodian of the child is unwilling or unavailable to consent to such medical or behavioral health treatment or other action, the court shall specifically include in the emergency order authorization for such medical or behavioral health evaluation or treatment as it deems necessary.

B. 1. By January 1, 2010, the Department in consultation with law enforcement and the district courts shall develop and implement a system for joint response when a child is taken into protective custody by a peace officer pursuant to paragraph 1 of subsection A of this section. The system shall include:

a. designation of persons to serve as contact points for peace officers, including at least one backup contact for each initial contact point,

b. a protocol for conducting a safety evaluation at the scene where protective custody is assumed to determine whether the child faces an imminent safety threat and, if so, whether the child can be protected through placement with relatives or others without the Department assuming emergency custody,

c. the development of reception centers for accepting protective custody of children from peace officers when the Department is unable to respond at the scene within a reasonable time period,

d. a protocol for conducting a safety evaluation at the reception center within twenty-three (23) hours of the assumption of protective custody of a child to determine whether the child faces an imminent safety threat and, if so, whether the child can be protected through placement with relatives or others without the Department assuming emergency custody, and

e. a protocol, when the child cannot safely be left in the home, for transporting a child to the home of a relative, kinship care home, an emergency foster care home, a shelter, or any other site at which the Department believes the child can be protected, provided that the Department shall utilize a shelter only when the home of a relative, kinship care home, or emergency foster care home is unavailable or inappropriate.

2. Beginning January 1, 2010, no child taken into protective custody under paragraph 1 of subsection A of this section shall be considered to be in the emergency custody of the Department until the Department has completed a safety evaluation and has concluded that the child faces an imminent safety threat and the court has issued an order for emergency custody.

3. If the safety evaluation performed by the Department of a child taken into protective custody under paragraph 1 of subsection A of this section indicates that the child does not face an imminent safety threat, the Department shall restore the child to the custody and control of the parent, legal guardian, or custodian of the child.

4. The Department shall report on the progress of the system to the Children's Services Oversight Committee established in Section 22 of this act by March 1, 2010.

C. When an order issued by the district court pursuant to subsection A of this section places the child in the emergency custody of the Department of Human Services pending further hearing specified by Section 1-4-203 of this title, an employee of the Department may execute such order and physically take the child into custody in the following limited circumstance:

1. The child is located in a hospital, school, or day care facility; and

2. It is believed that assumption of the custody of the child from the facility can occur without risk to the child or the employee of the Department.

Otherwise, the order shall be executed and the child taken into custody by a peace officer or employee of the court.

D. The court shall not enter a prepetition emergency custody order removing a child from the home of the child unless the court makes a determination:

1. That an imminent safety threat exists and continuation in the home of the child is contrary to the welfare of the child; and

2. Whether reasonable efforts have been made to prevent the removal of the child from the child's home; or

3. An absence of efforts to prevent the removal of the child from the home of the child is reasonable because the removal is due to an emergency and is for the purpose of providing for the safety and welfare of the child.

E. Whenever a child is taken into custody pursuant to this section:

1. The child may be taken to a kinship care home or an emergency foster care home designated by the Department, or if no such home is available, to a children's shelter located within the county where protective or emergency custody is assumed or, if there is no children's shelter within the county, to a children's shelter designated by the court;

2. Unless otherwise provided by administrative order entered pursuant to subsection F of this section, the child may be taken before a judge of the district court or the court may be contacted verbally for the purpose of obtaining an order for emergency custody. The court may place the child in the emergency custody of the Department or some other suitable person or entity pending further hearing specified by Section 1-4-203 of this title;

3. The child may be taken directly to or retained in a health care facility for medical treatment, when the child is in need of emergency medical treatment to maintain the child's health, or as otherwise directed by the court; or

4. The child may be taken directly to or retained in a behavioral health treatment facility for evaluation or inpatient treatment, in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, when the child is in need of behavioral health care to preserve the child's health, or as otherwise directed by the court; and

5. Unless otherwise provided by administrative order entered pursuant to subsection F of this section, the district court of the county where the custody is assumed shall be immediately notified, verbally or in writing, that the child has been taken into custody. If notification is verbal, written notification shall be sent to the district court within one (1) judicial day of such verbal notification.

F. The court may provide, in an administrative order issued pursuant to this section, for the disposition of children taken into custody and notification of the assumption of such custody.

1. Such order or rule shall be consistent with the provisions of subsection E of this section and may include a process for release of a child prior to an emergency custody

hearing. The administrative order shall not include a provision to modify protective custody of a child to emergency custody of the Department upon admission of a child to a shelter; and

2. The administrative order may require joint training of peace officers and Department staff deemed necessary by the court to carry out the provisions of the administrative order.

G. No child taken into custody pursuant to this section shall be confined in any jail, adult lockup, or adult or juvenile detention facility.

H. When a determination is made by the Department that there is a significant risk of abuse or neglect, but there is not an imminent safety threat to the child, the Department may recommend a court-supervised and Department-monitored in-home placement. The Department shall assist the family in obtaining the services necessary to maintain the in-home care and correct the conditions leading to the risk determination.

I. Any peace officer, employee of the court, or employee of the Department is authorized to transport a child when acting pursuant to this section. Such persons and any other person acting under the direction of the court, who in good faith transports any child or carries out duties pursuant to this section, shall be immune from civil or criminal liability that may result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed. This provision shall not apply to damage or injury caused by the willful, wanton or gross negligence or misconduct of a person.

J. A parent or person responsible for the child who is arrested on a charge or warrant other than child abuse or neglect or an act of child endangerment may designate another person to take physical custody of the child. Upon this request, the peace officer may release the child to the physical custody of the designated person.

OKLA. STAT. ANN. TIT. 10A, § 1-4-207 (2010). IMMEDIATE ASSUMPTION OF CUSTODY TO PROTECT CHILD'S HEALTH OR WELFARE

Nothing contained in the Oklahoma Children's Code shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical or behavioral health treatment, to protect the child's health, safety, or welfare.

OKLA. STAT. ANN. TIT. 10A, § 1-4-803 (2010). PLACEMENT OF A CHILD IN THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES

If the court determines it would be in the best interests of a child, the court may place the child in the legal custody of the Department of Human Services. Whenever a child is in the custody of the Department, the court shall not have the authority to order a specific placement of the child but shall have the authority to approve or disapprove a specific placement if it does not conform to statutory requirements and the best interests of the child.

OKLA. STAT. ANN. TIT. 10A, § 2-2-101 (2010). TAKING OF CHILD INTO CUSTODY--DETENTION--MEDICAL TREATMENT--BEHAVIORAL HEALTH TREATMENT--HEARING ON ORDER FOR MEDICAL TREATMENT

A. A child may be taken into custody prior to the filing of a petition alleging that the child is delinquent or in need of supervision:

1. By a peace officer, without a court order for any criminal offense for which the officer is authorized to arrest an adult without a warrant, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child for a substantial length of time or without intent to return, or if the surroundings of the child are such as to endanger the welfare of the child;

2. By an employee of the court without a court order, if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child for a substantial length of time or without intent to return, or if the surroundings of the child are such as to endanger the welfare of the child;

3. Pursuant to an order of the district court issued on the application of the office of the district attorney. The application presented by the district attorney shall be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is probable cause to believe the child has committed a crime or is in violation of the terms of probation, parole or order of the court;

4. By order of the district court pursuant to subsection E of this section when the child is in need of medical or behavioral health treatment or other action in order to protect the health or welfare of the child and the parent, legal guardian, legal custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or behavioral health treatment or other action; and

5. Pursuant to an emergency ex parte or a final protective order of the district court issued at the request of a parent or legal guardian pursuant to the Protection from Domestic Abuse Act.

Any child referred to in this subsection shall not be considered to be in the custody of the Office of Juvenile Affairs.

B. Whenever a child is taken into custody as a delinquent child or a child in need of supervision pursuant to subsection A of this section, the child shall be detained, held temporarily in the custodial care of a peace officer or other person employed by a police department, or be released to the custody of the parent of the child, legal guardian, legal custodian, attorney or other responsible adult, upon the written promise of such person to bring the child to the court at the time fixed if a petition is to be filed and to assume

responsibility for costs for damages caused by the child if the child commits any delinquent acts after being released regardless of whether or not a petition is to be filed. It shall be a misdemeanor for any person to sign the written promise and then fail to comply with the terms of the promise. Any person convicted of violating the terms of the written promise shall be subject to imprisonment in the county jail for not more than six (6) months or a fine of not more than Five Hundred Dollars ($ 500.00), or by both such fine and imprisonment. In addition, if a parent, legal guardian, legal custodian, attorney or other responsible adult is notified that the child has been taken into custody, it shall be a misdemeanor for such person to refuse to assume custody of the child within a timely manner. If detained, the child shall be taken immediately before a judge of the district court in the county in which the child is sought to be detained, or to the place of detention or shelter designated by the court. If no judge be available locally, the person having the child in custody shall immediately report the detention of the child to the presiding judge of the judicial administrative district, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a secure juvenile detention center, beyond the second judicial day unless the court shall so order after a detention hearing to determine if there exists probable cause to detain the child. The child shall be present at the detention hearing or the image of the child may be broadcast to the judge by closed-circuit television or any other electronic means that provides for a two-way communication of image and sound between the child and the judge. If the latter judge cannot be reached, such detention shall be reported immediately to any judge regularly serving within the judicial administrative district. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the court may be released to the custody of a parent, legal guardian, legal custodian, or other responsible adult or to any other person appointed by the court, or be detained pursuant to Chapter 3 of the Oklahoma Juvenile Code in such place as shall be designated by the court, subject to further order.

C. When any child is taken into custody pursuant to this title and it reasonably appears to the peace officer, employee of the court or person acting pursuant to court order that the child is in need of medical treatment to preserve the health of the child, any peace officer, any employee of the court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of the parent of the child, legal guardian, legal custodian, or other person having custody and control of the child who is competent to authorize medical treatment. The officer or the employee of the court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent of the child, legal guardian, legal custodian, or other person legally competent to authorize said medical treatment. The parent of the child, legal guardian, legal custodian, or other person having custody and control shall be responsible for such medical expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

D. A child who has been taken into custody as otherwise provided by this Code who appears to be a minor in need of treatment, as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, may be admitted to a behavioral health treatment facility in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. The parent of the child, legal guardian, legal custodian, or other person having custody and control shall be responsible for such behavioral health expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such behavioral health evaluation or treatment shall have any liability, civil or criminal, for giving such authorization.

E. 1. A child may be taken into custody pursuant to an order of the court specifying that the child is in need of medical treatment or other action to protect the health or welfare of the child and the parent, legal guardian, legal custodian, or other responsible adult having custody or control of a child is unwilling or unavailable to consent to such medical treatment or other action.

2. If the child is in need of immediate medical treatment or other action to protect the health or welfare of the child, the court may issue an emergency ex parte order upon application of the district attorney of the county in which the child is located. The application for an ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need of immediate medical treatment or other action to protect the health or welfare of the child. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any ex parte order issued by the court shall be served upon such parent, legal guardian, legal custodian, or other responsible adult having custody or control of the child. Within twenty-four (24) hours of the filing of the application the court shall schedule a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

3. Except as otherwise provided by paragraph 2 of this subsection, whenever a child is in need of medical treatment to protect the health or welfare of the child, or whenever any other action is necessary to protect the health or welfare of the child, and the parent of the child, legal guardian, legal custodian, or other person having custody or control of the child is unwilling or unavailable to consent to such medical treatment or other action, the court, upon application of the district attorney of the county in which the child is located, shall hold a full hearing within five (5) days of filing the application. Notice of the hearing and a copy of the application shall be served upon the parent, legal guardian, legal custodian, or other person having custody or control of the child.

4. At any hearing held pursuant to this subsection, the court may grant any order or require such medical treatment or other action as is necessary to protect the health or welfare of the child.

5. a. The parent, legal guardian, legal custodian, or other person having custody or control of the child shall be responsible for such medical expenses as ordered by the court.

b. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this subsection for any child found in need of such medical treatment shall have any liability, civil or criminal.

OKLA. STAT. ANN. TIT. 10A, § 2-2-803 (2010). REVIEW AND ASSESSMENT OF CHILDREN COMMITTED TO OFFICE OF JUVENILE AFFAIRS

A. The Office of Juvenile Affairs shall review and assess each child committed to the Office to determine the type of placement consistent with the treatment needs of the child in the nearest geographic proximity to the home of the child and, in the case of delinquent children, the protection of the public. Such review and assessment shall include an investigation of the personal and family history of the child, and his environment, and any physical or mental examinations considered necessary.

B. In making such review, the Office may use any facilities, public or private, which offer aid to it in the determination of the correct placement of the child.

OKLA. STAT. ANN. TIT. 22, § 1161 (2010). ACTS OF INSANE PERSON NOT PUNISHABLE--ACQUITTAL ON GROUND OF INSANITY--DISCHARGE PROCEDURE--FORENSIC REVIEW BOARD

A. 1. An act committed by a person in a state of insanity cannot be punished as a public offense, nor can the person be tried, sentenced to punishment, or punished for a public offense while such person is insane.

2. When in any criminal action by indictment or information, the defense of insanity is raised, but the defendant is not acquitted on the ground that the defendant was insane at the time of the commission of the crime charged, an issue concerning such defense may be raised on appeal. If the appellate court finds relief is required, the appellate court shall not have authority to modify the judgment or sentence, but will only have the authority to order a new trial or order resentencing without recommendations to sentencing.

3. When in any criminal action by indictment or information the defense of insanity is interposed either singly or in conjunction with some other defense, the jury shall state in the verdict, if it is one of acquittal, whether or not the defendant is acquitted on the ground of insanity. When the defendant is acquitted on the ground that the defendant was insane at the time of the commission of the crime charged, the person shall not be discharged from custody until the court has made a determination that the person is not presently dangerous to the public peace and safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes.

B. 1. To assist the court in its determination, the court shall immediately issue an order for the person to be examined by the Department of Mental Health and Substance Abuse Services at a facility the Department has designated to examine and treat forensic individuals. Upon the issuance of the order, the sheriff shall deliver the person to the designated facility.

2. Within forty-five (45) days of the court entering such an order, a hearing shall be conducted by the court to ascertain whether the person is presently dangerous to the public peace or safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes or, if not, is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance. During the required period of hospitalization the Department of Mental Health and Substance Abuse Services shall have the person examined by two qualified psychiatrists or one such psychiatrist and one qualified clinical psychologist whose training and experience enable the professional to form expert opinions regarding mental illness, competency, dangerousness and criminal responsibility.

C. 1. Each examiner shall, within thirty-five (35) days of hospitalization, individually prepare and submit to the court, the district attorney and the person's trial counsel a report of the person's psychiatric examination findings and an evaluation concerning whether the person is presently dangerous to the public peace or safety.

2. If the court is dissatisfied with the reports or if a disagreement on the issue of mental illness and dangerousness exists between the two examiners, the court may designate one or more additional examiners and have them submit their findings and evaluations as specified in paragraph 1 of this subsection.

3. a. Within ten (10) days after the reports are filed, the court must conduct a hearing to determine the person's present condition as to the issue of whether:

(1) the person is presently dangerous to the public peace or safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, or

(2) if not believed to be presently dangerous to the public peace or safety, the person is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance.

b. The district attorney must establish the foregoing by a preponderance of the evidence. At this hearing the person shall have the assistance of counsel and may present independent evidence.

D. 1. If the court finds that the person is not presently dangerous to the public peace or

safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes and is not in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance, it shall immediately discharge the person from hospitalization.

2. If the court finds that the person is presently dangerous to the public peace and safety, it shall commit the person to the custody of the Department of Mental Health and Substance Abuse Services. The person shall then be subject to discharge pursuant to the procedure set forth in Title 43A of the Oklahoma Statutes.

a. During the period of hospitalization, the Department of Mental Health and Substance Abuse Services may administer or cause to be administered to the person such psychiatric, medical or other therapeutic treatment as in its judgment should be administered.

b. The person shall be subject to discharge or conditional release pursuant to the procedures set forth in this section.

E. If at any time the court finds the person is not presently dangerous to the public peace or safety because the person is a person requiring treatment pursuant to the provisions of Section 1-103 of Title 43A of the Oklahoma Statutes, but is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance, the court may:

1. Discharge the person pursuant to the procedure set forth in Title 43A of the Oklahoma Statutes;

2. Discharge the person, and upon the court's or the district attorney's motion commence civil involuntary commitment proceedings against the person pursuant to the provisions of Title 43A of the Oklahoma Statutes; or

3. Order conditional release, as set forth in subsection F of this section.

F. There is hereby created a Forensic Review Board to be composed of seven (7) members appointed by the Governor with the advice and consent of the Senate. The Board members shall serve for a term of five (5) years except that for members first appointed to the Board: one shall serve for a term ending December 31, 2008, two shall serve for a term ending December 31, 2009, two shall serve a term ending December 31, 2010, and two shall serve for a term ending December 31, 2011.

1. The Board shall be composed of:

a. four licensed mental health professionals with experience in treating mental illness, at least one of whom is licensed as a Doctor of Medicine, a Doctor of Osteopathy, or a licensed clinical psychologist and shall be appointed from a list of seven names

submitted to the Governor by the Department of Mental Health and Substance Abuse Services,

b. one member who shall be an attorney licensed to practice in this state and shall be appointed from a list of not less than three names submitted to the Governor by the Board of Governors of the Oklahoma Bar Association,

c. one member who shall be a retired judge licensed to practice in this state and shall be appointed from a list of not less than three names submitted to the Governor by the Judicial Nominating Committee, and

d. one at-large member.

The attorney and retired judge members of the Board shall be prohibited from representing in the courts of this state persons charged with felony offenses while serving on the Board.

2. The Board shall meet as necessary to determine which individuals confined with the Department of Mental Health and Substance Abuse Services are eligible for therapeutic visits, conditional release or discharge and whether the Board wishes to make such a recommendation to the court of the county where the individual was found not guilty by reason of insanity.

a. Forensic Review Board meetings shall not be considered subject to the Oklahoma Open Meeting Act and are not open to the public. Other than the Forensic Review Board members, only the following individuals shall be permitted to attend Board meetings:

(1) the individual the Board is considering for therapeutic visits, conditional release or discharge, his or her treatment advocate, and members of his or her treatment team,

(2) the Commissioner of Mental Health and Substance Abuse Services or designee,

(3) the Advocate General for the Department of Mental Health and Substance Abuse Services or designee,

(4) the General Counsel for the Department of Mental Health and Substance Abuse Services or designee, and

(5) any other persons the Board and Commissioner of Mental Health and Substance Abuse Services wish to be present.

b. The Department of Mental Health and Substance Abuse Services shall provide administrative staff to the Board to take minutes of meetings and prepare necessary documents and correspondence for the Board to comply with its duties as set forth in this section. The Department of Mental Health and Substance Abuse Services shall also transport the individuals being reviewed to and from the Board meeting site.

c. The Board shall promulgate rules concerning the granting and structure of therapeutic visits, conditional releases and discharge.

d. For purposes of this subsection, "therapeutic visit" means a scheduled time period off campus which provides for progressive tests of the consumer's ability to maintain and demonstrate coping skills.

3. The Forensic Review Board shall submit any recommendation for therapeutic visit, conditional release or discharge to the court and district attorney of the county where the person was found not guilty by reason of insanity, the person's trial counsel, the Department of Mental Health and Substance Abuse Services and the person at least fourteen (14) days prior to the scheduled visit.

a. The district attorney may file an objection to a recommendation for a therapeutic visit within ten (10) days of receipt of the notice.

b. If an objection is filed, the therapeutic visit is stayed until a hearing is held. The court shall hold a hearing not less than ten (10) days following an objection to determine whether the therapeutic visit is necessary for treatment, and if necessary, the nature and extent of the visit.

4. During the period of hospitalization the Department of Mental Health and Substance Abuse Services shall submit an annual report on the status of the person to the court, the district attorney and the patient advocate general of the Department of Mental Health and Substance Abuse Services.

G. Upon motion by the district attorney or upon a recommendation for conditional release or discharge by the Forensic Review Board, the court shall conduct a hearing to ascertain if the person is presently dangerous and a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes. This hearing shall be conducted under the same procedure as the first hearing and must occur not less than ten (10) days following the motion or request by the Forensic Review Board.

1. If the court determines that the person continues to be presently dangerous to the public peace and safety because the person is a person requiring treatment as defined in

Section 1-103 of Title 43A of the Oklahoma Statutes, it shall order the return of the person to the hospital for additional treatment.

2. If the court determines that the person is not dangerous subject to certain conditions, the court may conditionally release the person subject to the following:

a. the Forensic Review Board has made a recommendation for conditional release, including a written plan for outpatient treatment and a list of recommendations for the court to place as conditions on the release,

b. in its order of conditional release, the court shall specify conditions of release and shall direct the appropriate agencies or persons to submit annual reports regarding the person's compliance with the conditions of release and progress in treatment,

c. the person must agree, in writing, that during the period the person is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all pertinent information, including clinical information regarding the person, among the Department of Mental Health and Substance Abuse Services, the appropriate community mental health centers and the appropriate district attorneys, law enforcement and court personnel,

d. the court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause. The person placed on conditional release shall remain under the supervision of the Department of Mental Health and Substance Abuse Services until the committing court enters a final discharge order. The Department of Mental Health and Substance Abuse Services shall assess the person placed on conditional release annually and shall have the authority to recommend discharge of the person to the Board,

e. any agency or individual involved in providing treatment with regard to the person's conditional release plan may prepare and file an affidavit under oath if the agency or individual believes that the person has failed to comply with the conditions of release or that such person has progressed to the point that inpatient care is appropriate.

(1) Any peace officer who receives such an affidavit shall take the person into protective custody and return the person to the forensic unit of the state hospital.

(2) A hearing shall be conducted within three (3) days, excluding holidays and weekends, after the person is returned to the forensic unit of the state hospital to determine if the person has violated the conditions of release, or if full-time hospitalization is the least restrictive alternative consistent with the person's needs and the need for public safety. Notice of the hearing shall be issued, at least twenty-four (24) hours before the hearing, to the hospital superintendent, the person, trial counsel for the person, and the patient advocate general of the Department of Mental Health and Substance Abuse Services. If the person requires hospitalization because of a violation of the conditions of release or because of progression to the point that inpatient care is appropriate, the court may then modify the conditions of release.

3. If the court determines that the person is not presently dangerous to the public peace or safety because the person is not a person requiring treatment, it shall order that the person be discharged from the custody of the Department of Mental Health and Substance Abuse Services.

OKLA. STAT. ANN. TIT. 22, § 1167 (2010). FINDING OF INSANITY--SUSPENSION OF TRIAL OR JUDGMENT--COMMITMENT TO STATE HOSPITAL

If the jury finds the defendant presently insane, the trial or judgment must be suspended until he becomes sane, and if the jury deem his discharge dangerous to the public peace or safety, the court shall order that the defendant be committed to one of the state hospitals for the mentally ill, and to be held therein and kept as a patient and inmate until he be discharged and released as presently sane by the authority of the superintendent of said hospital. A release by the superintendent of said hospital shall be to the custody of the sheriff of the county in which the criminal case theretofore suspended is or was pending and from which he was committed. The court having jurisdiction thereof shall set the cause for trial.

OKLA. STAT. ANN. TIT. 22, § 1175.6A (2010). PERSON CAPABLE OF ACHIEVING COMPETENCE WITH REASONABLE TIME--SUSPENSION OF CRIMINAL PROCEEDINGS--CIVIL COMMITMENT

A. If the person is found to be incompetent because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, but capable of achieving competence with treatment within a reasonable period of time as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and commit the person to the legal custody of the Department of Mental Health and Substance Abuse Services.

1. The Department of Mental Health and Substance Abuse Services shall make periodic reports to the court as to the competency of the defendant.

2. If the person is determined by the Department of Mental Health and Substance

Abuse Services to have regained competency, or is no longer incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, a hearing shall be scheduled within twenty (20) days:

a. if found competent by the court or a jury after such rehearing, criminal proceedings shall be resumed,

b. if the person is found to continue to be incompetent because the person is a person requiring treatment as defined in Title 43A of the Oklahoma Statutes, the person shall be returned to the custody of the Department of Mental Health and Substance Abuse Services,

c. if the person is found to be incompetent because the person is mentally retarded as defined by Title 10 of the Oklahoma Statutes, the court shall issue the appropriate order as set forth in Section 7 of this act,

d. if the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, and other than the person is mentally retarded as defined in Title 10 of the Oklahoma Statutes, and is also found to be not dangerous as defined by Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section 7 of this act,

e. if the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, and other than the person is mentally retarded as defined in Title 10 of the Oklahoma Statutes, but is also found to be dangerous as defined by Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section 8 of this act.

B. If the person is found to be incompetent because the person is a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes, but not capable of achieving competence with treatment within a reasonable period of time as defined by Section 1175.1 of this title, the court shall commence civil commitment proceedings pursuant to Title 43A and shall dismiss without prejudice the criminal proceeding. If the person is subsequently committed to the Department of Mental Health and Substance Abuse Services pursuant to Title 43A, the statute of limitations for the criminal charges which were dismissed by the court shall be tolled until the person is discharged from the Department of Mental Health and Substance Abuse Services pursuant to Section 7-101 of Title 43A of the Oklahoma Statutes.

OKLA. STAT. ANN. TIT. 22, § 1175.6B (2010). INCOMPETENCE DUE TO MENTAL RETARDATION--SUSPENSION OF CRIMINAL PROCEEDINGS--PLACEMENT--CONDITIONAL RELEASE

A. If the person is found to be incompetent primarily because the person is mentally retarded as defined in Section 1408 of Title 10 of the Oklahoma Statutes, and is also found by the court to be dangerous as defined by Section 1175.1 of this Title, the court shall suspend the criminal proceedings, and shall place the person into the custody of the Office of Public Guardian. The Office of Public Guardian shall act with all powers set forth in the Oklahoma Public Guardianship Act, and:

1. The Office of Public Guardian shall place any person placed in its custody under this title in a facility or residential setting, private or public, willing to accept the individual and that has a level of supervision and security that is appropriate to the needs of the person;

2. Such placements shall be within the sole discretion of the Office of Public Guardian;

3. All such placements made by the Office of Public Guardian shall be made within six (6) months of the date of the order awarding custody to the Office of Public Guardian;

4. The Office of Public Guardian shall report to the court at least every six (6) months as to the status of the person including, but not limited to, the type of placement, services provided, level of supervision, the medical and psychological health of the person, whether the person would be dangerous if conditionally released into a nonsecure environment, the assistance and services that would be required for such conditional release and whether the person has achieved competency;

5. If the person is determined by the Office of Public Guardian to have regained competency or that conditional release to a private guardian or other caretaker is appropriate, a hearing shall be scheduled within twenty (20) days. If found competent by the court or a jury after such rehearing, criminal proceedings shall be resumed. If the court finds conditional release to be appropriate, the court shall make an appropriate order for conditional release; and

6. The provisions of subsections C, H and I of Section 6-101 of Title 30 of the Oklahoma Statutes shall not apply to custody orders arising under this title.

B. If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes and is found to be not dangerous as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and either refer the person to the Department of Human Services for consideration of voluntary assistance or conditionally release the person as set forth in this section.

1. For any person recommended for conditional release, a written plan for services shall be prepared by the Department of Human Services and filed with the court. In its order of

conditional release, the court shall specify the conditions of release and shall direct the appropriate agencies or persons to submit annual reports regarding the person's compliance with the conditions of release and progress:

a. to be eligible for conditional release, the person shall agree, in writing, that during the period the person is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all pertinent information, including clinical information regarding the person, among the person's treatment providers, the appropriate district attorneys, law enforcement and court personnel. To affect this agreement, the person shall execute any releases required by law to allow for the dissemination of this information,

b. the court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause,

c. the district attorney, as well as any agency or individual involved in providing services with regard to the person's conditional release, may prepare and file an affidavit under oath if the district attorney, agency, or individual believes that the person has failed to comply with the conditions of release. The court shall then conduct a hearing to determine if the person has violated the conditions of release. Notice of the hearing shall be issued, at least twenty-four (24) hours before the hearing, to the Department of Human Services, the person, trial counsel for the person, and the client advocate general of the Department of Human Services. After reviewing the evidence concerning any alleged violation of the conditions of the release, the person's progress, treatment alternatives, and the need for public safety, the court may order no change to the conditions for the person's release or modify the conditions of release, and

d. the person placed on conditional release shall remain in a conditional release status until the reviewing court issues a full release from all conditions.

2. If the person is determined by the Department of Human Services to have regained competency, a hearing shall be scheduled within twenty (20) days:

a. if found competent by the court or a jury after such rehearing, criminal proceedings shall be resumed,

b. if the person is found to continue to be incompetent, the person shall be returned to either conditional release or referred to the

Department of Human Services for consideration of voluntary assistance.

OKLA. STAT. ANN. TIT. 22, § 1175.6C (2010). PERSON INCOMPETENT FOR REASONS OTHER THAN NEEDED TREATMENT OR DUE TO MENTAL RETARDATION--DANGEROUS TO SELF OR OTHERS--PLACEMENT

A. If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, or the person is mentally retarded as defined by Title 10 of the Oklahoma Statutes, but is also found to be dangerous as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and refer the matter to the Department of Human Services and Department of Mental Health and Substance Abuse Services for determination of appropriate placement.

B. The Department of Human Services and the Department of Mental Health and Substance Abuse Services shall jointly establish procedures by the effective date of this act to determine the appropriate placement of individuals who are found to be incompetent to stand trial for reasons other than the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, or the person is mentally retarded as defined by Title 10 of the Oklahoma Statutes. Both agencies shall then submit their joint recommendation to the court for determination of appropriate placement.

OKLA. STAT. ANN. TIT. 22, § 1175.7 (2010). PERSONS INCOMPETENT BUT CAPABLE OF ACHIEVING COMPETENCY WITH REASONABLE TIME--TREATMENT ORDER--MEDICAL SUPERVISOR--COMMITMENT--PRIVATE TREATMENT--INVOLUNTARY COMMITMENT TO DEPARTMENT OF HUMAN SERVICES PROHIBITED

A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the court, the court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. If the person is not committed to the custody of the Department of Mental Health and Substance Abuse Services, the court shall appoint a medical supervisor for a course of treatment. The medical supervisor of treatment may be any person or agency that agrees to supervise the course of treatment. The proposed treatment may be either inpatient or outpatient care depending on the facilities and resources available to the court and the type of disability sought to be corrected by the court's order. The court shall require the supervisor to provide periodic progress reports to the court and may pay for the services of the medical supervisor from court funds.

C. The court may commit the incompetent person to the custody of the Department of Mental Health and Substance Abuse Services, but only where the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, or other appropriate state agency, if the court, after the hearing provided in Section 1175.4 of this

title, determines that such commitment is necessary for the effective administration of the treatment ordered, or if the court determines that the defendant is dangerous to self or society as a result of being a person requiring treatment as defined by Title 43A of the Oklahoma Statutes.

D. The court may allow the person to receive treatment from private facilities if such facilities are willing, and neither the state nor the court fund is required to directly pay for such care.

E. In no event shall an incompetent individual be involuntarily committed to the legal custody of the Department of Human Services or any of its facilities.

OKLA. STAT. ANN. TIT. 43A, § 3-702 (2010). PRISONERS IN NEED OF MENTAL HEALTH TREATMENT--DETERMINATION OF ABILITY TO CONSENT--TRANSFER TO FACILITY--DISCHARGE--COSTS--EXPIRATION OF SENTENCE--COMMITMENT

When a person confined in a penal or correctional institution or reformatory of this state is evaluated as provided by law by a licensed mental health professional to be a person requiring treatment as defined in Section 1-103 of this title, the district court may order the inmate's transfer to a facility, or unit within the Department of Corrections and make a determination of whether the inmate is capable of consenting to or refusing treatment that is ordered including, but not limited to, the right to refuse medication, pursuant to the laws governing involuntary commitment, where the inmate shall remain until the person in charge of the correctional institution or unit, or the physician which received the inmate determines that the inmate has improved to the point that the inmate may be discharged pursuant to the laws of this title governing discharge. If the sentence expires during the time of a prisoner's involuntary commitment at the correctional institution, and the prisoner is still a person requiring treatment, the person in charge of the correctional institution shall immediately instigate proceedings for commitment to the custody of the Department of Mental Health and Substance Abuse Services or to a private facility willing to accept the person for treatment under the procedures provided in this title.

OKLA. STAT. ANN. TIT. 43A, § 5-101 (2010). PROCEDURES FOR ADMISSION TO STATE FACILITY, PSYCHIATRIC HOSPITAL OR PRIVATE INSTITUTION

A. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care, and who is not in confinement in any jail or correctional facility on a criminal charge or conviction and who has no criminal charges pending against him or her, may be admitted to and confined in a facility within the Department of Mental Health and Substance Abuse Services, a state psychiatric hospital, or a licensed private institution by compliance with any one of the following procedures:

1. Emergency admission;

2. On voluntary application; or

3. On involuntary court commitment.

B. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care and who has criminal charges pending against him or her but is not confined in any jail or correctional facility may be admitted to a facility within the Department or a licensed private institution pursuant to the provisions of subsection A of this section; provided, the facility or hospital shall be authorized to take such reasonable steps as necessary to assure the protection of the public, the residents of the facility or hospital and the person including, but not limited to, segregation and private facilities. Provided further, treatment received pursuant to this subsection shall not constitute a defense in any criminal proceeding except as otherwise provided by Title 22 of the Oklahoma Statutes.

C. 1. Any person confined pursuant to a criminal charge shall only be admitted to and confined pursuant to a court order issued in compliance with the provisions of Section 1175.6 of Title 22 of the Oklahoma Statutes.

2. No person shall be deprived of his or her liberty on the grounds that such person is, or is supposed to have, a mental illness or is in need of mental health treatment, except in accordance with the provisions of the Mental Health Law.

OKLA. STAT. ANN. TIT. 43A, § 5-410 (2010). PETITION REGARDING PERSON REQUIRING TREATMENT

A. The following persons may file or request the district attorney to file a petition with the district court, upon which is hereby conferred jurisdiction, to determine whether an individual is a person requiring treatment, and to order the least restrictive appropriate treatment for the person:

1. The father, mother, husband, wife, brother, sister, guardian or child, over the age of eighteen (18) years, of an individual alleged to be a person requiring treatment;

2. A licensed mental health professional;

3. The executive director of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention;

4. An administrator of a hospital that is approved by the Joint Commission on Accreditation of Healthcare Organizations; provided, however, in any involuntary commitment procedure in which a hospital is the petitioner pursuant to the provisions of this section, the hospital may participate in such hearing without retaining their own legal counsel if the hospital provides as a witness a mental health therapist or a licensed mental health professional;

5. A person in charge of any correctional institution;

6. Any peace officer within the county in which the individual alleged to be a person

requiring treatment resides or may be found; or

7. The district attorney in whose district the person resides or may be found.

B. The petition shall contain a statement of the facts upon which the allegation is based and, if known, the names and addresses of any witnesses to the alleged facts.

1. The petition shall be verified and made under penalty of perjury.

2. A request for the prehearing detention of the individual alleged to be a person requiring treatment may be attached to the petition.

3. If the individual alleged to be a person requiring treatment is being held in emergency detention, a copy of the mental health evaluation shall be attached to the petition.

C. The inpatient mental health treatment of minors shall be pursuant to the provisions of the Inpatient Mental Health Treatment of Minors Act.

OKLA. STAT. ANN. TIT. 43A, § 5-411 (2010). RIGHTS OF INDIVIDUAL ALLEGED TO REQUIRE TREATMENT

A. An individual alleged to be a person requiring treatment shall have the following rights:

1. The right to notice, as provided by Section 5-412 of this title;

2. The right to counsel, including court-appointed counsel, and if the person has no counsel, that the court shall appoint an attorney to represent the person at no cost if the person is an indigent person and cannot afford an attorney;

3. The right to a hearing and the right to a closed hearing, unless the person requests otherwise;

4. Upon request, right to a jury trial. The jury shall be composed of six persons having the qualifications required of jurors in courts of record;

5. The right to be present at the hearing on the petition or jury trial. The person shall be present at the hearing or jury trial unless the court finds that the presence of the person alleged to be a person requiring treatment makes it impossible to conduct the hearing or trial in a reasonable manner or that the presence of the person would be injurious to the health or well-being of such person.

a. The court shall not decide in advance of the hearing, solely on the basis of the mental health evaluation, that the person alleged to be a person requiring treatment should not be allowed nor required to appear.

b. Prior to issuing an order excluding the person from the hearing or jury trial, the court shall find, based upon clear and convincing evidence, that alternatives to exclusion of the person were attempted;

6. The right to present and to cross-examine witnesses. The petitioner and witnesses identified in the petition shall offer testimony under oath at the hearing on the petition. When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined.

B. An individual alleged to be or found by a court to be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.

C. No statement, admission or confession made by the person alleged to be a person requiring treatment shall be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time directly or in any manner or form.

D. An attorney appointed by the court to represent a person alleged to be a person requiring treatment shall be a licensed and actively practicing attorney who shall represent the person until final disposition of the case. The court may appoint a public defender where available.

1. The attorney appointed by the court shall meet and consult with the person within one (1) day of notification of the appointment. The attorney shall immediately, upon meeting with the person alleged to be a person requiring treatment, present to such person a statement of the rights, including all rights afforded to persons alleged to be a person requiring treatment by the Oklahoma and the United States Constitutions.

2. The court-appointed attorney shall be replaced by another attorney if:

a. the person alleged to be a person requiring treatment prefers the services of an attorney other than the one initially appointed for the person,

b. the preferred attorney agrees to accept the responsibility, and

c. the person alleged to be a person requiring treatment or the preferred attorney notifies the court of the preference and the attorney's acceptance of employment.

The preferred attorney shall meet and consult with the person within one (1) day of

employment or appointment. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case, including cost.

3. The attorney fees for all services shall be paid by the person alleged to be a person requiring treatment. However, if the person alleged to be a person requiring treatment, or a person empowered pursuant to law to act on behalf of such person, submits an affidavit that such person is indigent and unable to pay attorney fees, the attorney fees shall be paid from the court fund, after a determination by the court that such person is indigent. The amount of such fee shall be set by the court.

4. The attorney representing the person alleged to be a person requiring treatment shall notify the court of any current and unrevoked advance directive that has been executed by such person pursuant to the Advance Directives for Mental Health Treatment Act and provide a written copy of the advance directive, if available, to the court and a representative of the district attorney's office.

OREGON

OR. REV. STAT. § 419C.529 (2009). FINDING OF MENTAL DISEASE OR DEFECT; JURISDICTION OF PSYCHIATRIC SECURITY REVIEW BOARD; CONDITIONAL RELEASE OR COMMITMENT.

(1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the court finds by a preponderance of the evidence that the young person, at the time of disposition, has a serious mental condition or has a mental disease or defect other than a serious mental condition and presents a substantial danger to others, requiring conditional release or commitment to a hospital or facility designated on an individual case basis by the Department of Human Services or the Oregon Health Authority as provided in subsection (6) of this section, the court shall order the young person placed under the jurisdiction of the Psychiatric Security Review Board.

(2) The court shall determine whether the young person should be committed to a hospital or facility designated on an individual case basis by the department or the authority, as provided in subsection (6) of this section, or conditionally released pending a hearing before the juvenile panel of the Psychiatric Security Review Board as follows:

(a) If the court finds that the young person is not a proper subject for conditional release, the court shall order the young person committed to a secure hospital or a secure intensive community inpatient facility designated on an individual case basis by the department or the authority, as provided in subsection (6) of this section, for custody, supervision and treatment pending a hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542 and shall order the young person placed under the jurisdiction of the board.

(b) If the court finds that the young person can be adequately controlled with supervision and treatment services if conditionally released and that necessary supervision and treatment services are available, the court may order the young person conditionally released, subject to those supervisory orders of the court that are in the best interests of justice and the young person. The court shall designate a qualified mental health or developmental disabilities treatment provider or state, county or local agency to supervise the young person on release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the qualified mental health or developmental disabilities treatment provider or agency to whom conditional release is contemplated and provide the qualified mental health or developmental disabilities treatment provider or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the qualified mental health or developmental disabilities treatment provider or agency designated shall assume supervision of the young person subject to the direction of the juvenile panel. The qualified mental health or developmental disabilities treatment provider or agency designated as supervisor shall report in writing no less than once per month to the juvenile panel concerning the supervised young person's compliance with the conditions of release.

(c) For purposes of determining whether to order commitment to a hospital or facility or conditional release, the primary concern of the court is the protection of society.

(3) In determining whether a young person should be conditionally released, the court may order examinations or evaluations deemed necessary.

(4) Upon placing a young person on conditional release and ordering the young person placed under the jurisdiction of the board, the court shall notify the juvenile panel in writing of the court's conditional release order, the supervisor designated and all other conditions of release pending a hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542.

(5) When making an order under this section, the court shall:

(a) Determine whether the parent or guardian of the young person is able and willing to assist the young person in obtaining necessary mental health or developmental disabilities services and is willing to acquiesce in the decisions of the juvenile panel. If the court finds that the parent or guardian:

(A) Is able and willing to do so, the court shall order the parent or guardian to sign an irrevocable consent form in which the parent agrees to any placement decision made by the juvenile panel.

(B) Is unable or unwilling to do so, the court shall order that the young person be placed in the legal custody of the Department of Human Services for the purpose of obtaining necessary developmental disabilities services or the Oregon Health Authority for the purpose of obtaining necessary mental health services.

(b) Make specific findings on whether there is a victim and, if so, whether the victim wishes to be notified of any board hearings concerning the young person and of any conditional release, discharge or escape of the young person.

(c) Include in the order a list of the persons who wish to be notified of any board hearing concerning the young person.

(d) Determine on the record the act committed by the young person for which the young person was found responsible except for insanity.

(e) State on the record the mental disease or defect on which the young person relied for the responsible except for insanity defense.

(6) When the department designates a facility for the commitment of a developmentally disabled young person under this section, or the authority designates a hospital or facility for commitment of a mentally ill young person under this section, the department and the authority shall take into account the care and treatment needs of the young person, the resources available to the department or the authority and the safety of the public.

H.B. 3634,75TH LEG. ASSEM., 2010 SPEC. SESS. (ORE. 2010). MODIFYING OR. REV. STAT. § 419C.529 (2009). FINDING OF MENTAL DISEASE OR DEFECT; JURISDICTION OF PSYCHIATRIC SECURITY REVIEW BOARD; CONDITIONAL RELEASE OR COMMITMENT. EFFECTIVE ON MARCH 23, 2010.

* See section 10

…

[*10] SECTION 10. ORS 419C.529 is amended to read:

419C.529. (1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the court finds by a preponderance of the evidence that the young person, at the time of disposition, has a serious mental condition or has a mental disease or defect other than a serious mental condition and presents a substantial danger to others, requiring conditional release or commitment to a hospital or facility designated on an individual case basis by the Department of Human Services or the Oregon Health Authority as provided in subsection (6) of this section, the court shall order the young person placed under the jurisdiction of the Psychiatric Security Review Board.

(2) The court shall determine whether the young person should be committed to a hospital or facility designated on an individual case basis by the department or the authority, as provided in subsection (6) of this section, or conditionally released pending a hearing before the juvenile panel of the Psychiatric Security Review Board as follows:

(a) If the court finds that the young person is not a proper subject for conditional release, the court shall order the young person committed to a secure hospital or a secure intensive community inpatient facility designated on an individual case basis by the department or the authority, as provided in subsection (6) of this section, for custody,

supervision and treatment pending a hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542 and shall order the young person placed under the jurisdiction of the board.

(b) If the court finds that the young person can be adequately controlled with supervision and treatment services if conditionally released and that necessary supervision and treatment services are available, the court may order the young person conditionally released, subject to those supervisory orders of the court that are in the best interests of justice and the young person. The court shall designate a qualified mental health or developmental disabilities treatment provider or state, county or local agency to supervise the young person on release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the qualified mental health or developmental disabilities treatment provider or agency to whom conditional release is contemplated and provide the qualified mental health or developmental disabilities treatment provider or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the qualified mental health or developmental disabilities treatment provider or agency designated shall assume supervision of the young person subject to the direction of the juvenile panel. The qualified mental health or developmental disabilities treatment provider or agency designated as supervisor shall report in writing no less than once per month to the juvenile panel concerning the supervised young person's compliance with the conditions of release.

(c) For purposes of determining whether to order commitment to a hospital or facility or conditional release, the primary concern of the court is the protection of society.

(3) In determining whether a young person should be conditionally released, the court may order examinations or evaluations deemed necessary.

(4) Upon placing a young person on conditional release and ordering the young person placed under the jurisdiction of the board, the court shall notify the juvenile panel in writing of the court's conditional release order, the supervisor designated and all other conditions of release pending a hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542.

(5) When making an order under this section, the court shall:

(a) Determine whether the parent or guardian of the young person is able and willing to assist the young person in obtaining necessary mental health or developmental disabilities services and is willing to acquiesce in the decisions of the juvenile panel. If the court finds that the parent or guardian:

(A) Is able and willing to do so, the court shall order the parent or guardian to sign an irrevocable consent form in which the parent agrees to any placement decision made by the juvenile panel.

(B) Is unable or unwilling to do so, the court shall order that the young person be placed in the legal custody of the Department of Human Services for the purpose of obtaining necessary developmental disabilities services or the Oregon Health Authority for the purpose of obtaining necessary mental health services.

(b) Make specific findings on whether there is a victim and, if so, whether the victim wishes to be notified of any board hearings **[A>** AND ORDERS **<A]** concerning the young person and of any conditional release, discharge or escape of the young person.

(c) Include in the order a list of the persons who wish to be notified of any board hearing concerning the young person.

(d) Determine on the record the act committed by the young person for which the young person was found responsible except for insanity.

(e) State on the record the mental disease or defect on which the young person relied for the responsible except for insanity defense.

(6) When the department designates a facility for the commitment of a developmentally disabled young person under this section, or the authority designates a hospital or facility for commitment of a mentally ill young person under this section, the department and the authority shall take into account the care and treatment needs of the young person, the resources available to the department or the authority and the safety of the public.
…

OR. REV. STAT. § 426.130 (2009). COURT DETERMINATION OF MENTAL ILLNESS; DISCHARGE; RELEASE FOR VOLUNTARY TREATMENT; CONDITIONAL RELEASE; COMMITMENT; PROHIBITION RELATING TO FIREARMS; PERIOD OF COMMITMENT.

(1) After hearing all of the evidence, and reviewing the findings of the examining persons, the court shall determine whether the person is mentally ill. If, in the opinion of the court, the person is:

(a) Not mentally ill, the person shall be discharged forthwith.

(b) Mentally ill based upon clear and convincing evidence, the court:

(A) Shall order the release of the individual and dismiss the case if:

(i) The mentally ill person is willing and able to participate in treatment on a voluntary basis; and

(ii) The court finds that the person will probably do so.

(B) May order conditional release under this subparagraph subject to the qualifications and requirements under ORS 426.125. If the court orders conditional release under this

subparagraph, the court shall establish a period of commitment for the conditional release.

(C) May order commitment of the individual to the Oregon Health Authority for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the mentally ill person. If the court orders commitment under this subparagraph:

(i) The court shall establish a period of commitment.

(ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the order to be delivered to the sheriff of the county who will enter the information into the Law Enforcement Data System.

(2) A court that orders a conditional release or a commitment under this section shall establish a period of commitment for the person subject to the order. Any period of commitment ordered for commitment or conditional release under this section shall be for a period of time not to exceed 180 days.

(3) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice included a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's determination under subsection (1) of this section.

OR. REV. STAT. § 426.670 (2009). TREATMENT PROGRAMS FOR SEXUALLY DANGEROUS PERSONS.

The Oregon Health Authority hereby is directed and authorized to establish and operate treatment programs, either separately within an existing state Department of Corrections institution, as part of an existing program within an Oregon Health Authority institution, or in specified and approved sites in the community to receive, treat, study and retain in custody, as required, such sexually dangerous persons as are committed under ORS 426.510 to 426.670.

OR. REV. STAT. § 426.675 (2009). DETERMINATION OF SEXUALLY DANGEROUS PERSONS; CUSTODY PENDING SENTENCING; HEARING; SENTENCING; RULES.

(1) When a defendant has been convicted of a sexual offense under ORS 163.305 to 163.467 or 163.525 and there is probable cause to believe the defendant is a sexually dangerous person, the court prior to imposing sentence may continue the time for

sentencing and commit the defendant to a facility designated under ORS 426.670 for a period not to exceed 30 days for evaluation and report.

(2) If the facility reports to the court that the defendant is a sexually dangerous person and that treatment available may reduce the risk of future sexual offenses, the court shall hold a hearing to determine by clear and convincing evidence that the defendant is a sexually dangerous person. The state and the defendant shall have the right to call and cross-examine witnesses at such hearing. The defendant may waive the hearing required by this subsection.

(3) If the court finds that the defendant is a sexually dangerous person and that treatment is available which will reduce the risk of future sexual offenses, it may, in its discretion at the time of sentencing:

(a) Sentence the defendant to probation on the condition that the person participate in and successfully complete a treatment program for sexually dangerous persons pursuant to ORS 426.670;

(b) Impose a sentence of imprisonment with the order that the defendant be assigned by the Director of the Department of Corrections to participate in a treatment program for sexually dangerous persons pursuant to ORS 426.670. The Department of Corrections and the Oregon Health Authority shall jointly adopt administrative rules to coordinate assignment and treatment of prisoners under this subsection; or

(c) Impose any other sentence authorized by law.

PENNSYLVANIA

42 PA. CONS. STAT. ANN. § 6401 (2010). SCOPE OF CHAPTER

This chapter establishes rights and procedures for the civil commitment of sexually violent delinquent children who, due to a mental abnormality or personality disorder, have serious difficulty in controlling sexually violent behavior and thereby pose a danger to the public and further provides for additional periods of commitment for involuntary treatment for said persons.

42 PA. CONS. STAT. ANN. § 6403 (2010). COURT-ORDERED INVOLUNTARY TREATMENT

(a) PERSONS SUBJECT TO INVOLUNTARY TREATMENT.-- A person may be subject to court-ordered commitment for involuntary treatment under this chapter if the person:

(1) Has been adjudicated delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S.A. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual

intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest).

(2) Has been committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child) and remains in the institution or other facility upon attaining 20 years of age.

(3) Is in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.

(b) PROCEDURES FOR INITIATING COURT-ORDERED INVOLUNTARY COMMITMENT.--

(1) Where, pursuant to the provisions of section 6358(f) (relating to assessment of delinquent children by the State Sexual Offenders Assessment Board), the court determines that a prima facie case has been presented that the child is in need of involuntary treatment under the provisions of this chapter, the court shall order that a petition be filed by the county solicitor or a designee before the court having jurisdiction of the person pursuant to Chapter 63 (relating to juvenile matters).

(2) The petition shall be in writing in a form adopted by the department and shall set forth the facts constituting reasonable grounds to believe the individual is within the criteria for court-ordered involuntary treatment as set forth in subsection (a). The petition shall include the assessment of the person by the board as required in section 6358.

(3) The court shall set a date for the hearing which shall be held within 30 days of the filing of the petition pursuant to paragraph (1) and direct the person to appear for the hearing. A copy of the petition and notice of the hearing date shall be served on the person, the attorney who represented the person at the most recent dispositional review hearing pursuant to section 6358(e) and the county solicitor or a designee. The person and the attorney who represented the person shall, along with copies of the petition, also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person.

(4) The person shall be informed that the person has a right to be assisted in the proceedings by an independent expert in the field of

sexually violent behavior. If the person cannot afford to engage such an expert, the court shall allow a reasonable fee for such purpose.

(c) HEARING.-- A hearing pursuant to this chapter shall be conducted as follows:

(1) The person shall not be called as a witness without the person's consent.

(2) The person shall have the right to confront and cross-examine all witnesses and to present evidence on the person's own behalf.

(3) The hearing shall be public.

(4) A stenographic or other sufficient record shall be made.

(5) The hearing shall be conducted by the court.

(6) A decision shall be rendered within five days after the conclusion of the hearing.

(d) DETERMINATION AND ORDER.-- Upon a finding by clear and convincing evidence that the person has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence, an order shall be entered directing the immediate commitment of the person for inpatient involuntary treatment to a facility designated by the department. The order shall be in writing and shall be consistent with the protection of the public safety and the appropriate control, care and treatment of the person. An appeal shall not stay the execution of the order.

42 PA. CONS. STAT. ANN. § 6404 (2010). DURATION OF COMMITMENT AND REVIEW

(a) INITIAL PERIOD OF COMMITMENT.-- The person shall be subject to a period of commitment for inpatient treatment for one year.

(b) ANNUAL REVIEW.--

(1) Sixty days prior to the expiration of the one-year commitment period, the director of the facility or a designee shall submit an evaluation and the board shall submit an assessment of the person to the court.

(2) The court shall schedule a review hearing which shall be conducted pursuant to section 6403(c) (relating to court-ordered involuntary treatment) and which shall be held no later than 30 days after receipt of both the evaluation and the assessment under paragraph (1). Notice of the review hearing shall be provided to the person, the attorney who

represented the person at the previous hearing held pursuant to this subsection or section 6403, the district attorney and the county solicitor or a designee. The person and the person's attorney shall also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person. If the court determines by clear and convincing evidence that the person continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes the person likely to engage in an act of sexual violence, the court shall order an additional period of involuntary treatment of one year; otherwise, the court shall order the discharge of the person. The order shall be in writing and shall be consistent with the protection of the public safety and appropriate control, care and treatment of the person.

(c) DISCHARGE.--

(1) If at any time the director or a designee of the facility to which the person was committed concludes the person no longer has serious difficulty in controlling sexually violent behavior, the director shall petition the court for a hearing. Notice of the petition shall be given to the person, the attorney who represented the person at the previous hearing held pursuant to subsection (b) or section 6403, the board, the district attorney and the county solicitor. The person and the person's attorney shall also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person.

(2) Upon receipt of notice under paragraph (1), the board shall conduct a new assessment within 30 days and provide that assessment to the court.

(3) Within 15 days after the receipt of the assessment from the board, the court shall hold a hearing pursuant to section 6403(c). If the court determines by clear and convincing evidence that the person continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes the person likely to engage in an act of sexual violence, the court shall order that the person be subject to the remainder of the period of commitment. Otherwise, the court shall order the discharge of the person.

(4) The department shall provide the person with notice of the person's right to petition the court for discharge over the objection of the department. The court, after review of the petition, may schedule a hearing pursuant to section 6403(c).

42 PA. CONS. STAT. ANN. § 9727 (2010). DISPOSITION OF PERSONS FOUND GUILTY BUT MENTALLY ILL

(a) IMPOSITION OF SENTENCE.-- A defendant found guilty but mentally ill or whose plea of guilty but mentally ill is accepted under the provisions of 18 Pa.C.S. § 314 (relating to guilty but mentally ill) may have any sentence imposed on him which may lawfully be imposed on any defendant convicted of the same offense. Before imposing sentence, the court shall hear testimony and make a finding on the issue of whether the defendant at the time of sentencing is severely mentally disabled and in need of treatment pursuant to the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the "Mental Health Procedures Act."

(b) TREATMENT.--

(1) An offender who is severely mentally disabled and in need of treatment at the time of sentencing shall, consistent with available resources, be provided such treatment as is psychiatrically or psychologically indicated for his mental illness. Treatment may be provided by the Bureau of Correction, by the county or by the Department of Public Welfare in accordance with the "Mental Health Procedures Act."

(2) The cost for treatment of offenders found guilty but mentally ill, committed to the custody of the Bureau of Correction and transferred to a mental health facility, shall be borne by the Commonwealth.

(c) DISCHARGE REPORT.-- When a treating facility designated by either the Bureau of Correction or the Department of Public Welfare discharges such a defendant from treatment prior to the expiration of his maximum sentence, that treating facility shall transmit to the Pennsylvania Board of Probation and Parole, the correctional facility or county jail to which the offender is being returned and the sentencing judge a report on the condition of the offender, together with the reasons for its judgments, which describes:

(1) The defendant's behavior.

(2) The course of treatment.

(3) The potential for recurrence of the behavior.

(4) The potential for danger to himself or the public.

(5) Recommendations for future treatment.

(d) PRERELEASE AND PAROLE CONDITIONS.-- An offender who is discharged from treatment may be placed on prerelease or parole status under the same terms and

laws applicable to any other offender. Psychological and psychiatric counseling and treatment may be required as a condition of such status. Failure to continue treatment, except by agreement of the supervising authority, shall be a basis for terminating prerelease status or instituting parole violation hearings.

(e) PAROLE PROCEDURE.-- The paroling authority may consider the offender for parole pursuant to other law or administrative rules. When the paroling authority considers the offender for parole, it shall consult with the treating facility at which the offender is being treated or from which he was discharged.

(f) PROBATION.--

(1) If an offender who is found guilty but mentally ill is placed on probation, the court may, upon recommendation of the district attorney or upon its own initiative, make treatment a condition of probation.

(2) Reports as specified by the trial judge shall be filed with the probation officer and the sentencing court. Failure to continue treatment, including the refusal to take such drugs as may be prescribed, except by agreement of the sentencing court, shall be a basis for the institution of probation violation hearings. The period of probation shall be the maximum permitted by law and shall not be reduced without receipt and consideration by the court of a mental health status report like that required in subsection (c).

(3) Treatment shall be provided by an agency approved by the Department of Public Welfare or, with the approval of the sentencing court and at individual expense, by private agencies, private physicians or other mental health personnel. A mental health status report, containing the information set forth in subsection (c), shall be filed with the probation officer and the sentencing court every three months during the period of probation. If a motion on a petition to discontinue probation is made by the defendant, the probation officer shall request a report as specified from the treating facility.

50 PA. CONS. STAT. ANN. § 7301 (2010). PERSONS WHO MAY BE SUBJECT TO INVOLUNTARY EMERGENCY EXAMINATION AND TREATMENT

(a) PERSONS SUBJECT. --Whenever a person is severely mentally disabled and in need of immediate treatment, he may be made subject to involuntary emergency examination and treatment. A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself.

(b) DETERMINATION OF CLEAR AND PRESENT DANGER. --(1) Clear and present danger to others shall be shown by establishing that within the past 30 days the

person has inflicted or attempted to inflict serious bodily harm on another and that there is a reasonable probability that such conduct will be repeated. If, however, the person has been found incompetent to be tried or has been acquitted by reason of lack of criminal responsibility on charges arising from conduct involving infliction of or attempt to inflict substantial bodily harm on another, such 30-day limitation shall not apply so long as an application for examination and treatment is filed within 30 days after the date of such determination or verdict. In such case, a clear and present danger to others may be shown by establishing that the conduct charged in the criminal proceeding did occur, and that there is a reasonable probability that such conduct will be repeated. For the purpose of this section, a clear and present danger of harm to others may be demonstrated by proof that the person has made threats of harm and has committed acts in furtherance of the threat to commit harm.

(2) Clear and present danger to himself shall be shown by establishing that within the past 30 days:

(i) the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, and that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded under this act; or

(ii) the person has attempted suicide and that there is the reasonable probability of suicide unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger may be demonstrated by the proof that the person has made threats to commit suicide and has committed acts which are in furtherance of the threat to commit suicide; or

(iii) the person has substantially mutilated himself or attempted to mutilate himself substantially and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation.

RHODE ISLAND

R.I. GEN. LAWS § 40.1-5.3-3 (2010). COMPETENCY TO STAND TRIAL

(a) *Definitions.* As used in this section:

(1) "Attorney for the state" means the attorney general, an authorized assistant attorney

general, or such other person as may be authorized by law to act as a representative of the state in a criminal proceeding;

(2) "Competent" or "competency" means mental ability to stand trial. A person is mentally competent to stand trial if he or she is able to understand the character and consequences of the proceedings against him or her and is able properly to assist in his or her defense;

(3) "Department" means the state department of mental health, retardation, and hospitals.

(4) "Director" means the director of the state department of mental health, retardation, and hospitals;

(5) "Incompetent" or "incompetency" means mentally incompetent to stand trial. A person is mentally incompetent to stand trial if he or she is unable to understand the character and consequences of the proceedings against him or her or is unable properly to assist in his or her defense;

(b) *Presumption of competency.* A defendant is presumed competent. The burden of proving that the defendant is not competent shall be by a preponderance of the evidence, and the burden of going forward with the evidence shall be on the party raising the issue. The burden of going forward shall be on the state if the court raises the issue.

(c) *Request for examination.* If at any time during a criminal proceeding, prior to the imposition of sentence, it appears that the defendant is not competent, counsel for the defendant or the state, or the court, on its own motion, may request an examination to determine the defendant's competency.

(d) *Examination of defendant.* (1) If the court finds that the request for examination is justified, the court shall order an examination of the defendant. The scope of the examination shall be limited to the question of whether the defendant is competent.

(2) The examination shall take place on an outpatient basis if the defendant is to be released on bail or recognizance. If the defendant is ordered confined at the adult correctional institutions, the examination shall take place at that facility. The department shall appoint or designate the physician(s) who will conduct the examinations.

(3) If the defendant is ordered confined to the adult correctional institutions, the physician shall complete the examination within five (5) days. If the physician determines that the defendant is incompetent to stand trial, the defendant shall be immediately transferred to the institute of mental health's forensic unit pending the hearing provided for in subsection (g).

(e) *Bail or recognizance during examination.* (1) A defendant for whom a competency examination has been ordered shall be entitled to release on bail or recognizance to the

same extent and on the same terms and conditions as if the issue of competency had not been raised.

(2) The court may order the defendant to appear at a designated time and place for outpatient examination, and such an appearance may be made a condition of pretrial release.

(f) *Reports of examining physicians.* Each examining physician shall prepare a report, in writing, in which he or she shall state his or her findings concerning the defendant's competency together with the medical and other data upon which his or her findings are based. The report shall be filed with the court within ten (10) days if the defendant was ordered confined at the adult correctional institutions and as soon as practicable if the defendant was released on bail or recognizance and copies given to the attorney for the state and to the defendant or his or her counsel.

(g) *Hearing.* Upon receipt of the report and appropriate notice to the parties, the court shall hold a hearing unless the report concludes that the defendant is competent and the defendant and the attorney for the state in open court state in writing their assent to the findings. At the hearing, the report shall be introduced, other evidence bearing on the defendant's competence may be introduced by the parties, and the defendant may testify, confront witnesses, and present evidence on the issue of his or her competency. On the basis of the evidence introduced at the hearing, the court shall decide if the defendant is competent.

(h) *Commitment of the defendant.* (1) If the court finds, after the hearing, that a defendant is competent it shall proceed with the criminal case.

(2) If the court finds that a defendant is incompetent, it shall commit him or her to the custody of the director for the purpose of determining whether or not the defendant is likely to imperil the peace and safety of the people of the state or the safety of himself or herself and whether the defendant will regain competency within the maximum period of any placement under this chapter.

(3) Not later than fifteen (15) days from the date of the order of commitment, the director shall prepare and file with the court a written report in which he or she shall state his or her opinion regarding the defendant's dangerousness, the likelihood of the defendant becoming competent to stand trial within the maximum period of any placement order and the recommendations of the department regarding appropriate care and treatment of the defendant.

(4) In the event the director is unable to complete the examination of the person in time to render his or her report within the fifteen (15) day period, he or she shall report that fact, in writing, to the court with a statement of the reasons why the examination and report could not be completed within the prescribed period. A copy of the director's statement shall be given to the attorney general and to the defendant or his or her counsel, any of whom may respond in writing, or if the court deems it appropriate, orally, to the

director's statement. The court may thereupon enter an order extending for an additional twenty (20) days the time in which the director is to file his or her report.

(i) *Hearing.* (1) Upon receipt of the report and appropriate notice to the director, the attorney general and the defendant or his or her counsel, the court shall hold a hearing at which the report shall be introduced, other evidence bearing on the question of the mental condition of the person may be introduced by the parties, and the person may testify, confront witnesses, and present evidence.

(2) If the court finds that a defendant who is incompetent may be placed on outpatient status without imperiling the peace or safety of the public or the safety of himself or herself, it may commit the defendant to an appropriate outpatient facility which agrees to provide treatment to the defendant and to adhere to the requirements of this section, in order that the defendant may receive treatment to restore or establish his or her competency.

(3) If the court finds that a defendant who is incompetent is likely to imperil the peace or safety of the people of the state or the peace and safety of himself or herself, it may order the defendant to the facility established pursuant to § 40.1-5.3-1 or to the general wards of the institute of mental health, if the director agrees that the defendant should be placed on the general wards. A person who is ordered to be treated on inpatient status shall not be paroled, furloughed, placed on outpatient status or removed from a locked facility or otherwise released from the institution where he or she is being treated except upon petition to the court by the director, on notice to the attorney general and the defendant or his or her counsel, and after hearing thereon and entry of an order by a judge of the court authorizing such release. The commitment ordered pursuant to this section shall terminate upon the occurrence of any of the following:

(i) The defendant is determined by the court to be competent; or

(ii) The charges against the defendant are dismissed pursuant to subsection (j); or

(iii) The charges against the defendant are dismissed or a nolle prosequi is entered; or

(iv) The defendant is civilly committed pursuant to § 40.1-5-8; or

(v) The court finds there is no reasonable likelihood that in the foreseeable future the defendant will become competent and his or her condition is such that he or she cannot properly be committed under § 40.1-5-8.

(j) *Period of commitment.* When a court commits a defendant pursuant to subsection (i)(2) or (i)(3) it shall compute, counting from the date of entry to the order of commitment, the date of the expiration of the period of time equal to two thirds (2/3) of the maximum term of imprisonment for the most serious offense with which the defendant is charged. If the maximum term for the most serious offense charged is life imprisonment or death, the court shall for the purpose of computation deem such offense

to be punishable by a maximum term of thirty (30) years. In the order of commitment, the court shall provide that if, on the date so computed, the defendant is still committed under the order, the charges against him or her shall be dismissed.

(k) *Periodic review.* The director shall petition the court to review the state of competency of a defendant committed pursuant to subsection (i)(2) or (i)(3) not later than six (6) months from the date of the order of commitment and every six (6) months thereafter, or when the director believes the defendant is no longer incompetent, whichever occurs first. Outpatient facilities which are providing treatment to defendants in accordance with subsection (i)(2) shall prepare reports to be submitted to the director in accordance with the requirements of this section. The director shall attach to the petition a report on the condition of the defendant. If the report indicates that the defendant remains incompetent, it shall include a prognosis regarding the likelihood that he or she will become competent prior to the dismissal of the charges pursuant to subsection (j). Copies of the report shall be given to the attorney for the state and to the defendant or his or her counsel.

(l) *Defendant's right to petition.* A defendant committed pursuant to subsection (i)(2) or (i)(3) may at any time petition the court to review the state of his or her competency.

(m) *Hearing on petition.* Upon receipt of a petition pursuant to subsection (k) or (l) and appropriate notice to the defendant, the state, and the director, the court shall hold a hearing at which the parties may introduce evidence as to the defendant's competency, including any reports of the director, and the defendant may testify, confront witnesses, and present evidence as to his or her competency and prognosis. On the basis of the evidence, the court shall make a finding as to the defendant's competency and, if he or she is found to be incompetent, whether a reasonable likelihood exists that he or she will become competent prior to the dismissal of the charges pursuant to subsection (j). If the court finds that the defendant is competent, it shall enter an order to that effect. If the court finds that the defendant is incompetent and that a reasonable likelihood exists that he or she will become competent prior to the dismissal of the charges pursuant to subsection (j), it shall order continuation of the commitment of the defendant. If the court finds that the defendant is incompetent and that a reasonable likelihood does not exist that he or she will become competent prior to the dismissal of the charges pursuant to subsection (j), it shall order that thirty (30) days thereafter the defendant be discharged from detention under the order of commitment. Upon entry of the order the state may commence proceedings seeking to commit the defendant pursuant to § 40.1-5-8.

(n) *Statements inadmissible.* No statements made by a defendant in the course of an examination conducted pursuant to subsection (d) or during a hearing conducted pursuant to subsection (i) or (m) shall be admissible in evidence against the defendant in any criminal action on any issue other than his or her mental condition. The statements shall be admissible on the issue of his or her mental condition even though they might otherwise be deemed to be privileged communications.

(o) *Disposition of charges.* The court may, at any time, proceed to a disposition of the

charges pending against a defendant who has been committed pursuant to subsection (i)(2) or (i)(3) if the factual and legal issues involved can be resolved without regard to the competency of the defendant.

R.I. GEN. LAWS § 40.1-5.3-4 (2010). COMMITMENT OF PERSONS ACQUITTED ON GROUND OF INSANITY

(a) *Definitions.* As used in this section:

(1) "Court" means the court in which a defendant was adjudged not guilty of a criminal offense because he or she was insane at the time of its commission.

(2) "Director" means the director of the state department of mental health, retardation, and hospitals.

(3) "Mental disability" means a mental disorder in which the capacity of a person to exercise self control or judgment in the conduct of his or her affairs and social relations or to care for his or her own personal needs is significantly impaired.

(4) "Likelihood of serious harm" means:

(i) A substantial risk of physical harm to the person him or herself as manifested by behavior evidencing serious threats of or attempts at suicide or by behavior which will result in serious bodily harm; or

(ii) A substantial risk of physical harm to other persons as manifested by behavior or threats evidencing homicidal or other violent behavior.

(b) *Examination of person found not guilty.* If a person is adjudged not guilty of a criminal offense because he or she was insane at the time of its commission, the court shall commit him or her to the custody of the director for the purpose of observation and examination to determine whether the person is dangerous.

(c) *Report of director.* (1) Not later than twenty (20) days from the date of the order of commitment, the director shall prepare and file with the court a report, in writing, in which he or she shall state his or her opinion as to whether by reason of mental disability the person's unsupervised presence in the community will create a likelihood of serious harm, together with the medical and other data upon which his or her opinion is based. A copy of the report shall be given to the attorney general and to the person or his or her counsel.

(2) In the event the director is unable to complete the examination of the person in time to render his or her report within the twenty (20) day period, he or she shall report that fact, in writing, to the court with a statement of the reasons why the examination and report could not be completed within the prescribed period. A copy of the director's statement shall be given to the attorney general and to the person or his or her counsel, any of whom may respond in writing, or if the court deems it appropriate, orally, to the

director's statement. The court may thereupon enter an order extending for an additional twenty (20) days the time in which the director is to file his or her report.

(d) *Hearing.* Upon receipt of the report and appropriate notice to the director, the attorney general and the person or his or her counsel, the court shall hold a hearing at which the report shall be introduced, other evidence bearing on the question of the mental condition of the person may be introduced by the parties, and the person may testify, confront witnesses, and present evidence.

(e) *Commitment of person.* If the court finds that the person is not dangerous it shall order that he or she be discharged at once. If the court finds that the person is dangerous it shall commit him or her to the custody of the director for care and treatment as an inpatient in a public institution. A person committed under this subsection shall not be paroled, furloughed, placed on outpatient status, or released from a locked facility or otherwise released from the institution where he or she is being treated except upon petition to the court by the director, on notice to the attorney general and the person or his or her counsel, and entry of an order by a judge of the court authorizing the release.

(f) *Periodic review.* The director shall petition the court to review the condition of a person committed pursuant to subsection (e) not later than six (6) months from the date of the order of commitment and every six (6) months thereafter, or when the director no longer believes that the unsupervised presence of the person in the community will create a likelihood of serious harm, whichever occurs first. The director shall attach to the petition a report on the condition of the person. Copies of the report shall be given to the attorney general and to the defendant or his or her counsel.

(g) *Person's right to petition.* A person committed pursuant to subsection (e) may at any time petition the court to review his or her condition.

(h) *Hearing on petition.* Upon receipt of a petition pursuant to subsection (f) or (g) and appropriate notice to the director, the attorney general and the person or his or her counsel, the court shall hold a hearing at which the parties may introduce evidence bearing on the mental condition of the person, including any reports of the director, and the person may testify, confront witnesses, and present evidence. If the court finds by clear and convincing evidence that by reason of mental disability the presence of the person in the community will create a likelihood of serious harm, it shall enter an order to that effect and he or she shall remain in the custody of the director. If the court does not so find, it shall enter an order discharging the person from the custody of the director.

(i) *Transfer of nonresidents.* In the case of a person who has been committed pursuant to subsection (e) and who is a resident of another state, the director, on notice to the attorney general and the person or his or her counsel, may petition the court to transfer the person to the custody of officials of the state in which the person ordinarily resides. The court may, in its discretion, order the transfer of the person if it finds that appropriate officials of the state in which the person ordinarily resides are willing to accept custody of the person and provide care and treatment for him or her on such terms and conditions as the

court deems to be necessary and proper to the peace and safety of the public and to the welfare of the person.

R.I. GEN. LAWS § 40.1-5.3-6 (2010). EXAMINATION OF PERSONS AWAITING TRIAL OR CONVICTED AND IMPRISONED FOR CRIME

On a petition of the director of the department of mental health, retardation, and hospitals, or on the petition of the director of the department of corrections, setting forth that any person awaiting trial or convicted of a crime and imprisoned for the crime in the adult correctional institutions is mentally ill and requires specialized mental health care and psychiatric in-patient services which cannot be provided in a correctional facility, a justice of the superior court may order the examination of the person as in his or her discretion he or she shall deem appropriate.

R.I. GEN. LAWS § 40.1-5.3-7 (2010). HEARING ON PETITION

(a) Upon receipt of the petition and appropriate notice to the director, the attorney general and the person or his or her counsel, the court shall hold a hearing at which the parties may introduce evidence bearing on the mental condition of the person. The person who is the subject of the petition may testify, confront witnesses, and present evidence.

(b) If the court finds by clear and convincing evidence that the person is mentally ill and requires specialized mental health care and psychiatric inpatient services which cannot be provided in a correctional facility, the court may order the transfer of the prisoner from the adult correctional institutions, to be detained in the facility provided for in § 40.1-5.3-1.

R.I. GEN. LAWS § 40.1-5.3-9 (2010). RETURN TO CONFINEMENT

When any person transferred pursuant to § 40.1-5.3-7 has sufficiently recovered his or her mental health, he or she may, upon petition of the director and by order of a justice of the superior court in his or her discretion, be transferred to the place of his or her original confinement, to serve out the remainder of his or her term of sentence.

SOUTH CAROLINA

S.C. CODE ANN. § 44-24-60 (2009). EMERGENCY ADMISSION OF CHILD TO INPATIENT HOSPITAL.

(A) A child may be admitted to an inpatient hospital for emergency admission upon:

(1) written application under oath by an interested person stating:

(a) belief that the child is in need of treatment and in danger of harming himself or others as a result of his need for treatment;

(b) the specific type of serious harm thought probable if the child is not hospitalized

immediately;

(c) the factual basis for this belief;

(d) the reason why the child cannot obtain treatment voluntarily.

(2) a certification in triplicate by a licensed physician stating that he has examined the child and is of the opinion that he is a child in need of treatment and in need of emergency admission. The certification must contain the grounds for the opinion.

(B) A child for whom a certificate has been issued must not be admitted on the basis of the certificate after the expiration of three calendar days after the date of his examination.

(C) Before the emergency admission of a child to a treatment program or facility of the department, the child must be examined by a licensed physician. The physician shall inform the mental health center in the county where the child resides or where the examination takes place of the mental and physical treatment needs of the child. The physician shall consult with the center regarding the commitment and admission process and the available treatment options and alternatives in lieu of hospitalization at a state psychiatric facility.

(D) The examining physician shall complete a statement that he has consulted with the local mental health center before the admission of the child to a state psychiatric facility. If the physician does not consult with the center, he shall state a clinical reason for his failure to do so. The statement must accompany the physician's certificate and written application for emergency commitment. The department, in its discretion, may refuse to admit a child to its facility if the physician fails to complete the statement required by this chapter.

(E) Within twenty-four hours after his admission, exclusive of Saturdays, Sundays, and legal holidays, the place of admission shall forward the application and certification to the court of the county in which the child resides or where the acts or conduct leading to his admission occurred.

(F) Within forty-eight hours of receipt of the application and certification exclusive of Saturdays, Sundays, and legal holidays, the court shall conduct a preliminary review of the evidence to determine if probable cause exists to continue the emergency detention of the child. If the court finds that probable cause does not exist, it shall issue an order of release for the child. Upon a finding of probable cause, the court shall make a written order detailing its findings and may order the continued detention of the child. The court shall appoint counsel for the child if he has not retained counsel and fix a date for a full hearing to be held within fifteen days from the date of his admission.

(G) With each application and certification, the place of admission also shall provide the court with an examiner appointment form listing the names of two examiners.

(H) If the court appoints these two examiners, the examination must be performed at the place of admission and a report must be submitted to the court within seven days from the date of admission. The court may appoint independent examiners who shall submit a report to the court within five days. In the process of the examination by the examiners, available previous treatment records must be considered. At least one of the examiners appointed by the court must be a licensed physician.

(I) The examiner's report must be available to the child's counsel before the full hearing.

S.C. CODE ANN. § 44-48-20 (2009). LEGISLATIVE FINDINGS.

The General Assembly finds that a mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary civil commitment in a secure facility for long-term control, care, and treatment. The General Assembly further finds that the likelihood these sexually violent predators will engage in repeated acts of sexual violence if not treated for their mental conditions is significant. Because the existing civil commitment process is inadequate to address the special needs of sexually violent predators and the risks that they present to society, the General Assembly has determined that a separate, involuntary civil commitment process for the long-term control, care, and treatment of sexually violent predators is necessary. The General Assembly also determines that, because of the nature of the mental conditions from which sexually violent predators suffer and the dangers they present, it is necessary to house involuntarily-committed sexually violent predators in secure facilities separate from persons involuntarily committed under traditional civil commitment statutes. The civil commitment of sexually violent predators is not intended to stigmatize the mentally ill community.

S.C. CODE ANN. § 44-48-80 (2009). DETERMINATION OF PROBABLE CAUSE; TAKING PERSON INTO CUSTODY; HEARING; EVALUATION.

(A) Upon filing of a petition, the court must determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If the court determines that probable cause exists to believe that the person is a sexually violent predator, the person must be taken into custody if he is not already confined in a secure facility.

(B) Immediately upon being taken into custody pursuant to subsection (A), the person must be provided with notice of the opportunity to appear in person at a hearing to contest probable cause as to whether the detained person is a sexually violent predator. This hearing must be held within seventy-two hours after a person is taken into custody pursuant to subsection (A). At this hearing the court must:

(1) verify the detainee's identity;

(2) receive evidence and hear arguments from the person and the Attorney General; and

(3) determine whether probable cause exists to believe that the person is a sexually violent predator.

The State may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(C) At the probable cause hearing as provided in subsection (B), the detained person has the following rights in addition to any rights previously specified:

(1) to be represented by counsel;

(2) to present evidence on the person's behalf;

(3) to cross-examine witnesses who testify against the person; and

(4) to view and copy all petitions and reports in the court file.

(D) If the probable cause determination is made, the court must direct that the person be transferred to an appropriate secure facility including, but not limited to, a local or regional detention facility for an evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a qualified expert approved by the court at the probable cause hearing.

S.B. 931, 118TH GEN. ASSEM., 2ND REG. SESS. (S.C. 2010). MODIFYING S.C. CODE ANN. § 44-48-80 (2009). DETERMINATION OF PROBABLE CAUSE; TAKING PERSON INTO CUSTODY; HEARING; EVALUATION. EFFECTIVE MAY 12, 2010.

* See section 2

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[*2] SECTION 2. Section 44-48-80(D) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

"(D) If the probable cause determination is made, the court must direct that upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a qualified expert appointed by the court at the probable cause hearing. The expert must complete the evaluation within sixty days after the completion of the probable cause hearing. The court may grant one extension upon request of the expert and a showing of good cause. Any further extensions may only be granted for extraordinary circumstances."

Sexually violent predators

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S.C. CODE ANN. § 44-48-100 (2009). STANDARD FOR DETERMINING PREDATOR STATUS; CONTROL, CARE AND TREATMENT OF PERSON; RELEASE; MISTRIAL PROCEDURES; PERSONS INCOMPETENT TO STAND TRIAL.

(A) The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If a jury determines that the person is a sexually violent predator, the determination must be by unanimous verdict. If the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by the Department of Mental Health. At all times, a person committed for control, care, and treatment by the Department of Mental Health pursuant to this chapter must be kept in a secure facility, and the person must be segregated at all times from other patients under the supervision of the Department of Mental Health. The Department of Mental Health may enter into an interagency agreement with the Department of Corrections for the control, care, and treatment of these persons. A person who is in the confinement of the Department of Corrections pursuant to an interagency agreement authorized by this chapter must be kept in a secure facility and must, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Corrections. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person's release. Upon a mistrial, the court must direct that the person be held at an appropriate secure facility including, but not limited to, a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued. The court or jury's determination that a person is a sexually violent predator may be appealed. The person must be committed to the custody of the Department of Mental Health pending his appeal.

(B) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought pursuant to subsection (A), the court first shall hear evidence and determine whether the person committed the act or acts with which he is charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply. After hearing evidence on this issue, the court must make specific findings on whether the person committed the act or acts with which he is charged; the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, the court must enter a final order,

appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

S.B. 931, 118TH GEN. ASSEM., 2ND REG. SESS. (S.C. 2010). MODIFYING S.C. CODE ANN. § 44-48-100 (2009). STANDARD FOR DETERMINING PREDATOR STATUS; CONTROL, CARE AND TREATMENT OF PERSON; RELEASE; MISTRIAL PROCEDURES; PERSONS INCOMPETENT TO STAND TRIAL.

EFFECTIVE MAY 12, 2010.

* See section 4

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[*4] SECTION 4. Section 44-48-100(A) of the 1976 Code, as last amended by Act 176 of 2004, is further amended to read:

"(A) The court or jury must determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If a jury determines that the person is a sexually violent predator, the determination must be by unanimous verdict. If the court or jury determines that the person is a sexually violent predator, the person must be committed to the custody of the Department of Mental Health for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by the Department of Mental Health. At all times, a person committed for control, care, and treatment by the Department of Mental Health pursuant to this chapter must be kept in a secure facility, and the person must be segregated at all times from other patients under the supervision of the Department of Mental Health. The Department of Mental Health may enter into an interagency agreement with the Department of Corrections for the control, care, and treatment of these persons. A person who is in the confinement of the Department of Corrections pursuant to an interagency agreement authorized by this chapter must be kept in a secure facility and must, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Corrections. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person's release. Upon a mistrial, the court must direct that the person be held at a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued. The court or jury's determination that a person is a sexually violent predator may be appealed. The person must be committed to the custody of the Department of Mental Health pending his appeal."

Sexually violent predators

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S.C. CODE ANN. § 44-48-110 (2009). PERIODIC MENTAL EXAMINATION OF COMMITTED PERSONS; REPORT; PETITION FOR RELEASE; HEARING; TRIAL TO CONSIDER RELEASE

A person committed pursuant to this chapter must have an examination of his mental condition performed once every year. The person may retain or, if the person is indigent and so requests, the court may appoint a qualified expert to examine the person, and the expert must have access to all medical, psychological, criminal offense, and disciplinary records and reports concerning the person. The annual report must be provided to the court which committed the person pursuant to this chapter, the Attorney General, the solicitor who prosecuted the person, and the multidisciplinary team. The court must conduct an annual hearing to review the status of the committed person. The committed person is not prohibited from petitioning the court for release at this hearing. The Director of the Department of Mental Health must provide the committed person with an annual written notice of the person's right to petition the court for release over the director's objection; the notice must contain a waiver of rights. The director must forward the notice and waiver form to the court with the annual report. The committed person has a right to have an attorney represent him at the hearing, but the committed person is not entitled to be present at the hearing. If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the court must schedule a trial on the issue. At the trial, the committed person is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The Attorney General must notify the victim of all proceedings. The Attorney General must represent the State and has the right to have the committed person evaluated by qualified experts chosen by the State. The trial must be before a jury if requested by either the person, the Attorney General, or the solicitor. The committed person also has the right to have qualified experts evaluate the person on the person's behalf, and the court must appoint an expert if the person is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

S.C. CODE ANN. § 44-48-170 (2009). INVOLUNTARY DETENTION OR COMMITMENT; CONSTITUTIONAL REQUIREMENTS.

The involuntary detention or commitment of a person pursuant to this chapter must conform to constitutional requirements for care and treatment.

S.C. CODE ANN. § 44-52-10 (2009). DEFINITIONS.

(1) "Chemical dependency" means a chronic disorder manifested by repeated use of alcohol or other drugs to an extent that it interferes with a person's health, social, or economic functioning; some degree of habituation, dependence, or addiction may be implied.

(2) "Chemically dependent person in need of emergency commitment" means a person

who is suffering from chemical dependency and, as a result of this condition, poses a substantial risk of physical harm to himself or others if not immediately provided with emergency care and treatment.

(3) "Patient" means a person who is under the care and treatment of a treatment facility as a chemically dependent person.

(4) "Treatment facility" means any facility licensed or approved by the Department of Health and Environmental Control equipped to provide for the care and treatment of chemically dependent persons including the Division of Alcohol and Drug Addiction Services of the South Carolina Department of Mental Health, and any other treatment facility approved by the Director of the Department of Mental Health.

(5) "Licensed physician" means an individual licensed under the laws of this State to practice medicine or a medical officer of the Government of the United States while in this State in the performance of his official duties.

(6) "Head of a treatment facility" means the individual in charge of a treatment facility or his designee.

(7) "Treatment" means the broad range of emergency, outpatient, inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, or social service care, rehabilitation, and counseling which may be extended to a chemically dependent person.

(8) "Individualized treatment plan" means a plan developed during a patient's period of treatment in a treatment facility and which is specifically tailored to the individual patient's needs. Each plan shall clearly state:

(a) treatment goals and objectives based upon and related to a proper evaluation, which may be reasonably achieved within a designated time interval;

(b) treatment methods and procedures to be used to obtain these goals;

(c) identification of the types of professional personnel who shall carry out these procedures; and

(d) documentation of patient involvement.

(9) "Division" means the Division of Alcohol and Drug Addiction Services of the South Carolina Department of Mental Health.

(10) "Court" means the Probate Court.

(11) "Chemically dependent person in need of involuntary commitment" means a person who is suffering from chemical dependency as demonstrated by:

(a) recent overt acts or recent expressed acts of violence;

(b) episodes of recent serious physical problems related to the habitual and excessive use of drugs or alcohol, or both;

(c) incapacitation by drugs or alcohol, or both, on a habitual and excessive basis as evidenced by numerous appearances before the court within the preceding twelve months, repeated incidences involving law enforcement, multiple prior treatment episodes, or testimony by family or by members of the community known to the person relating to a lifestyle adversely affected by alcohol or drugs, or both.

S.C. CODE ANN. § 44-52-110 (2009). INVOLUNTARY COMMITMENT; CONDUCT OF HEARING AND EFFECT OF FINDINGS.

The individual for whom involuntary commitment is sought and all other persons required to receive notice may be present at the hearing. The court shall hear all relevant testimony, including the results of an examination or investigation required by the court. Counsel for the individual for whom involuntary commitment is sought must be allowed to present evidence and cross-examine witnesses. Opinions of court-ordered investigators or examiners may not be admitted into evidence unless the examiner or investigator is present to testify, except by agreement of the parties.

If the court finds, after presentation of all the evidence, that the individual is not a chemically dependent person in need of involuntary commitment, the court shall order that he be discharged if he has been hospitalized before the hearing.

If the court finds by clear and convincing evidence that the individual is a chemically dependent person in need of involuntary commitment and, after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the petition, voluntary outpatient care, or voluntary admission to a treatment facility, finds that there is no suitable alternative to involuntary commitment, the court shall make an order of commitment to the division for inpatient treatment. If the individual, his relatives, spouse, or guardian requests, and the head of the licensed treatment facility consents, the court may order commitment to another licensed treatment facility for inpatient treatment. The court shall not order the commitment to the division unless it determines that the division has a bed available and is able to provide adequate and appropriate treatment for him, and the treatment is likely to be beneficial. Neither the State, a county, nor a municipality is liable for costs of or may be charged for sending an individual to a licensed private treatment facility.

The treatment facility may request that the court, as part of relief ordered in the commitment proceedings, order the petitioner, if a family member, to cooperate with and participate in the treatment process.

Upon order of the court, a law enforcement officer shall deliver the patient to the treatment facility or, if the individual is already at the facility, authorize the facility to

retain the patient for the required treatment period. Every patient subject to involuntary commitment by court order must be evaluated and an individualized treatment plan developed by the treatment facility as soon as practicable after admission.

S.C. CODE ANN. § 63-19-1450 (2009). COMMITMENT OF JUVENILE WITH MENTAL ILLNESS OR MENTAL RETARDATION.

(A) No juvenile may be committed to an institution under the control of the Department of Juvenile Justice who is seriously handicapped by mental illness or retardation. If, after a juvenile is referred to the Reception and Evaluation Center, it is determined that the juvenile is mentally ill, as defined in Section 44-23-10, or mentally retarded to an extent that the juvenile could not be properly cared for in its custody, the department through the voluntary admission process or by instituting necessary legal action may accomplish the transfer of the juvenile to another state agency which in its judgment is best qualified to care for the juvenile in accordance with the laws of this State. This legal action must be brought in the juvenile's resident county. The department shall establish standards with regard to the physical and mental health of juveniles whom it can accept for commitment.

(B) When the state agency to which a juvenile is transferred determines that it is appropriate to release from commitment that juvenile, the state agency must submit a request for release to the releasing entity. If the releasing entity does not grant the request to release the juvenile, the juvenile must be placed in an environment consistent with the provisions of this section.

(C) If a juvenile transferred to another state agency pursuant to this section is absent from a treatment facility without proper authorization, any state or local law enforcement officer upon the request of the director, or a designee, of the state agency to which the juvenile has been transferred and without the necessity of a warrant or a court order, may take the juvenile into custody and return the juvenile to the facility designated by the agency director or the designee.

SOUTH DAKOTA

S.D. CODIFIED LAWS § 23A-10A-3 (2010). HEARING TO DETERMINE MENTAL COMPETENCY -- EXAMINATION AND REPORT

At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, the defendant or the prosecuting attorney may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or developmental disability, or other conditions set forth in §23A-10A-1, rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceeding against him or to assist properly in his defense. Prior to the date of hearing, the court may order that a psychiatric or psychological examination

of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of §§ 23A-46-1 and 23A-46-2. The hearing shall be conducted pursuant to the provisions of § 23A-46-3.

S.D. CODIFIED LAWS § 23A-10A-4 (2010). COMMITMENT TO APPROVED FACILITY -- REQUIRED FINDING -- DURATION

If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or developmental disability, or other conditions set forth in § 23A-10A-1, rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of an approved facility having residential capability. The facility shall have custody and treat the defendant for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed. No commitment may be made to an approved facility which is not owned by the state without first obtaining the consent of the administrator of the privately owned facility.

S.D. CODIFIED LAWS § 23A-10A-14 (2010). REPORT ON PROBABILITY THAT DEFENDANT WILL BECOME COMPETENT WITHIN YEAR -- LENGTH OF COMMITMENT -- REVIEW

After four months of evaluation, pursuant to § 23A-10A-4, if the facility has not certified that the defendant is competent to proceed, pursuant to § 23A-10A-4.1, the director of the approved facility shall issue a report to the circuit court evaluating whether there is a substantial probability that within the next year the defendant will become competent to proceed. After receipt of that report by the circuit court, the court shall set a time for hearing to determine whether or not the defendant is reasonably likely to become competent to proceed within the next year.

If the court finds there is a reasonable likelihood that the defendant will become competent to proceed within the next year, it shall order the defendant committed to an approved facility for an additional specified period of time, not to exceed one year, or until the director of the facility issues a certificate of recovery pursuant to § 23A-10A-4.1.

If the court finds there is no reasonable likelihood that the defendant will become competent to proceed within one year, it shall review the defendant's condition to determine appropriate placement and order the defendant committed to an approved facility for a term consistent with § 23A-10A-15.

If the one year provided for in this section has run without a certificate of recovery being issued, the director of the approved facility shall notify the court that one year has expired since the order of detention, and the court shall order a hearing to review the defendant's condition to determine appropriate placement and order the defendant's commitment to an approved facility for a term consistent with § 23A-10A-15.

S.D. CODIFIED LAWS § 23A-10A-15 (2010). CLASS A OR B FELONY -- LENGTH OF DETENTION

If the most serious charge against the defendant is a Class A or B felony, the order of detention shall be for any period of time deemed reasonable by the court or until the charges have been dismissed by the prosecution. The order for detention may not exceed the maximum penalty allowable for the most serious charge facing the defendant. Upon expiration of the order of detention, or after the expiration of the longest time the defendant could have been sentenced, whichever is longest, the criminal charges against the defendant shall be dismissed. If the prosecutor believes that there is probable cause to believe that the defendant is a danger to himself or others at the time of such dismissal, he may file a petition pursuant to chapters 27A-10 or 27A-11A or Title 27B, for further treatment.

Every twelve months thereafter the director of the approved facility shall notify the court if the defendant is still in the approved facility pursuant to this chapter, and the circuit court shall hold a hearing to review any order of detention to determine if the defendant has become competent to proceed.

S.D. CODIFIED LAWS § 23A-10A-16 (2010). TIME IN APPROVED FACILITY CREDITED TO TERM OF IMPRISONMENT

Time spent by a defendant in an approved facility as a result of an evaluation, treatment or detention pursuant to this chapter, shall be credited to the term of imprisonment, if any, for which the defendant is sentenced in the criminal case which was suspended pursuant to § 23A-10A-5.

S.D. CODIFIED LAWS § 27A-1-2 (2010). PERSONS SUBJECT TO INVOLUNTARY COMMITMENT

A person is subject to involuntary commitment if:

(1) The person has a severe mental illness;

(2) Due to the severe mental illness, the person is a danger to self or others; and

(3) The individual needs and is likely to benefit from treatment.

TENNESSEE

TENN. CODE ANN. § 33-3-617 (2010). REQUISITES FOR COMMITMENT.

IF AND ONLY IF

(1) the certificates required by law have been filed with the court showing the need for involuntary care and treatment, AND

(2) the court finds on the basis of clear, unequivocal and convincing evidence that the defendant is subject to involuntary care and treatment under the statute under which the commitment is sought,

THEN

(3) the court shall commit the person under the commitment statute on which the complaint is based.

TENN. CODE ANN. § 33-7-301 (2010). EVALUATION OF ACCUSED BELIEVED INCOMPETENT TO STAND TRIAL -- JUDICIAL HOSPITALIZATION PROCEEDINGS -- RECOVERY REPORT.

(a) (1) When a defendant charged with a criminal offense is believed to be incompetent to stand trial, or there is a question about the defendant's mental capacity at the time of the commission of the crime, the criminal, circuit, or general sessions court judge may, upon the judge's own motion or upon petition by the district attorney general or by the attorney for the defendant and after hearing, order the defendant to be evaluated on an outpatient basis. The evaluation shall be done by the community mental health center or licensed private practitioner designated by the commissioner to serve the court or, if the evaluation cannot be made by the center or the private practitioner, on an outpatient basis by the state hospital or the state-supported hospital designated by the commissioner to serve the court. If, and only if, the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the defendant hospitalized, and if in a department facility, in the custody of the commissioner for not more than thirty (30) days for further evaluation and treatment for competence to stand trial subject to the availability of suitable accommodations.

(2) At any stage of a felony criminal proceeding, including a pre-trial hearing, trial, sentencing, or post-conviction proceeding, the state may move or petition the court to authorize the district attorney general to designate a qualified expert to examine the defendant if the defendant gives notice that the defendant intends to offer testimony about the defendant's mental condition, whether in support of a defense of insanity or for any other purpose. The court may authorize the district attorney general to designate a qualified expert, who is willing to be appointed, to examine the defendant, if:

(A) An inpatient evaluator under subdivision (a)(1) notifies the court in a pre-trial proceeding that the type or extent of assessment required exceeds the expertise or resources available to the evaluator or exceeds the scope of analysis of the defendant's competence to stand trial, satisfaction of criteria for the insanity defense, or for commitment under chapter 6, part 5, of this title; or

(B) In any other type of felony criminal proceeding, the court determines that examination of the defendant by a qualified expert for the state is necessary to adjudicate fairly the matter before it.

(3) The amount and payment of expert fees shall be determined and paid by the state

district attorneys general conference.

(4) (A) Except as provided in subdivision (a)(4)(B), during the post-conviction stage of a criminal proceeding, if it is believed that a defendant is incompetent to assist counsel in preparation for, or otherwise participate in, the post-conviction proceeding, the court may, upon its own motion, order that the defendant be evaluated on either an outpatient or inpatient basis, as may be appropriate. If the defendant is indigent, the amount and payment of the costs for the evaluation shall be determined and paid for by the administrative office of the courts. If the defendant is not indigent, the cost of the evaluation shall be charged as court costs. If the evaluation cannot be done on an outpatient basis and if it is necessary to hospitalize the defendant in a department facility, hospitalization shall not be for more than thirty (30) days and shall be subject to available suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available suitable accommodations. Any costs incurred by the administrative office of the courts shall be absorbed within the current appropriation for the indigent defense fund.

(B) In a post-conviction proceeding in a capital case, if there is a question on the defendant's mental condition at the time of the commission of the crime when there has been no such prior evaluation or a question as to whether the defendant is intellectually disabled, the court may, upon its own motion or upon petition by the district attorney general or by the attorney for the defendant, and, if the matter is contested, after a hearing, order that the defendant be evaluated on an outpatient basis. If and only if the outpatient evaluator concludes that an inpatient evaluation is necessary, the court may order the defendant to be hospitalized for not more than thirty (30) days.

(5) Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available suitable accommodations.

(b) (1) If the court determines on the basis of the mental health evaluation and other relevant evidence:

(A) That the defendant is incompetent to stand trial because of mental illness; or

(B) (i) That the defendant is competent to stand trial but that the failure to hospitalize would create a likelihood to cause the defendant serious harm by reason of mental illness; and

(ii) The defense attorney agrees with those findings, the district attorney general or the attorney for the defense may petition the criminal court before which the case is pending or that would hear the case, if the defendant were bound over to the grand jury to conduct proceedings for judicial hospitalization under chapter 6, part 5, of this title.

(2) Either party may demand a jury trial on the issues.

(3) The court is vested with jurisdiction to conduct the proceedings.

(4) In the proceedings the court shall determine, in addition to the findings required by chapter 6, part 5 of this title, whether the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and whether treatment is in the defendant's best interest.

(5) If the court enters an order of judicial hospitalization, the defendant shall be transferred to the custody of the commissioner, and if the court finds in addition that the defendant is substantially likely to injure the defendant or others if the defendant is not treated in a forensic services unit and that treatment in the unit is in the defendant's best interests, the defendant shall be transferred to the custody of the commissioner at a forensic services unit designated by the commissioner. If the court commits a person under this subsection (b), the person comes into the commissioner's custody only if the forensic services unit has available suitable accommodations; provided, that, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state-owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a defendant for such commitment, the sheriff or other transportation agent shall determine that the receiving facility has available suitable accommodations.

(c) When a defendant admitted under subsection (b) has been hospitalized for six (6) months, and at six-month intervals thereafter, the chief officer of the hospital shall file a written report with the clerk of the court by whose order the defendant was confined and shall give a copy of the report to the defendant, the defendant's attorney, the defendant's legal guardian or conservator, if any, and to the district attorney general. The chief officer shall also send a copy of the report to the defendant's parent, adult child, or spouse, whichever is appropriate, but at least one (1) of the three (3). The report shall detail the chief officer's best judgment as to the defendant's prospects for recovery, the defendant's present condition, the time required for relevant kinds of recovery, and whether there is substantial probability that the defendant will become competent to stand trial in the foreseeable future.

TENN. CODE ANN. § 33-7-302 (2010). DETERMINATION AND NOTICE OF RESTORED COMPETENCE TO STAND TRIAL.

When the chief officer determines that a defendant in a state hospital or treatment resource who is charged with a crime is restored to competence to stand trial, the chief officer shall give notice of that fact to the clerk of the court by whose order the defendant was confined and deliver the defendant to the sheriff of the county from which the defendant was admitted.

TENN. CODE ANN. § 33-7-303 (2010). JUDICIAL HOSPITALIZATION OR OUTPATIENT TREATMENT OF PERSON JUDGED NOT GUILTY BY REASON OF

INSANITY -- TRANSFER TO FORENSIC SERVICES UNIT -- APPEAL -- COST OF TREATMENT.

(a) When a person charged with a criminal offense is acquitted of the charge on a verdict of not guilty by reason of insanity at the time of the commission of the offense, the criminal court shall order the person to be diagnosed and evaluated on an outpatient basis. The evaluation shall be performed by the community mental health agency or licensed private practitioner designated by the commissioner to serve the court.

(b) (1) Following diagnosis and evaluation, if certification is provided that the person is committable under chapter 6, part 5 of this title, the district attorney general shall file a complaint in the criminal court for judicial commitment under chapter 6, part 5 of this title. If certification is not provided that the person is committable under chapter 6, part 5 of this title, the district attorney general shall file a complaint in the criminal court for an order requiring the person to participate in outpatient treatment under this subsection (b).

(2) [Deleted by 2009 amendment.]

(3) If the court does not commit the person under chapter 6, part 5 of this title and the court determines that the person's condition resulting from mental illness is likely to deteriorate rapidly to the point that the person will pose a substantial likelihood of serious harm under § 33-6-501 unless treatment is continued, the court may order the person to participate in outpatient treatment. Otherwise, the court may not order the person to participate in outpatient treatment. The obligation to participate in outpatient treatment continues until it is terminated by the court under subdivision (b)(5).

(4) If the court orders the person to participate in outpatient treatment and the person does not comply with the treatment plan, the qualified mental health professional shall notify the district attorney general of the noncompliance, and the district attorney general may move the criminal court to cite the person for civil or criminal contempt of court for the noncompliance and may file a complaint in the criminal court under the provisions of chapter 6, part 5 of this title. The qualified mental health professional shall file a report with the district attorney general every six (6) months as to the person's continuing need for treatment.

(5) The court shall terminate the obligation to participate in outpatient treatment when it determines that the person is no longer subject to the obligation under subdivision (b)(3).

(6) The court is vested with jurisdiction to conduct proceedings authorized by this subsection (b).

(c) (1) Following the hearing conducted by the criminal court under chapter 6, part 5, of this title, if the court finds that the person meets the commitment standards under chapter 6, part 5, of this title, the court shall enter an order of judicial hospitalization and transfer the person to the custody of the commissioner subject to department rules governing release procedures.

(2) If the court further finds that:

(A) The person is substantially likely to injure the person or others if the person is not treated in a forensic services unit; and

(B) Treatment in the unit is in the person's best interests, the person shall be transferred into the custody of the commissioner at a forensic services unit designated by the commissioner subject to the provisions of § 33-7-203.

(3) If the court commits a person under this subsection (c), the person comes into the commissioner's custody only if the commissioner determines that a facility has available suitable accommodations; provided, that, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state-owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a defendant for commitment in a department facility, the sheriff or other transportation agent shall determine that the receiving facility has available suitable accommodations.

(d) Either party may appeal a final adjudication under this section to the court of criminal appeals.

(e) The criminal court, in a trial before a jury in which the issue of insanity at the time of the commission of the offense is raised, shall instruct the jury before it begins deliberation as to the provisions of this section.

(f) The cost of treatment incurred as a result of the outpatient treatment and evaluation required in subdivision (b)(3) shall be taxed as court costs.

TENN. CODE ANN. § 37-1-114 (2010). DETENTION OR SHELTER CARE OF CHILD PRIOR TO HEARING ON PETITION.

(a) A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless there is probable cause to believe that the child:

(1) Has committed the delinquent or unruly act with which the child is charged; or

(2) Is a neglected, dependent or abused child, and in either case the child's detention or shelter care is required because the child is subject to an immediate threat to the child's health or safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm, or the child may abscond or be removed from the jurisdiction of the court, and in either case, there is no less drastic alternative to removal of the child from the custody of the child's parent, guardian or legal custodian available that would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing.

(b) Children alleged to be unruly shall not be detained for more than twenty-four (24)

hours, excluding nonjudicial days unless there has been a detention hearing and a judicial determination that there is probable cause to believe the child has violated a valid court order, and in no event shall such a child be detained for more than seventy-two (72) hours exclusive of nonjudicial days prior to an adjudicatory hearing. Nothing herein prohibits the court from ordering the placement of children in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this section.

(c) A child shall not be detained in any secure facility or secure portion of any facility unless:

(1) There is probable cause to believe the child has committed a delinquent offense constituting:

(A) A crime against a person resulting in the serious injury or death of the victim or involving the likelihood of serious injury or death to such victim; or

(B) The unlawful possession of a handgun or carrying of a weapon, as prohibited by title 39, chapter 17, part 13;

(2) There is probable cause to believe the child has committed any other delinquent offense involving the likelihood of serious physical injury or death, or an offense constituting a felony, violation of probation or violation of aftercare, and the child:

(A) Is currently on probation;

(B) Is currently awaiting court action on a previous alleged delinquent offense;

(C) Is alleged to be an escapee or absconder from a juvenile facility, institution or other court-ordered placement; or

(D) Has, within the previous twelve (12) months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult;

(3) There is probable cause to believe the child has committed a delinquent offense, and special circumstances in accordance with the provisions of subsection (a) indicate the child should be detained; however, in any such case, the judge shall, within twenty-four (24) hours of the actual detention, excluding nonjudicial days, issue a written order on a form prescribed by the Tennessee council of juvenile and family court judges setting forth the specific reasons necessitating such detention. Nothing in this subdivision (c)(3) shall be construed as requiring a hearing or formal finding of fact, except as otherwise required by § 37-1-117;

(4) The child is alleged to be an escapee from a secure juvenile facility or institution;

(5) The child is wanted in another jurisdiction for an offense that, if committed by an adult, would be a felony in that jurisdiction;

(6) There is probable cause to believe the child is an unruly child who has violated a valid court order or who is a runaway from another jurisdiction. Any detention of such a child shall be in compliance with subsection (b);

(7) In addition to any of the conditions listed in subdivisions (c)(1)-(6), there is no less restrictive alternative that will reduce the risk of flight or of serious physical harm to the child or to others, including placement of the child with a parent, guardian, legal custodian or relative; use of any of the alternatives listed in § 37-1-116(g); or the setting of bail; and

(8) For the purposes of this subsection (c), "serious physical injury" includes conduct that would constitute the offenses of aggravated rape, rape and aggravated sexual battery.

TENN. CODE ANN. § 37-1-128 (2010). INVESTIGATIONS -- EMERGENCY TEMPORARY CARE AND CUSTODY -- PHYSICAL AND MENTAL EXAMINATIONS -- EVALUATION AND COMMITMENT FOR MENTAL ILLNESS OR DEVELOPMENTAL DISABILITY. [AMENDED EFFECTIVE JANUARY 15, 2011.]

(a) (1) When a child alleged to be delinquent or unruly is brought before the court, the court may notify a probation officer attached to the court or any such person, persons or agencies available to the court, or to the department of children's services, and it shall be their duty to:

(A) Make an investigation of the case;

(B) Be present in court to report when the case is heard;

(C) Furnish such information and assistance as the court may require; and

(D) Take charge of any child before or after the hearing as may be directed by the court.

(2) A probation officer shall have, as to any child committed to such officer's care, the powers of a law enforcement officer. At any time, the probation officer may bring such child before the court committing the child to the officer's care for further action as the court may deem fit and proper.

(b) (1) When a petition is filed in the juvenile court alleging a child to be either an abandoned child or a dependent and neglected child, it is the function of the juvenile court, when necessary, to give the child emergency temporary care, and the court shall forthwith refer the case to the county director of public welfare to investigate the social conditions of the child and to report the findings to the court to aid the court in its disposition of the child. The director shall submit such director's findings pursuant to an order from the court. If the child who is the subject of the petition is in the custody of a

licensed child-placing agency, or, if the petition is filed by a licensed child-placing agency, the referral may be made to the licensed child-placing agency having custody of the child or filing the petition in lieu of a referral to the director. The court may make informal adjustment of such cases as is provided by § 37-1-110.

(2) When the court finds, based upon a sworn petition or sworn testimony containing specific factual allegations, that there is probable cause to believe that the conditions specified in § 37-1-114(a)(2) exist and the child is in need of the immediate protection of the court, the court may order that the child be removed from the custody of the child's parent, guardian or legal custodian, pending further investigation and hearing for a period not to exceed three (3) days, excluding Saturdays, Sundays and legal holidays. In no case shall such order remain in effect for more than two (2) days, excluding Saturdays, Sundays and legal holidays, unless a petition is filed within the two-day period. If the child is not returned to the parent, guardian or legal custodian within such three-day period, a hearing shall be conducted pursuant to § 37-1-117(c). The provisions of the preceding sentence may be waived by express and knowing waiver, by the parties to an action, including the parents, guardian or legal custodian, and the child or guardian ad litem for the child, if the child is of tender years. Any such waiver may be revoked at any time, at which time the provisions of this section shall apply. In lieu of any disposition of the child authorized by the preceding sentence, the court may, in its discretion, authorize a representative of the department to remain in the child's home with the child until a parent, legal guardian or relative of the child enters the home and expresses a willingness and apparent ability to resume permanent charge of the child, or, in the case of a relative, to assume charge of the child until a parent or legal guardian enters the home and expresses such willingness and apparent ability.

(c) (1) At any time prior to a child being adjudicated unruly or dependent and neglected, or before the disposition of a child who has been adjudicated delinquent, unruly or dependent and neglected, the court may order that the department make an assessment of the child and report the findings and recommendations to the court. Such order of referral shall confer authority to the department or its designees to transport the child and to obtain any necessary evaluations of the child without further consent of the parent(s), legal custodian or guardian.

(2) If, during the evaluation or assessment, the department determines that there is a need for treatment for either the mental or physical well being of the child, consent of the parent(s), guardian or current legal custodian shall be obtained. If such consent cannot be obtained, the department may apply to the court for authorization to provide consent on behalf of the child. If a child is suspected of being in need of or is eligible for special education services, then state and federal laws governing evaluation and placement must be followed.

(3) A report to the court of the department's recommendations shall be made within fifteen (15) days, which may be extended up to thirty (30) days for good cause following the court's order of referral. The department shall include in the report a review of the child's previous records including, but not limited to, health and education records, a

review of the child's family history and current family status, and a written recommendation concerning the child's status.

(4) Any order of the court that places custody of a child with the department shall empower the department to select any specific residential or treatment placements or programs for the child according to the determination made by the department, its employees, agents or contractors.

(d) During the pendency of any proceeding, the court may order the child examined at a suitable place by a physician regarding the child's medical condition, and may order medical or surgical treatment of a child who is suffering from a serious physical condition or illness that requires prompt treatment, even if the parent, guardian or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of such person's refusal to consent to treatment.

(e) [Amended effective January 15, 2011. See the Compiler's Notes.] **(1) (A)** If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from mental illness, the court may order the child to be evaluated on an outpatient basis by a mental health agency or a licensed private practitioner designated by the commissioner of mental health to serve the court. If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from a developmental disability, the court may order the child to be evaluated on an outpatient basis by a mental health agency, developmental center or a licensed private practitioner designated by the commissioner of mental health to serve the court. The outpatient evaluation shall be completed no more than thirty (30) days after receipt of the order by the examining professional.

(B) If, and only if, in either of the circumstances described in subdivision (e)(1)(A) the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the child hospitalized. If the court orders the child to be hospitalized in a department of mental health facility, hospital or treatment resource, the child shall be placed into the custody of the commissioner of mental health at the expense of the county for not more than thirty (30) days at a facility, hospital or treatment resource with available, suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available, suitable accommodations.

[Amended effective January 15, 2011. See the Compiler's Notes.]

(2) If an evaluation is ordered under this subsection (e), the evaluator shall file a complete report with the court, which shall include:

(A) Whether the child is mentally ill or developmentally disabled;

(B) Identification of the care, training or treatment required to address conditions of mental illness or developmental disability that are found, and recommendations as to

resources that may be able to provide such services;

(C) Whether the child is subject to voluntary or involuntary admission or commitment for inpatient or residential services or for commitment to the custody of the department of mental health for such conditions under title 33; and

(D) Any other information requested by the court that is within the competence of the evaluator.

(3) If it appears from the evaluation report and other information before the court that the child is in need of care, training or treatment for mental illness or developmental disability, the court may proceed in accordance with other provisions of this chapter or may order that proceedings be initiated before the court under § 37-1-175, § 33-5-402 or title 33, chapter 6, part 5.

(4) When transportation of the child is necessary to obtain evaluations under this subsection (e), the court may order the child transported with the cost of the transportation borne by the county from which the child is sent.

[Amended effective January 15, 2011. See the Compiler's Notes.]

(5) If a community mental health center receives grants or contracts from the department of mental health for services for mental illness or developmental disability and the commissioner has not designated another provider of outpatient evaluation for the court, the department shall contract with the center for evaluation services under this subsection (e), and the center shall provide such services ordered under this subsection (e) by courts in the center's catchment area.

[Amended effective January 15, 2011. See the Compiler's Notes.]

(6) If a child who is alleged to be delinquent or unruly is brought before the court, and if the court determines that there is reason to believe that the child is experiencing a behavioral health emergency, then the court may request the services of a crisis response provider designated by the commissioner of mental health to perform such services under title 33. For purposes of this subdivision (e)(6), "behavioral health emergency" means an acute onset of a behavioral health condition that manifests itself by an immediate substantial likelihood of serious harm as defined in § 33-6-501. If the crisis provider is unable to respond within two (2) hours of contact by the court, the crisis provider shall immediately notify the court and provide instructions for examination of the child under title 33, chapter 6, part 1.

(f) After adjudication, but prior to the disposition of a child found to be dependent and neglected, delinquent, unruly or in need of services under § 37-1-175, the court may place the child in custody of the department of children's services for the purpose of evaluation and assessment if the department has a suitable placement available for such purpose. If the department determines that there is no suitable placement available, the

court shall not order the department to take custody of the child for the purpose of evaluation and assessment. Such pre-disposition custody shall last for a maximum of thirty (30) days and the court shall have a hearing to determine the appropriate disposition before the expiration of the thirty (30) days.

TENN. CODE ANN. § 37-1-135 (2010). MENTALLY ILL OR DEVELOPMENTALLY DISABLED CHILD -- DISPOSITION.

If, at a dispositional hearing or at a hearing to transfer a child under § 37-1-134, there is reason to believe the child may be suffering from mental illness or is developmentally disabled, the court may proceed under § 37-1-128(d).

TENN. CODE ANN. § 37-1-166 (2010). ORDERS COMMITTING OR RETAINING A CHILD WITHIN THE CUSTODY OF THE DEPARTMENT OF CHILDREN'S SERVICES -- REQUIRED DETERMINATIONS.

(a) At any proceeding of a juvenile court, prior to ordering a child committed to or retained within the custody of the department of children's services, the court shall first determine whether reasonable efforts have been made to:

(1) Prevent the need for removal of the child from such child's family; or

(2) Make it possible for the child to return home.

(b) Whenever a juvenile court is making the determination required by subsection (a), the department has the burden of demonstrating that reasonable efforts have been made to prevent the need for removal of the child or to make it possible for the child to return home.

(c) To enable the court to determine whether such reasonable efforts have been made, the department, in a written affidavit to the court in each proceeding where the child's placement is at issue, shall answer each of the following questions:

(1) Is removal of the child from such child's family necessary in order to protect the child, and, if so, then what is the specific risk or risks to the child or family that necessitates removal of the child?;

(2) What specific services are necessary to allow the child to remain in the home or to be returned to the home?;

(3) What services have been provided to assist the family and the child so as to prevent removal or to reunify the family?; and

(4) Has the department had the opportunity to provide services to the family and the child, and, if not, then what are the specific reasons why services could not have been provided?

(d) Whenever a juvenile court is making a determination required by subsection (a),

based on all the facts and circumstances presented, the court must find whether:

(1) There is no less drastic alternative to removal;

(2) Reasonable efforts have been made to prevent the need for removal of the child from such child's family or to make it possible for the child to return home; and

(3) Continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.

(e) All parties involved in each proceeding shall receive a copy of the department's affidavit and shall have an opportunity to respond as allowed by law.

(f) Unless emergency removal is necessary, the department shall be provided no more than thirty (30) days to investigate or offer services to the family and child in cases where the petition is not filed by the department.

(g) (1) As used in this section, "reasonable efforts" means the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family. In determining reasonable efforts to be made with respect to a child, as described in this subdivision (g)(1), and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(2) Except as provided in subdivision (g)(4), reasonable efforts shall be made to preserve and reunify families:

(A) Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(B) To make it possible for a child to safely return to the child's home.

(3) If continuation of reasonable efforts of the type described in subdivision (g)(2) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) Reasonable efforts of the type described in subdivision (g)(2) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:

(A) The parent has subjected the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home to aggravated circumstances as defined in § 36-1-102;

(B) As set out in § 36-1-113, the parent has:

(i) Committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home;

(ii) Committed voluntary manslaughter of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home;

(iii) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; or

(iv) Committed a felony assault that results in serious bodily injury to the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; or

(C) The parental rights of the parent to a sibling or half-sibling have been terminated involuntarily.

(5) If reasonable efforts of the type described in subdivision (g)(2) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subdivision (g)(4):

(A) A permanency hearing shall be held for the child within thirty (30) days after the determination; and

(B) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subdivision (g)(2).

TENN. CODE ANN. § 37-1-175 (2010). TEMPORARY LEGAL CUSTODY FOR CHILDREN WITH MENTAL ILLNESSES.

IF AND ONLY IF

(1) a child is the subject of a proceeding under this chapter, AND

(2) the child is mentally ill, AND

(3) the child needs care, training, or treatment because of the mental illness, AND

(4) all available less drastic alternatives to committing the child to the temporary legal

custody of the department are unsuitable to meet the child's needs for care, training, or treatment for the mental illness,

THEN

(5) a juvenile court may commit the child to the temporary legal custody of the department in proceedings conducted in conformity with §§ 33-3-602 -- 33-3-608, 33-3-610 -- 33-3-620, and 33-6-505 -- 33-6-508, to meet the child's needs for care, training, or treatment for the mental illness.

TEXAS

TEX. CODE CRIM. PROC. ANN. ART. 46B.005 (2010). DETERMINING INCOMPETENCY TO STAND TRIAL

(a) If after an informal inquiry the court determines that evidence exists to support a finding of incompetency, the court shall order an examination under Subchapter B to determine whether the defendant is incompetent to stand trial in a criminal case.

(b) Except as provided by Subsection (c), the court shall hold a trial under Subchapter C before determining whether the defendant is incompetent to stand trial on the merits.

(c) A trial under this chapter is not required if:

(1) neither party's counsel requests a trial on the issue of incompetency;

(2) neither party's counsel opposes a finding of incompetency; and

(3) the court does not, on its own motion, determine that a trial is necessary to determine incompetency.

(d) If the issue of the defendant's incompetency to stand trial is raised after the trial on the merits begins, the court may determine the issue at any time before the sentence is pronounced. If the determination is delayed until after the return of a verdict, the court shall make the determination as soon as reasonably possible after the return. If a verdict of not guilty is returned, the court may not determine the issue of incompetency.

TEX. CODE CRIM. PROC. ANN. ART. 46B.0095 (2010). MAXIMUM PERIOD OF FACILITY COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE

(a) A defendant may not, under this chapter, be committed to a mental hospital or other inpatient or residential facility, ordered to participate in an outpatient treatment program, or subjected to both inpatient and outpatient treatment for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was

to be tried, except that if the defendant is charged with a misdemeanor and has been ordered only to participate in an outpatient treatment program under Subchapter D or E, the maximum period of restoration is two years beginning on the date of the initial order for outpatient treatment program participation was entered.

(b) On expiration of the maximum restoration period under Subsection (a), the defendant may be confined for an additional period in a mental hospital or other inpatient or residential facility or ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil commitment proceedings.

TEX. CODE CRIM. PROC. ANN. ART. 46B.024 (2010). FACTORS CONSIDERED IN EXAMINATION

During an examination under this subchapter and in any report based on that examination, an expert shall consider, in addition to other issues determined relevant by the expert, the following:

(1) the capacity of the defendant during criminal proceedings to:

(A) rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;

(B) disclose to counsel pertinent facts, events, and states of mind;

(C) engage in a reasoned choice of legal strategies and options;

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

(2) whether the defendant has a diagnosable mental illness or is a person with mental retardation;

(3) the impact of the mental illness or mental retardation, if existent, on the defendant's capacity to engage with counsel in a reasonable and rational manner; and

(4) if the defendant is taking psychoactive or other medication:

(A) whether the medication is necessary to maintain the defendant's competency; and

(B) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

TEX. CODE CRIM. PROC. ANN. ART. 46B.071 (2010). OPTIONS ON DETERMINATION OF INCOMPETENCY

On a determination that a defendant is incompetent to stand trial, the court shall:

(1) commit the defendant to a facility under Article 46B.073; or

(2) release the defendant on bail under Article 46B.072.

TEX. CODE CRIM. PROC. ANN. ART. 46B.073 (2010). COMMITMENT FOR RESTORATION TO COMPETENCY

(a) This article applies only to a defendant not released on bail.

(b) The court shall commit a defendant described by Subsection (a) to a mental health facility or residential care facility for a period not to exceed 120 days for further examination and treatment toward the specific objective of attaining competency to stand trial.

(c) If the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6), or the indictment alleges an affirmative finding under Section 3g(a)(2), Article 42.12, the court shall enter an order committing the defendant to the maximum security unit of any facility designated by the department, to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

(d) If the defendant is not charged with an offense described by Subsection (c) and the indictment does not allege an affirmative finding under Section 3g(a)(2), Article 42.12, the court shall enter an order committing the defendant to a mental health facility or residential care facility determined to be appropriate by the local mental health authority or local mental retardation authority.

TEX. CODE CRIM. PROC. ANN. ART. 46B.102 (2010). CIVIL COMMITMENT HEARING: MENTAL ILLNESS

(a) If it appears to the court that the defendant may be a person with mental illness, the court shall hold a hearing to determine whether the defendant should be court-ordered to mental health services under Subtitle C, Title 7, Health and Safety Code.

(b) Proceedings for commitment of the defendant to court-ordered mental health services are governed by Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court.

(c) If the court enters an order committing the defendant to a mental health facility, the defendant shall be:

(1) treated in conformity with Subtitle C, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application for court-ordered temporary or extended mental health services may not be required;

(2) the provisions of Subtitle C, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code.

TEX. CODE CRIM. PROC. ANN. ART. 46B.103 (2010). CIVIL COMMITMENT HEARING: MENTAL RETARDATION

(a) If it appears to the court that the defendant may be a person with mental retardation, the court shall hold a hearing to determine whether the defendant is a person with mental retardation.

(b) Proceedings for commitment of the defendant to a residential care facility are governed by Subtitle D, Title 7, Health and Safety Code, to the extent that Subtitle D applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also a county court.

(c) If the court enters an order committing the defendant to a residential care facility, the defendant shall be:

(1) treated and released in accordance with Subtitle D, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In the proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application to have the defendant declared a person with mental retardation may not be required;

(2) the provisions of Subtitle D, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for commitment to a residential care facility under Subtitle D, Title 7, Health and Safety Code.

TEX. CODE CRIM. PROC. ANN. ART. 46B.104 (2010). CIVIL COMMITMENT HEARING: FINDING OF VIOLENCE

A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the maximum security unit of any facility designated by the department if:

(1) the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6); or

(2) the indictment charging the offense alleges an affirmative finding under Section 3g(a)(2), Article 42.12.

TEX. CODE CRIM. PROC. ANN. ART. 46B.107 (2010). RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT

(a) The release from the department, an outpatient treatment program, or a facility of a defendant committed under this chapter is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant.

(b) If the head of the facility or outpatient treatment provider to which a defendant has been committed under this chapter determines that the defendant should be released from the facility, the head of the facility or outpatient treatment provider shall notify the committing court and the sheriff of the county from which the defendant was committed in writing of the release not later than the 14th day before the date on which the facility or outpatient treatment provider intends to release the defendant.

(c) The head of the facility or outpatient treatment provider shall provide with the notice a written statement that states an opinion as to whether the defendant to be released has attained competency to stand trial.

(d) The court may, on motion of the attorney representing the state or on its own motion, hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code. The court may conduct the hearing:

(1) at the facility; or

(2) by means of an electronic broadcast system as provided by Article 46B.013.

(e) If the court determines that release is not appropriate, the court shall enter an order directing the head of the facility or the outpatient treatment provider to not release the defendant.

(f) If an order is entered under Subsection (e), any subsequent proceeding to release the defendant is subject to this article.

TEX. CODE CRIM. PROC. ANN. ART. 46B.108 (2010). REDETERMINATION OF COMPETENCY

(a) If criminal charges against a defendant found incompetent to stand trial have not been dismissed, the trial court at any time may determine whether the defendant has been restored to competency.

(b) An inquiry into restoration of competency under this subchapter may be made at the request of the head of the mental health facility, outpatient treatment provider, or residential care facility to which the defendant has been committed, the defendant, the attorney representing the defendant, or the attorney representing the state, or may be made on the court's own motion.

TEX. CODE CRIM. PROC. ANN. ART. 46B.116 (2010). DISPOSITION ON DETERMINATION OF COMPETENCY

If the defendant is found competent to stand trial, the proceedings on the criminal charge may proceed.

TEX. CODE CRIM. PROC. ANN. ART. 46B.151 (2010). COURT DETERMINATION RELATED TO COMMITMENT

(a) If a court is required by Article 46B.084(f) or permitted by Article 46B.004(e) to proceed under this subchapter, the court shall determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with mental retardation.

(b) If it appears to the court that there is evidence to support a finding of mental illness or mental retardation, the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings and stating that all charges pending against the defendant in that court have been dismissed. The court may order the defendant:

(1) detained in jail or any other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health facility or residential care facility; or

(2) placed in the care of a responsible person on satisfactory security being given for the defendant's proper care and protection.

(c) Notwithstanding Subsection (b), a defendant placed in a facility of the department pending civil hearing under this article may be detained in that facility only with the consent of the head of the facility and pursuant to an order of protective custody issued under Subtitle C, Title 7, Health and Safety Code.

(d) If the court does not detain or place the defendant under Subsection (b), the court shall release the defendant.

TEX. CODE CRIM. PROC. ANN. ART. 46C.157 (2010). DETERMINATION REGARDING DANGEROUS CONDUCT OF ACQUITTED PERSON

If a defendant is found not guilty by reason of insanity, the court immediately shall determine whether the offense of which the person was acquitted involved conduct that:

(1) caused serious bodily injury to another person;

(2) placed another person in imminent danger of serious bodily injury; or

(3) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

TEX. CODE CRIM. PROC. ANN. ART. 46C.158 (2010). CONTINUING JURISDICTION OD DANGEROUS ACQUITTED PERSON

If the court finds that the offense of which the person was acquitted involved conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court retains jurisdiction over the acquitted person until either:

(1) the court discharges the person and terminates its jurisdiction under Article 46C.268; or

(2) the cumulative total period of institutionalization and outpatient or community-based treatment and supervision under the court's jurisdiction equals the maximum term provided by law for the offense of which the person was acquitted by reason of insanity and the court's jurisdiction is automatically terminated under Article 46C.269.

TEX. CODE CRIM. PROC. ANN. ART. 46C.160 (2010). DETENTION PENDING FURTHER PROCEEDINGS

(a) On a determination by the judge or jury that the defendant is not guilty by reason of insanity, pending further proceedings under this chapter, the court may order the defendant detained in jail or any other suitable place for a period not to exceed 14 days.

(b) The court may order a defendant detained in a facility of the department or a facility of the Department of Aging and Disability Services under this article only with the consent of the head of the facility.

TEX. CODE CRIM. PROC. ANN. ART. 46C.251 (2010). COMMITMENT FOR EVALUATION AND TREATMENT; REPORT

(a) The court shall order the acquitted person to be committed for evaluation of the person's present mental condition and for treatment to the maximum security unit of any facility designated by the department. The period of commitment under this article may not exceed 30 days.

(b) The court shall order that:

(1) a transcript of all medical testimony received in the criminal proceeding be prepared as soon as possible by the court reporter and the transcript be forwarded to the facility to which the acquitted person is committed; and

(2) the following information be forwarded to the facility and, as applicable, to the department or the Department of Aging and Disability Services:

(A) the complete name, race, and gender of the person;

(B) any known identifying number of the person, including social security number, driver's license number, or state identification number;

(C) the person's date of birth; and

(D) the offense of which the person was found not guilty by reason of insanity and a statement of the facts and circumstances surrounding the alleged offense.

(c) The court shall order that a report be filed with the court under Article 46C.252.

(d) To determine the proper disposition of the acquitted person, the court shall hold a hearing on disposition not later than the 30th day after the date of acquittal.

TEX. CODE CRIM. PROC. ANN. ART. 46C.253 (2010). HEARING ON DISPOSITION

(a) The hearing on disposition shall be conducted in the same manner as a hearing on an application for involuntary commitment under Subtitle C or D, Title 7, Health and Safety Code, except that the use of a jury is governed by Article 46C.255.

(b) At the hearing, the court shall address:

(1) whether the person acquitted by reason of insanity has a severe mental illness or mental retardation;

(2) whether as a result of any mental illness or mental retardation the person is likely to cause serious harm to another; and

(3) whether appropriate treatment and supervision for any mental illness or mental retardation rendering the person dangerous to another can be safely and effectively provided as outpatient or community-based treatment and supervision.

(c) The court shall order the acquitted person committed for inpatient treatment or residential care under Article 46C.256 if the grounds required for that order are established.

(d) The court shall order the acquitted person to receive outpatient or community-based treatment and supervision under Article 46C.257 if the grounds required for that order are established.

(e) The court shall order the acquitted person transferred to an appropriate court for proceedings under Subtitle C or D, Title 7, Health and Safety Code, if the state fails to establish the grounds required for an order under Article 46C.256 or 46C.257 but the evidence provides a reasonable basis for believing the acquitted person is a proper subject for those proceedings.

(f) The court shall order the acquitted person discharged and immediately released if the evidence fails to establish that disposition under Subsection (c), (d), or (e) is appropriate.

TEX. CODE CRIM. PROC. ANN. ART. 46C.254 (2010). EFFECT OF STABILIZATION ON TREATMENT REGIMEN

If an acquitted person is stabilized on a treatment regimen, including medication and other treatment modalities, rendering the person no longer likely to cause serious harm to another, inpatient treatment or residential care may be found necessary to protect the safety of others only if:

(1) the person would become likely to cause serious harm to another if the person fails to follow the treatment regimen on an Order to Receive Outpatient or Community-Based Treatment and Supervision; and

(2) under an Order to Receive Outpatient or Community-Based Treatment and Supervision either:

(A) the person is likely to fail to comply with an available regimen of outpatient or community-based treatment, as determined by the person's insight into the need for medication, the number, severity, and controllability of side effects, the availability of support and treatment programs for the person from community members, and other appropriate considerations; or

(B) a regimen of outpatient or community-based treatment will not be available to the person.

TEX. CODE CRIM. PROC. ANN. ART. 46C.256 (2010). ORDER OF COMMITMENT TO INPATIENT TREATMENT OR RESIDENTIAL CARE

(a) The court shall order the acquitted person committed to a mental hospital or other appropriate facility for inpatient treatment or residential care if the state establishes by clear and convincing evidence that:

(1) the person has a severe mental illness or mental retardation;

(2) the person, as a result of that mental illness or mental retardation, is likely to cause

serious bodily injury to another if the person is not provided with treatment and supervision; and

(3) inpatient treatment or residential care is necessary to protect the safety of others.

(b) In determining whether inpatient treatment or residential care has been proved necessary, the court shall consider whether the evidence shows both that:

(1) an adequate regimen of outpatient or community-based treatment will be available to the person; and

(2) the person will follow that regimen.

(c) The order of commitment to inpatient treatment or residential care expires on the 181st day following the date the order is issued but is subject to renewal as provided by Article 46C.261.

TEX. CODE CRIM. PROC. ANN. ART. 46C.259 (2010). STATUS OF COMMITTED PERSON

If an acquitted person is committed under this subchapter, the person's status as a patient or resident is governed by Subtitle C or D, Title 7, Health and Safety Code, except that:

(1) transfer to a nonsecure unit is governed by Article 46C.260;

(2) modification of the order to direct outpatient or community-based treatment and supervision is governed by Article 46C.262; and

(3) discharge is governed by Article 46C.268.

TEX. CODE CRIM. PROC. ANN. ART. 46C.260 (2010). TRANSFER OF COMMITTED PERSON TO NONSECURE FACILITY

(a) A person committed to a facility under this subchapter shall be committed to the maximum security unit of any facility designated by the department.

(b) A person committed under this subchapter shall be transferred to the maximum security unit immediately on the entry of the order of commitment.

(c) Unless the person is determined to be manifestly dangerous by a review board within the department, not later than the 60th day following the date of the person's arrival at the maximum security unit the person shall be transferred to a nonsecure unit of a facility designated by the department or the Department of Aging and Disability Services, as appropriate.

(d) The commissioner shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illnesses or with mental retardation, to determine whether the

person is manifestly dangerous and, as a result of the danger the person presents, requires continued placement in a maximum security unit.

(e) If the head of the facility at which the maximum security unit is located disagrees with the determination, then the matter shall be referred to the commissioner. The commissioner shall decide whether the person is manifestly dangerous.

TEX. CODE CRIM. PROC. ANN. ART. 46C.261 (2010). RENEWAL OF ORDERS FOR INPATIENT COMMITMENT OR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

(a) A court that orders an acquitted person committed to inpatient treatment or orders outpatient or community-based treatment and supervision annually shall determine whether to renew the order.

(b) Not later than the 30th day before the date an order is scheduled to expire, the institution to which a person is committed, the person responsible for providing outpatient or community-based treatment and supervision, or the attorney representing the state may file a request that the order be renewed. The request must explain in detail the reasons why the person requests renewal under this article. A request to renew an order committing the person to inpatient treatment must also explain in detail why outpatient or community-based treatment and supervision is not appropriate.

(c) The request for renewal must be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the person during the 30-day period preceding the date on which the request is filed.

(d) On the filing of a request for renewal under this article, the court shall:

(1) set the matter for a hearing; and

(2) appoint an attorney to represent the person.

(e) The court shall act on the request for renewal before the order expires.

(f) If a hearing is held, the person may be transferred from the facility to which the acquitted person was committed to a jail for purposes of participating in the hearing only if necessary but not earlier than 72 hours before the hearing begins. If the order is renewed, the person shall be transferred back to the facility immediately on renewal of the order.

(g) If no objection is made, the court may admit into evidence the certificate of medical examination for mental illness. Admitted certificates constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificate and the detailed request for renewal.

(h) A court shall renew the order only if the court finds that the party who requested the

renewal has established by clear and convincing evidence that continued mandatory supervision and treatment are appropriate. A renewed order authorizes continued inpatient commitment or outpatient or community-based treatment and supervision for not more than one year.

(i) The court, on application for renewal of an order for inpatient or residential care services, may modify the order to provide for outpatient or community-based treatment and supervision if the court finds the acquitted person has established by a preponderance of the evidence that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

TEX. CODE CRIM. PROC. ANN. ART. 46C.262 (2010). COURT-ORDERED OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION AFTER INPATIENT COMMITMENT

(a) An acquitted person, the head of the facility to which the acquitted person is committed, or the attorney representing the state may request that the court modify an order for inpatient treatment or residential care to order outpatient or community-based treatment and supervision.

(b) The court shall hold a hearing on a request made by the head of the facility to which the acquitted person is committed. A hearing under this subsection must be held not later than the 14th day after the date of the request.

(c) If a request is made by an acquitted person or the attorney representing the state, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the request and any accompanying material provide a basis for believing modification of the order may be appropriate.

(d) If a request is made by an acquitted person not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration of the 90-day period following the date of the hearing on the previous request.

(e) The court shall rule on the request during or as soon as practicable after any hearing on the request but not later than the 14th day after the date of the request.

(f) The court shall modify the commitment order to direct outpatient or community-based treatment and supervision if at the hearing the acquitted person establishes by a preponderance of the evidence that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

TEX. CODE CRIM. PROC. ANN. ART. 46C.267 (2010). DETENTION PENDING PROCEEDINGS TO MODIFY OR REVOKE ORDER FOR OUTPATIENT OR COMMUNITY-BASED TREATMENT AND SUPERVISION

(a) The state or the head of the facility or other person responsible for administering a regimen of outpatient or community-based treatment and supervision may file a sworn application with the court for the detention of an acquitted person receiving court-ordered outpatient or community-based treatment and supervision. The application must state that the person meets the criteria of Article 46C.266 and provide a detailed explanation of that statement.

(b) If the court determines that the application establishes probable cause to believe the order for outpatient or community-based treatment and supervision should be revoked, the court shall issue an order to an on-duty peace officer authorizing the acquitted person to be taken into custody and brought before the court.

(c) An acquitted person taken into custody under an order of detention shall be brought before the court without unnecessary delay.

(d) When an acquitted person is brought before the court, the court shall determine whether there is probable cause to believe that the order for outpatient or community-based treatment and supervision should be revoked. On a finding that probable cause for revocation exists, the court shall order the person held in protective custody pending a determination of whether the order should be revoked.

(e) An acquitted person may be detained under an order for protective custody for a period not to exceed 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b), Health and Safety Code, for an extreme emergency.

(f) This subchapter does not affect the power of a peace officer to take an acquitted person into custody under Section 573.001, Health and Safety Code.

TEX. CODE CRIM. PROC. ANN. ART. 46C.268 (2010). ADVANCE DISCHARGE OF ACQUITTED PERSON AND TERMINATION OF JURISDICTION

(a) An acquitted person, the head of the facility to which the acquitted person is committed, the person responsible for providing the outpatient or community-based treatment and supervision, or the state may request that the court discharge an acquitted person from inpatient commitment or outpatient or community-based treatment and supervision.

(b) Not later than the 14th day after the date of the request, the court shall hold a hearing on a request made by the head of the facility to which the acquitted person is committed or the person responsible for providing the outpatient or community-based treatment and supervision.

(c) If a request is made by an acquitted person, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the request and any accompanying material indicate that modification of the order may be appropriate.

(d) If a request is made by an acquitted person not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration of the 90-day period following the date of the hearing on the previous request.

(e) The court shall rule on the request during or shortly after any hearing that is held and in any case not later than the 14th day after the date of the request.

(f) The court shall discharge the acquitted person from all court-ordered commitment and treatment and supervision and terminate the court's jurisdiction over the person if the court finds that the acquitted person has established by a preponderance of the evidence that:

(1) the acquitted person does not have a severe mental illness or mental retardation; or

(2) the acquitted person is not likely to cause serious harm to another because of any severe mental illness or mental retardation.

TEX. CODE CRIM. PROC. ANN. ART. 46C.269 (2010). TERMINATION OF COURT'S JURISDICTION

(a) The jurisdiction of the court over a person covered by this subchapter automatically terminates on the date when the cumulative total period of institutionalization and outpatient or community-based treatment and supervision imposed under this subchapter equals the maximum term of imprisonment provided by law for the offense of which the person was acquitted by reason of insanity.

(b) On the termination of the court's jurisdiction under this article, the person must be discharged from any inpatient treatment or residential care or outpatient or community-based treatment and supervision ordered under this subchapter.

(c) An inpatient or residential care facility to which a person has been committed under this subchapter or a person responsible for administering a regimen of outpatient or community-based treatment and supervision under this subchapter must notify the court not later than the 30th day before the court's jurisdiction over the person ends under this article.

(d) This subchapter does not affect whether a person may be ordered to receive care or treatment under Subtitle C or D, Title 7, Health and Safety Code.

TEX. CODE CRIM. PROC. ANN. ART. 46C.270 (2010). APPEALS

(a) An acquitted person may appeal a judgment reflecting an acquittal by reason of insanity on the basis of the following:

(1) a finding that the acquitted person committed the offense; or

(2) a finding that the offense on which the prosecution was based involved conduct that:

(A) caused serious bodily injury to another person;

(B) placed another person in imminent danger of serious bodily injury; or

(C) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

(b) Either the acquitted person or the state may appeal from:

(1) an Order of Commitment to Inpatient Treatment or Residential Care entered under Article 46C.256;

(2) an Order to Receive Outpatient or Community-Based Treatment and Supervision entered under Article 46C.257 or 46C.262;

(3) an order renewing or refusing to renew an Order for Inpatient Commitment or Outpatient or Community-Based Treatment and Supervision entered under Article 46C.261;

(4) an order modifying or revoking an Order for Outpatient or Community-Based Treatment and Supervision entered under Article 46C.266 or refusing a request to modify or revoke that order; or

(5) an order discharging an acquitted person under Article 46C.268 or denying a request for discharge of an acquitted person.

(c) An appeal under this subchapter may not be considered moot solely due to the expiration of an order on which the appeal is based.

TEX. CODE CRIM. PROC. ANN. ART. 62.201 (2010). ADDITIONAL PUBLIC NOTICE FOR INDIVIDUALS SUBJECT TO CIVIL COMMITMENT

(a) On receipt of notice under this chapter that a person subject to registration who is civilly committed as a sexually violent predator is due to be released from a penal institution or intends to move to a new residence in this state, the department shall, not later than the seventh day after the date on which the person is released or the seventh day after the date on which the person moves, provide written notice mailed or delivered to at least each address, other than a post office box, within a one-mile radius, in an area that has not been subdivided, or a three-block area, in an area that has been subdivided, of the place where the person intends to reside.

(b) The department shall provide the notice in English and Spanish and shall include in the notice any information that is public information under this chapter. The department may not include any information that is not public information under this chapter.

(c) The department shall establish procedures for a person with respect to whom notice is provided under this article to pay to the department all costs incurred by the department in providing the notice. The person shall pay those costs in accordance with the procedures established under this subsection.

(d) The department's duty to provide notice under this article in regard to a particular person ends on the date on which a court releases the person from all requirements of the civil commitment process.

TEX. CODE CRIM. PROC. ANN. ART. 62.202 (2010). VERIFICATION OF INDIVIDUALS SUBJECT TO COMMITMENT

(a) Notwithstanding Article 62.058, if an individual subject to registration under this chapter is civilly committed as a sexually violent predator, the person shall report to the local law enforcement authority designated as the person's primary registration authority by the department not less than once in each 30-day period following the date the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person. For purposes of this subsection, a person complies with a requirement that the person register within a 30-day period following a date if the person registers at any time on or after the 27th day following that date but before the 33rd day after that date.

(b) On the date a court releases a person described by Subsection (a) from all requirements of the civil commitment process:

(1) the person's duty to verify registration as a sex offender is no longer imposed by this article; and

(2) the person is required to verify registration as provided by Article 62.058.

TEX. CODE CRIM. PROC. ANN. ART. 62.203 (2010). FAILURE TO COMPLY: INDIVIDUALS SUBJECT TO COMMITMENT

(a) A person commits an offense if the person, after commitment as a sexually violent predator but before the person is released from all requirements of the civil commitment process, fails to comply with any requirement of this chapter.

(b) An offense under this article is a felony of the second degree.

TEX. HEALTH & SAFETY CODE ANN. § 841.001 (2010). LEGISLATIVE FINDINGS

The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to

address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.

TEX. HEALTH & SAFETY CODE ANN. § 841.002 (2010). DEFINITIONS

In this chapter:

(1) "Attorney representing the state" means an attorney employed by the civil division of the special prosecution unit to initiate and pursue a civil commitment proceeding under this chapter.

(2) "Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

(3) "Case manager" means a person employed by or under contract with the council to perform duties related to outpatient treatment and supervision of a person committed under this chapter.

(3-a) "Civil commitment proceeding" means a trial or hearing conducted under Subchapter D, F, or G.

(4) "Council" means the Council on Sex Offender Treatment.

(5) "Predatory act" means an act directed toward individuals, including family members, for the primary purpose of victimization.

(6) "Repeat sexually violent offender" has the meaning assigned by Section 841.003.

(7) "Secure correctional facility" means a county jail or a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(7-a) "Sexually motivated conduct" means any conduct involving the intent to arouse or gratify the sexual desire of any person immediately before, during, or immediately after the commission of an offense.

(8) "Sexually violent offense" means:

(A) an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(B) an offense under Section 20.04(a)(4), Penal Code, if the person committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the person committed the offense with the intent to commit an offense listed in Paragraph (A) or (B);

(D) an offense under Section 19.02 or 19.03, Penal Code, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during a civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), or (D);

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E); or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E).

(9) "Sexually violent predator" has the meaning assigned by Section 841.003.

(10) "Tracking service" means an electronic monitoring service, global positioning satellite service, or other appropriate technological service that is designed to track a person's location.

TEX. HEALTH & SAFETY CODE ANN. § 841.004 (2010). SPECIAL PROSECUTION UNIT

The civil division of the special prosecution unit, separate from that part of the unit responsible for prosecuting criminal cases, is responsible for initiating and pursuing a civil commitment proceeding under this chapter.

TEX. HEALTH & SAFETY CODE ANN. § 841.007 (2010). DUTIES OF COUNCIL ON SEX OFFENDER TREATMENT

The Council on Sex Offender Treatment is responsible for providing appropriate and necessary treatment and supervision through the case management system.

TEX. HEALTH & SAFETY CODE ANN. § 841.081 (2010). CIVIL COMMITMENT OF PREDATOR

(a) If at a trial conducted under Subchapter D the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for outpatient treatment and supervision to be coordinated by the case manager. The commitment order is effective immediately on entry of the order, except that the outpatient treatment and supervision begins on the person's release from a secure correctional facility or discharge

from a state hospital and continues until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) At any time after entry of a commitment order under Subsection (a), the case manager may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

TEX. HEALTH & SAFETY CODE ANN. § 841.082 (2010). COMMITMENT REQUIREMENTS

(a) Before entering an order directing a person's outpatient civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

(1) requiring the person to reside in a Texas residential facility under contract with the council or at another location or facility approved by the council;

(2) prohibiting the person's contact with a victim or potential victim of the person;

(3) prohibiting the person's possession or use of alcohol, inhalants, or a controlled substance;

(4) requiring the person's participation in and compliance with a specific course of treatment;

(5) requiring the person to:

(A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and

(B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment;

(6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization;

(7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone;

(8) requiring the person to notify the case manager immediately but in any event within 24 hours of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person; and

(9) any other requirements determined necessary by the judge.

(b) A tracking service to which a person is required to submit under Subsection (a)(5) must:

(1) track the person's location in real time;

(2) be able to provide a real-time report of the person's location to the case manager at the case manager's request; and

(3) periodically provide a cumulative report of the person's location to the case manager.

(c) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the council. The council shall provide a copy of those requirements to the case manager and to the service providers.

(d) The court retains jurisdiction of the case with respect to a civil commitment proceeding conducted under Subchapters F and G.

(e) The requirements imposed under Subsection (a) may be modified at any time after notice to each affected party to the proceedings and a hearing.

TEX. HEALTH & SAFETY CODE ANN. § 841.085 (2010). CRIMINAL PENALTY; PROSECUTION OF OFFENSE

(a) A person commits an offense if, after having been adjudicated and civilly committed as a sexually violent predator under this chapter, the person violates a civil commitment requirement imposed under Section 841.082.

(b) An offense under this section is a felony of the third degree.

(c) At the request of the local prosecuting attorney, an attorney employed by the civil division of the special prosecution unit described by Section 841.004 may assist in the trial of an offense under this section.

TEX. HEALTH & SAFETY CODE ANN. § 841.102 (2010). BIENNIAL REVIEW

(a) The judge shall conduct a biennial review of the status of the committed person.

(b) The person is entitled to be represented by counsel at the biennial review, but the person is not entitled to be present at that review.

(c) The judge shall set a hearing if the judge determines at the biennial review that:

(1) a requirement imposed on the person under this chapter should be modified; or

(2) probable cause exists to believe that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

TEX. HEALTH & SAFETY CODE ANN. § 841.121 (2010). AUTHORIZED PETITION FOR RELEASE

(a) If the case manager determines that the committed person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the case manager shall authorize the person to petition the court for release.

(b) The petitioner shall serve a petition under this section on the court and the attorney representing the state.

(c) The judge shall set a hearing on a petition under this section not later than the 30th day after the date the judge receives the petition. The petitioner and the state are entitled to an immediate examination of the petitioner by an expert.

(d) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(e) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

TEX. HEALTH & SAFETY CODE ANN. § 841.146 (2010). CIVIL COMMITMENT PROCEEDING; PROCEDURE AND COSTS

(a) On request, a person subject to a civil commitment proceeding under this chapter and the attorney representing the state are entitled to a jury trial or a hearing before a jury for that proceeding, except for a proceeding set by the judge under Section 841.102(c)(1). The number and selection of jurors are governed by Chapter 33, Code of Criminal Procedure.

(b) Except as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. To the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, this chapter controls.

(c) In an amount not to exceed $ 2,500, the State of Texas shall pay all costs associated with a civil commitment proceeding conducted under Subchapter D. The State of Texas shall pay the reasonable costs of state or appointed counsel or experts for any other civil commitment proceeding conducted under this chapter and shall pay the reasonable costs of the person's outpatient treatment and supervision.

UTAH

UTAH CODE ANN. § 77-15-6 (2010). COMMITMENT ON FINDING OF INCOMPETENCY TO STAND TRIAL -- SUBSEQUENT HEARINGS -- NOTICE TO PROSECUTING ATTORNEYS

(1) Except as provided in Subsection (5), if after hearing, the person is found to be incompetent to stand trial, the court shall order the defendant committed to the custody of the executive director of the Department of Human Services or his designee for the purpose of treatment intended to restore the defendant to competency. The court may recommend but not order placement of the defendant. The court may, however, order that the defendant be placed in a secure setting rather than a nonsecure setting. The director or his designee shall designate the specific placement of the defendant during the period of evaluation and treatment to restore competency.

(2) The examiner or examiners designated by the executive director to assess the defendant's progress toward competency may not be involved in the routine treatment of the defendant. The examiner or examiners shall provide a full report to the court and prosecuting and defense attorneys within 90 days of arrival of the defendant at the treating facility. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner shall have up to an additional 90 days to provide the full report. The full report shall assess:

(a) the facility's or program's capacity to provide appropriate treatment for the defendant;

(b) the nature of treatments provided to the defendant;

(c) what progress toward competency restoration has been made with respect to the factors identified by the court in its initial order;

(d) the defendant's current level of mental disorder or mental retardation and need for treatment, if any; and

(e) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party or by the executive director may appoint additional mental health examiners to examine the defendant and advise the court on his current mental status and progress toward competency restoration.

(4) Upon receipt of the full report, the court shall hold a hearing to determine the defendant's current status. At the hearing, the burden of proving that the defendant is competent is on the proponent of competency. Following the hearing, the court shall

determine by a preponderance of evidence whether the defendant is:

(a) competent to stand trial;

(b) incompetent to stand trial with a substantial probability that the defendant may become competent in the foreseeable future; or

(c) incompetent to stand trial without a substantial probability that the defendant may become competent in the foreseeable future.

(5) (a) If the court enters a finding pursuant to Subsection (4)(a), the court shall proceed with the trial or such other procedures as may be necessary to adjudicate the charges.

(b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that the defendant remain committed to the custody of the executive director of the Department of Human Services or his designee for the purpose of treatment intended to restore the defendant to competency.

(c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the defendant released from the custody of the director unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings must be initiated within seven days after the court's order entering the finding in Subsection (4)(c), unless the court enlarges the time for good cause shown. The defendant may be ordered to remain in the custody of the director until commitment proceedings have been concluded. If the defendant is committed, the court which entered the order pursuant to Subsection (4)(c), shall be notified by the director at least ten days prior to any release of the committed person.

(6) If the defendant is recommitted to the department pursuant to Subsection (5)(b), the court shall hold a hearing one year following the recommitment.

(7) At the hearing held pursuant to Subsection (6), except for defendants charged with the crimes listed in Subsection (8), a defendant who has not been restored to competency shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(8) If the defendant has been charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (6), the court may order the defendant recommitted for a period not to exceed 18 months for the purpose of treatment to restore the defendant to competency with a mandatory review hearing at the end of the 18-month period.

(9) Except for defendants charged with aggravated murder or murder, a defendant who has not been restored to competency at the time of the hearing held pursuant to

Subsection (8) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(10) If the defendant has been charged with aggravated murder or murder and the court determines that he is making reasonable progress towards restoration of competency at the time of the mandatory review hearing held pursuant to Subsection (8), the court may order the defendant recommitted for a period not to exceed 36 months for the purpose of treatment to restore him to competency.

(11) If the defendant is recommitted to the department pursuant to Subsection (10), the court shall hold a hearing no later than at 18-month intervals following the recommitment for the purpose of determining the defendant's competency status.

(12) A defendant who has not been restored to competency at the expiration of the additional 36-month commitment period ordered pursuant to Subsection (10) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(13) In no event may the maximum period of detention under this section exceed the maximum period of incarceration which the defendant could receive if he were convicted of the charged offense. This Subsection (13) does not preclude pursuing involuntary civil commitment nor does it place any time limit on civil commitments.

(14) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and may order periodic reviews to assess the defendant's competency to stand trial.

(15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, may still be adjudicated competent to stand trial under this chapter.

(16) (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

(b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7), (9), (12), or (13) shall not be dismissal of the criminal charges.

(17) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.

(18) At any time that the defendant becomes competent to stand trial, the clinical director of the hospital or other facility or the executive director of the Department of Human

Services shall certify that fact to the court. The court shall conduct a hearing within 15 working days of the receipt of the clinical director's or executive director's report, unless the court enlarges the time for good cause.

(19) The court may order a hearing or rehearing at any time on its own motion or upon recommendations of the clinical director of the hospital or other facility or the executive director of the Department of Human Services.

(20) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney. If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.

UTAH CODE ANN. § 77-16A-202 (2010). PERSONS FOUND GUILTY AND MENTALLY ILL -- COMMITMENT TO DEPARTMENT -- ADMISSION TO UTAH STATE HOSPITAL

(1) In sentencing and committing a mentally ill offender to the department under Subsection 77-16a-104(3)(a), the court shall:

(a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

(b) sentence the offender to a term of imprisonment and order that he be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of a mentally ill offender who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State

Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

UTAH CODE ANN. § 77-16A-203 (2010). REVIEW OF OFFENDERS WITH A MENTAL ILLNESS COMMITTED TO DEPARTMENT -- RECOMMENDATIONS FOR TRANSFER TO DEPARTMENT OF CORRECTIONS

(1) (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each mentally ill offender committed to it in accordance with Section 77-16a-202, at least once every six months.

(b) If the offender is mentally retarded, the review team shall include at least one individual who is a designated mental retardation professional, as defined in Section 62A-5-101.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:

(a) regarding the offender's:

(i) current mental condition;

(ii) progress since commitment; and

(iii) prognosis; and

(b) that includes a recommendation regarding whether the mentally ill offender should be:

(i) transferred to UDC; or

(ii) remain in the custody of the department.

(3) (a) The executive director shall notify the UDC medical administrator, and the board's mental health adviser that a mentally ill offender is eligible for transfer to UDC if the review team finds that the offender:

(i) is no longer mentally ill; or

(ii) is still mentally ill and may continue to be a danger to himself or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and

(iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

(i) all available clinical facts;

(ii) the diagnosis;

(iii) the course of treatment received at the mental health facility;

(iv) the prognosis for remission of symptoms;

(v) the potential for recidivism;

(vi) an estimation of the offender's dangerousness, either to himself or others; and

(vii) recommendations for future treatment.

UTAH CODE ANN. § 77-16A-302 (2010). PERSONS FOUND NOT GUILTY BY REASON OF INSANITY -- DISPOSITION

(1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within ten days to determine whether the defendant is currently mentally ill. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.

(2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:

(a) the defendant is still mentally ill; and

(b) because of that mental illness the defendant presents a substantial danger to himself or others.

(3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had he been convicted and received the maximum sentence for the crime of which he was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

UTAH CODE ANN. § 77-16A-304 (2010). REVIEW AFTER COMMITMENT

(1) (a) The executive director, or the executive director's designee, shall establish a review team of at least three qualified staff members to review the defendant's mental

condition at least every six months.

(b) The team described in Subsection (1)(a) shall include:

(i) at least one psychiatrist; and

(ii) if the defendant is mentally retarded, at least one staff member who is a designated mental retardation professional, as defined in Section 62A-5-101.

(2) If the review team described in Subsection (1) finds that the defendant has recovered from the defendant's mental illness, or, that the defendant is still mentally ill but does not present a substantial danger to himself or others, the executive director, or the executive director's designee, shall:

(a) notify the court that committed the defendant that the defendant is a candidate for discharge; and

(b) provide the court with a report stating the facts that form the basis for the recommendation.

(3) (a) The court shall conduct a hearing within ten business days after receipt of the executive director's, or the executive director's designee's, notification.

(b) The court clerk shall provide notice of the date and time of the hearing to:

(i) the prosecuting attorney;

(ii) the defendant's attorney; and

(iii) any victim of the crime for which the defendant was found not guilty by reason of insanity.

(4) (a) The court shall order that the defendant be discharged from commitment if the court finds that the defendant:

(i) is no longer mentally ill; or

(ii) is mentally ill, but no longer presents a substantial danger to himself or others.

(b) The court shall order the person conditionally released in accordance with Section 77-16a-305 if the court finds that the defendant:

(i) is still mentally ill;

(ii) is a substantial danger to himself or others; and

(iii) can be controlled adequately if conditionally released with treatment as a condition of release.

(c) The court shall order that the commitment be continued if the court finds that the defendant:

(i) has not recovered from his mental illness;

(ii) is a substantial danger to himself or others; and

(iii) cannot adequately be controlled if conditionally released on supervision.

(d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a defendant whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to himself or others.

(ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

UTAH CODE ANN. § 77-16A-305 (2010). CONDITIONAL RELEASE

(1) If the review team finds that a defendant is not eligible for discharge, in accordance with Section 77-16a-304, but that his mental illness and dangerousness can be controlled with proper care, medication, supervision, and treatment if he is conditionally released, the review team shall prepare a report and notify the executive director, or his designee, that the defendant is a candidate for conditional release.

(2) The executive director, or his designee, shall prepare a conditional release plan, listing the type of care and treatment that the individual needs and recommending a treatment provider.

(3) The executive director, or his designee, shall provide the court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by the review team under Subsection (1), and the conditional release plan. The court shall conduct a hearing on the issue of conditional release within 30 days after receipt of those documents.

(4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to himself or others, he can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.

(5) The department may provide treatment or contract with a local mental health authority or other public or private provider to provide treatment for a defendant who is conditionally released under this section.

VERMONT

VT. STAT. ANN. TIT. 13, § 4820 (2010). HEARING REGARDING COMMITMENT

When a person charged on information, complaint or indictment with a criminal offense:

(1) Is reported by the examining psychiatrist following examination pursuant to sections 4814-4816 of this title, to have been insane at the time of the alleged offense; or

(2) Is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a mental disease or mental defect; or

(3) Is not indicted upon hearing by grand jury by reason of insanity at the time of the alleged offense, duly certified to the court; or

(4) Upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which such person is tried or is to be tried for such offense, shall hold a hearing for the purpose of determining whether such person should be committed to the custody of the commissioner of mental health. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 15 days.

VT. STAT. ANN. TIT. 13, § 4822 (2010). FINDINGS AND ORDER; MENTALLY ILL PERSONS

(a) If the court finds that such person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court shall issue an order of commitment directed to the commissioner of developmental and mental health services, which shall admit the person to the care and custody of the department of developmental and mental health services for an indeterminate period. In any case involving personal injury or threat of personal injury, the committing court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

(b) Such order of commitment shall have the same force and effect as an order issued under 18 V.S.A. §§ 7611-7622, and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and treatment, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. §§ 7611-7622.

(c) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section the commissioner of developmental and mental health services shall give notice thereof to the committing

court and state's attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the hearing shall be conducted by the committing court issuing the order under that section. In all other cases, when the committing court orders a hearing under subsection (a) of this section or when, in the discretion of the commissioner of developmental and mental health services, a hearing should be held prior to the discharge, the hearing shall be held in the criminal division of the superior court, Waterbury circuit to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the commissioner, the state's attorney of the county where the prosecution originated, the committed person and the person's attorney. Prior to the hearing, the state's attorney may enter an appearance in the proceedings and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

(d) The court may continue the hearing provided in subsection (c) of this section for a period of 15 additional days upon a showing of good cause.

(e) If the court determines that commitment shall no longer be necessary, it shall issue an order discharging the patient from the custody of the department of developmental and mental health services.

(f) The court shall issue its findings and order not later than 15 days from the date of hearing.

VT. STAT. ANN. TIT. 13, § 4823 (2010). FINDINGS AND ORDER; PERSONS WITH MENTAL RETARDATION PERSONS

(a) If the court finds that such person is a person in need of custody, care and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order of commitment directed to the commissioner of disabilities, aging, and independent living for care and habilitation of such person for an indefinite or limited period in a designated program.

(b) Such order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § 8843 and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843.

(c) Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the criminal division of the superior court in which the person then resides, unless the person resides out of state in which case the proceedings shall be conducted in the original committing court.

VT. STAT. ANN. TIT. 18, § 7101 (2010). DEFINITIONS

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

(1) "Board" means the board of mental health.

(2) "Commissioner" means the commissioner of mental health.

(3) "Custody" means safe-keeping, protection, charge or care.

(4) "Designated hospital" means a hospital or other facility designated by the commissioner as adequate to provide appropriate care for the mentally ill patient.

(5) "Elopement" means the leaving of a designated hospital or designated program or training school without lawful authority.

(6) "Head of a hospital" means the administrator or persons in charge at any time.

(7) "Hospital" means a public or private hospital or facility or part thereof, equipped and otherwise qualified to provide in-patient care and treatment for the mentally ill.

(8) "Individual" means a resident of or a person in Vermont.

(9) "Interested party" means a guardian, spouse, parent, adult child, close adult relative, a responsible adult friend or person who has the individual in his or her charge or care. It also means a mental health professional, a law enforcement officer, a licensed physician, a head of a hospital, a selectman, a town service officer or a town health officer.

(10) "Law enforcement officer" means a sheriff, deputy sheriff, constable, municipal police officer or state police.

(11) "Licensed physician" means a physician legally qualified and licensed to practice as a physician in Vermont.

(12) "Mentally retarded individual" means an individual who has significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.

(13) "Mental health professional" means a person with professional training, experience and demonstrated competence in the treatment of mental illness, who shall be a physician, psychologist, social worker, mental health counselor, nurse or other qualified person designated by the commissioner.

(14) "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory, any of which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but shall not include mental retardation.

(15) "Patient" means a resident of or person in Vermont qualified under this title for

hospitalization or treatment as a mentally ill or mentally retarded individual.

(16) "A patient in need of further treatment" means:

(A) A person in need of treatment; or

(B) A patient who is receiving adequate treatment, and who, if such treatment is discontinued, presents a substantial probability that in the near future his or her condition will deteriorate and he or she will become a person in need of treatment.

(17) "A person in need of treatment" means a person who is suffering from mental illness and, as a result of that mental illness, his or her capacity to exercise self-control, judgment or discretion in the conduct of his or her affairs and social relations is so lessened that he or she poses a danger of harm to himself, to herself, or to others:

(A) A danger of harm to others may be shown by establishing that:

(i) he or she has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions he or she has placed others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions he or she has presented a danger to persons in his or her care.

(B) A danger of harm to himself or herself may be shown by establishing that:

(i) he or she has threatened or attempted suicide or serious bodily harm; or

(ii) he or she has behaved in such a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, personal or medical care, shelter, or self-protection and safety, so that it is probable that death, substantial physical bodily injury, serious mental deterioration or serious physical debilitation or disease will ensue unless adequate treatment is afforded.

(18) "Resident of Vermont" means:

(A) a person who has lived continuously in Vermont for one year immediately preceding his or her admission as a patient or immediately preceding his or her becoming a proposed patient; or

(B) a person who has a present intention to make Vermont his or her home for an indefinite period of time. This intention may be evidenced by prior statements or it may be implied from facts which show that the person does in fact make Vermont his or her permanent home. A married woman shall be capable of establishing a legal residence apart from her husband, and a child under 18 years shall take legal residence of the parent

or guardian with whom he is actually living.

(19) "Retreat" means the Brattleboro Retreat.

(20) "Secretary" means the secretary of the agency of human services.

(21), (22) [Repealed.]

(23) "Vermont" means the state of Vermont.

(24) "Voluntary patient" means an individual admitted to a hospital voluntarily or an individual whose status has been changed from involuntary to voluntary.

(25) "Children and adolescents with a severe emotional disturbance" means those persons defined as such under 33 V.S.A. § 4301(3).

VT. STAT. ANN. TIT. 18, § 7611 (2010). INVOLUNTARY TREATMENT

No person may be made subject to involuntary treatment unless he is found to be a person in need of treatment or a patient in need of further treatment.

VT. STAT. ANN. TIT. 18, § 8839 (2010). DEFINITIONS

As used in this subchapter,

(1) "Danger of harm to others" means the person has inflicted or attempted to inflict serious bodily injury to another or has committed an act that would constitute a sexual assault or lewd or lascivious conduct with a child.

(2) "Designated program" means a program designated by the commissioner as adequate to provide in an individual manner appropriate custody, care and habilitation to persons with mental retardation receiving services under this subchapter. Placement in the Brandon Training School may only be accomplished through the procedures set forth in subchapter 1 of chapter 206 of this title.

(3) "Person in need of custody, care and habilitation" means:

(A) a mentally retarded person;

(B) who presents a danger of harm to others; and

(C) for whom appropriate custody, care and habilitation can be provided by the commissioner in a designated program.

VT. STAT. ANN. TIT. 18, § 8843 (2010). FINDINGS AND ORDER

(a) In all cases, the court shall make specific findings of fact and state its conclusions of law.

(b) If the court finds that the respondent is not a person in need of custody, care and habilitation, it shall dismiss the petition.

(c) If the court finds that the respondent is a person in need of custody, care and habilitation, it shall order the respondent committed to the custody of the commissioner for placement in a designated program in the least restrictive environment consistent with the respondent's need for custody, care and habilitation for an indefinite or a limited period.

VT. STAT. ANN. TIT. 18, § 8844 (2010). LEGAL COMPETENCE

No determination that a person is in need of custody, care and habilitation and no order authorizing commitment shall lead to a presumption of legal incompetence.

VIRGINIA

VA. CODE ANN. § 16.1-275 (2010). PHYSICAL AND MENTAL EXAMINATIONS AND TREATMENT; NURSING AND MEDICAL CARE

The juvenile court or the circuit court may cause any juvenile within its jurisdiction under the provisions of this law to be physically examined and treated by a physician or to be examined and treated at a local mental health center. If no such appropriate facility is available locally, the court may order the juvenile to be examined and treated by any physician or psychiatrist or examined by a clinical psychologist. The Commissioner of Behavioral Health and Developmental Services shall provide for distribution a list of appropriate mental health centers available throughout the Commonwealth. Upon the written recommendation of the person examining the juvenile that an adequate evaluation of the juvenile's treatment needs can only be performed in an inpatient hospital setting, the court shall have the power to send any such juvenile to a state mental hospital for not more than 10 days for the purpose of obtaining a recommendation for the treatment of the juvenile. No juvenile sent to a state mental hospital pursuant to this provision shall be held or cared for in any maximum security unit where adults determined to be criminally insane reside; the juvenile shall be kept separate and apart from such adults. However, the Commissioner of Behavioral Health and Developmental Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or the public.

Whenever the parent or other person responsible for the care and support of a juvenile is determined by the court to be financially unable to pay the costs of such examination as ordered by the juvenile court or the circuit court, such costs may be paid according to standards, procedures and rates adopted by the State Board, from funds appropriated in the general appropriation act for the Department.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction who is found to be delinquent for an offense that is eligible for commitment pursuant to subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 to be placed in the temporary custody of the Department of Juvenile Justice for a period of time not to exceed 30 days for diagnostic assessment services after the adjudicatory hearing and prior to final disposition of his or her case. Prior to such a placement, the Department shall determine that the personnel, services and space are available in the appropriate correctional facility for the care, supervision and study of such juvenile and that the juvenile's case is appropriate for referral for diagnostic services.

Whenever a juvenile concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the juvenile court or the circuit court may order the parent or other person responsible for the care and support of the juvenile to provide such care in a hospital or otherwise and to pay the expenses thereof. If the parent or other person is unable or fails to provide such care, the juvenile court or the circuit court may refer the matter to the authority designated in accordance with law for the determination of eligibility for such services in the county or city in which such juvenile or his parents have residence or legal domicile.

In any such case, if a parent who is able to do so fails or refuses to comply with the order, the juvenile court or the circuit court may proceed against him as for contempt or may proceed against him for nonsupport.

VA. CODE ANN. § 16.1-278.8 (2010). DELINQUENT JUVENILES

A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278;

2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;

3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;

4. Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) has been found delinquent for an offense that would be a

Class 1 misdemeanor or felony if committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department, and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile where the court determines this participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at 30-day intervals;

8. Impose a fine not to exceed $ 500 upon such juvenile;

9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile as to the hours during which he may operate a motor vehicle. Any

juvenile whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such terms and conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school. The restricted permit shall be issued in accordance with the provisions of such subsection. However, only an abstract of the court order that identifies the juvenile and the conditions under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the physical custody of the court during any period of curfew restriction. The court shall send an abstract of any order issued under the provisions of this section to the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order in accordance with its terms.

Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order imposing the curfew;

10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the juvenile was found to be delinquent;

11. Require the juvenile to participate in a public service project under such conditions as the court prescribes;

12. In case of traffic violations, impose only those penalties that are authorized to be imposed on adults for such violations. However, for those violations punishable by confinement if committed by an adult, confinement shall be imposed only as authorized by this title;

13. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the juvenile;

b. A child welfare agency, private organization or facility that is licensed or otherwise

authorized by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the approval of the Director; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the juvenile has residence if other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when such local board consents to the commitment. The board to which the juvenile is committed shall have the final authority to determine the appropriate placement for the juvenile. Any order authorizing removal from the home and transferring legal custody of a juvenile to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;

14. Commit the juvenile to the Department of Juvenile Justice, but only if he is 11 years of age or older and the current offense is (i) an offense that would be a felony if committed by an adult, (ii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense that would be a felony if committed by an adult, or (iii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;

15. Impose the penalty authorized by § 16.1-284;

16. Impose the penalty authorized by § 16.1-284.1;

17. Impose the penalty authorized by § 16.1-285.1;

18. Impose the penalty authorized by § 16.1-278.9; or

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138,

18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 15.2-1812.2.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

VA. CODE ANN. § 16.1-285.1 (2010). COMMITMENT OF SERIOUS OFFENDERS

A. In the case of a juvenile fourteen years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months, (iii) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of twenty years or more, and the circuit court, or the juvenile or family court, as the case may be, finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Juvenile Justice for placement in a juvenile correctional center for the period of time prescribed pursuant to this section.

Alternatively, in order to determine if a juvenile, transferred from a juvenile and domestic relations district court to a circuit court pursuant to § 16.1-269.1, appropriately qualifies for commitment pursuant to this section, notwithstanding the inapplicability of the qualification criteria set forth in clauses (i) through (iv), the circuit court may consider the commitment criteria set forth in subdivisions 1, 2, and 3 of subsection B as well as other components of the juvenile's life history and, if upon such consideration in the opinion of the court the needs of the juvenile and the interests of the community would clearly best be served by commitment hereunder, may so commit the juvenile.

B. Prior to committing any juvenile pursuant to this section, the court shall consider:

1. The juvenile's age;

2. The seriousness and number of the present offenses, including (i) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the offense was against persons or property, with greater weight being given to offenses against persons, especially if death or injury resulted; (iii) whether the offense involved

the use of a firearm or other dangerous weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the nature of the juvenile's participation in the alleged offense;

3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the number and nature of previous contacts with courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated offenses; and

4. The Department's estimated length of stay.

Such commitment order must be supported by a determination that the interests of the juvenile and community require that the juvenile be placed under legal restraint or discipline and that the juvenile is not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

C. In ordering commitment pursuant to this section, the court shall specify a period of commitment not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first. The court may also order a period of determinate or indeterminate parole supervision to follow the commitment but the total period of commitment and parole supervision shall not exceed seven years or the juvenile's twenty-first birthday, whichever occurs first.

D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate juvenile correctional center for the time prescribed by the committing court. Such a placement decision shall be made based on the availability of treatment programs at the facility; the level of security at the facility; the offense for which the juvenile has been committed; and the welfare, age and gender of the juvenile.

E. The court which commits the juvenile to the Department under this section shall have continuing jurisdiction over the juvenile throughout his commitment. The continuing jurisdiction of the court shall not prevent the Department from removing the juvenile from a juvenile correctional center without prior court approval for the sole purposes of routine or emergency medical treatment, routine educational services, or family emergencies.

F. Any juvenile committed under the provisions of this section shall not be released at a time earlier than that specified by the court in its dispositional order except as provided for in § 16.1-285.2. The Department may petition the committing court for a hearing as provided for in § 16.1-285.2 for an earlier release of the juvenile when good cause exists for an earlier release. In addition, the Department shall petition the committing court for a determination as to the continued commitment of each juvenile sentenced under this

section at least sixty days prior to the second anniversary of the juvenile's date of commitment and sixty days prior to each annual anniversary thereafter.

VA. CODE ANN. § 19.2-169.2 (2010). DISPOSITION WHEN DEFENDANT FOUND INCOMPETENT

A. Upon finding pursuant to subsection E of § 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge. Any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community services board or behavioral health authority or his designee or to the director of the treating inpatient facility or his designee.

B. If, at any time after the defendant is ordered to undergo treatment under subsection A of this section, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

C. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of an order for treatment issued pursuant to subsection A.

VA. CODE ANN. § 19.2-169.6 (2010). INPATIENT PSYCHIATRIC HOSPITAL ADMISSION FROM LOCAL CORRECTIONAL FACILITY

A. Any inmate of a local correctional facility who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge if:

1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (iii) the inmate requires treatment in a hospital rather than the local correctional facility. Prior to making this determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance with § 37.2-816 and conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services

board or behavioral health authority who is skilled in the assessment and treatment of mental illness, who is not providing treatment to the inmate, and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services as provided in § 37.2-809. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report; or

2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention order for the inmate. Prior to the filing of the petition, the person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee or designee of the local community services board or behavioral health authority, and any other information presented, and finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable.

Upon detention pursuant to this subdivision, a hearing shall be held either (a) before the court having jurisdiction over the inmate's case or (b) before a district court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within 48 hours of execution of the temporary

detention order issued pursuant to this subdivision. If the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report. The judge or special justice conducting the hearing may order the inmate hospitalized if, after considering the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in accordance with § 37.2-816, and any other available information as specified in subsection C of § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (3) the inmate requires treatment in a hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at the hearing.

B. In no event shall an inmate have the right to make application for voluntary admission as may be otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient treatment as provided in § 37.2-817.

C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the court having jurisdiction over the inmate's case may order that the admitting hospital evaluate the inmate's competency to stand trial and his mental state at the time of the offense pursuant to §§ 19.2-169.1 and 19.2-169.5.

D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court which has criminal jurisdiction over him or a district court judge or a special justice, as defined in § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a court other than the court which has jurisdiction over his criminal case, the facility at which the inmate is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in the criminal case, if the case is still pending.

E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization may be extended in accordance with subsection D for periods of 180 days for an inmate who has been convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the custody of a local correctional facility after sentencing, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired had he received the maximum sentence for the crime charged. Any inmate who has not completed service of his sentence upon discharge from the hospital shall serve the remainder of his sentence.

F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a crime and is in the custody of a local correctional facility after sentencing, the time the inmate is confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an inmate who is the subject of a proceeding under this section, upon request, shall disclose to a magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed pursuant to § 37.2-815, the community service board or behavioral health authority preparing the preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional facility any and all information that is necessary and appropriate to enable each of them to perform his duties under this section. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the inmate and to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local correctional facility shall be limited to information necessary to protect the sheriff or administrator of the local correctional facility and his employees, the inmate, or the public from physical injury or to address the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

H. Any order entered where an inmate is the subject of proceedings under this section shall provide for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any other disclosures as required or permitted by law.

VA. CODE ANN. § 19.2-180(2010). SENTENCE OR TRIAL OF PRISONER WHEN RESTORED TO SANITY

When a prisoner whose trial or sentence was suspended by reason of his being found to be insane or feebleminded, has been found to be mentally competent and is brought from a hospital and committed to jail, if already convicted, he shall be sentenced, and if not, the court shall proceed to try him as if no delay had occurred on account of his insanity or feeblemindedness.

VA. CODE ANN. § 19.2-182.2(2010). VERDICT OF ACQUITTAL BY REASON OF INSANITY TO STATE THE FACT; TEMPORARY CUSTODY AND EVALUATION

When the defense is insanity of the defendant at the time the offense was committed, the jurors shall be instructed, if they acquit him on that ground, to state the fact with their verdict. The court shall place the person so acquitted (the acquittee) in temporary custody of the Commissioner of Behavioral Health and Developmental Services (hereinafter referred to in this chapter as the Commissioner) for evaluation as to whether the acquittee may be released with or without conditions or requires commitment. The evaluation shall be conducted by (i) one psychiatrist and (ii) one clinical psychologist. The psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and mental retardation and qualified by training and experience to perform such evaluations. The Commissioner shall appoint both evaluators, at least one of whom shall not be employed by the hospital in which the acquittee is primarily confined. The evaluators shall determine whether the acquittee currently has mental illness or mental retardation and shall assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in § 19.2-182.3. The evaluators shall conduct their examinations and report their findings separately within forty-five days of the Commissioner's assumption of custody. Copies of the report shall be sent to the acquittee's attorney, the attorney for the Commonwealth for the jurisdiction where the person was acquitted and the community services board or behavioral health authority as designated by the Commissioner. If either evaluator recommends conditional release or release without conditions of the acquittee, the court shall extend the evaluation period to permit the hospital in which the acquittee is confined and the appropriate community services board or behavioral health authority to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

VA. CODE ANN. § 19.2-182.3(2010). COMMITMENT; CIVIL PROCEEDINGS

Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court, to determine the appropriate disposition of the acquittee. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

At the conclusion of the hearing, the court shall commit the acquittee if it finds that he has mental illness or mental retardation and is in need of inpatient hospitalization. For the purposes of this chapter, mental illness includes any mental illness, as defined in § 37.2-100, in a state of remission when the illness may, with reasonable probability, become active. The decision of the court shall be based upon consideration of the following factors:

1. To what extent the acquittee has mental illness or mental retardation, as those terms are defined in § 37.2-100;

2. The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;

3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

4. Such other factors as the court deems relevant.

If the court determines that an acquittee does not need inpatient hospitalization solely because of treatment or habilitation he is currently receiving, but the court is not persuaded that the acquittee will continue to receive such treatment or habilitation, it may commit him for inpatient hospitalization. The court shall order the acquittee released with conditions pursuant to §§ 19.2-182.7 through 19.2-182.9 if it finds that he is not in need of inpatient hospitalization but that he meets the criteria for conditional release set forth in § 19.2-182.7. If the court finds that the acquittee does not need inpatient hospitalization nor does he meet the criteria for conditional release, it shall release him without conditions, provided the court has approved a discharge plan prepared by the appropriate community services board or behavioral health authority in consultation with the appropriate hospital staff.

VA. CODE ANN. § 19.2-182.4(2010). CONFINEMENT AND TREATMENT; INTERFACILITY TRANSFERS; OUT-OF-HOSPITAL VISITS; NOTICE OF CHANGE IN TREATMENT

A. Upon commitment of an acquittee for inpatient hospitalization, the Commissioner shall determine the appropriate placement for him, based on his clinical needs and security requirements. The Commissioner may make interfacility transfers and treatment and management decisions regarding acquittees in his custody without obtaining prior approval of or review by the committing court. If the Commissioner is of the opinion that a temporary visit from the hospital would be therapeutic for the acquittee and that such visit would pose no substantial danger to others, the Commissioner may grant such visit not to exceed forty-eight hours.

B. The Commissioner shall give notice of the granting of an unescorted community visit to any victim of a felony offense against the person punishable by more than five years in prison that resulted in the charges on which the acquittee was acquitted or the next-of-kin of the victim at the last known address, provided the person seeking notice submits a

written request for such notice to the Commissioner.

C. The Commissioner shall notify the attorney for the Commonwealth for the committing jurisdiction in writing of changes in an acquittee's course of treatment which will involve authorization for the acquittee to leave the grounds of the hospital in which he is confined.

VA. CODE ANN. § 19.2-182.5(2010). REVIEW OF CONTINUATION OF CONFINEMENT HEARING; PROCEDURE AND REPORTS; DISPOSITION

A. The committing court shall conduct a hearing twelve months after the date of commitment to assess the need for inpatient hospitalization of each acquittee who is acquitted of a felony by reason of insanity. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report evaluating the acquittee's condition and recommending treatment, to be prepared by a psychiatrist or a psychologist. The psychologist who prepares the report shall be a clinical psychologist and any evaluating psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and qualified by training and experience to perform forensic evaluations. If the examiner recommends release or the acquittee requests release, the acquittee's condition and need for inpatient hospitalization shall be evaluated by a second person with such credentials who is not currently treating the acquittee. A copy of any report submitted pursuant to this subsection shall be sent to the attorney for the Commonwealth for the jurisdiction from which the acquittee was committed.

C. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

According to the determination of the court following the hearing, and based upon the report and other evidence provided at the hearing, the court shall (i) release the acquittee from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 19.2-182.7, provided the court has approved a discharge plan prepared jointly by the hospital staff and the appropriate community services board or behavioral health authority; (ii) place the acquittee on conditional release if he meets the criteria for conditional release, and the court has approved a conditional release plan prepared jointly by the hospital staff and the appropriate community services board or behavioral health authority; or (iii) order that he remain in the custody of the Commissioner if he continues to require inpatient hospitalization based on consideration of the factors set forth in § 19.2-182.3.

D. An acquittee who is found not guilty of a misdemeanor by reason of insanity on or

after July 1, 2002, shall remain in the custody of the Commissioner pursuant to this chapter for a period not to exceed one year from the date of acquittal. If, prior to or at the conclusion of one year, the Commissioner determines that the acquittee meets the criteria for conditional release or release without conditions pursuant to § 19.2-182.7, emergency custody pursuant to § 37.2-808, temporary detention pursuant to §§ 37.2-809 to 37.2-813, or involuntary commitment pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, he shall petition the committing court. Written notice of an acquittee's scheduled release shall be provided by the Commissioner to the attorney for the Commonwealth for the committing jurisdiction not less than thirty days prior to the scheduled release. The Commissioner's duty to file a petition upon such determination shall not preclude the ability of any other person meeting the requirements of § 37.2-808 to file the petition.

VA. CODE ANN. § 19.2-182.9(2010). EMERGENCY CUSTODY OF CONDITIONALLY RELEASED ACQUITTEE

When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed four hours. However, upon a finding by a district court judge, special justice as defined in § 37.2-100, or magistrate that good cause exists to grant an extension, the district court judge, special justice, or magistrate shall extend the emergency custody order, or shall issue an order extending the period of emergency custody, one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (a) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to this section or (b) a medical evaluation of the person to be completed if necessary. If it appears from all evidence readily available (i) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) that he requires emergency evaluation to assess the need for inpatient hospitalization, the district court judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue a

temporary detention order authorizing the executing officer to place the acquittee in an appropriate institution for a period not to exceed 48 hours prior to a hearing. If the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) has mental illness or mental retardation and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner.

When an acquittee on conditional release pursuant to this chapter is taken into emergency custody, detained, or hospitalized, such action shall be considered to have been taken pursuant to this section, notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody, detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law other than those applicable to insanity acquittees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not recognized at the time of emergency custody or detention, at the time his status as such is verified, the provisions applicable to such persons shall be applied and the court hearing the matter shall notify the committing court of the proceedings.

VA. CODE ANN. § 37.2-900(2010). DEFINITIONS

As used in this chapter, unless the context requires a different meaning:

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services.

"Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to this chapter.

"Department" means the Department of Behavioral Health and Developmental Services.

"Director" means the Director of the Department of Corrections.

"Mental abnormality" or *"personality disorder"* means a congenital or acquired condition

that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Respondent" means the person who is subject of a petition filed under this chapter.

"Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision 5 of § 18.2-31, § 18.2-61, 18.2-67.1, or 18.2-67.2; (ii) § 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1, or 18.2-67.3; (iii) subdivision 1 of § 18.2-31 where the abduction was committed with intent to defile the victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration; (v) the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior is set forth in § 18.2-67.1 or 18.2-67.2, or is set forth in § 18.2-67.3; or (vi) conspiracy to commit or attempt to commit any of the above offenses.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense, or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3; and (ii) because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.

VA. CODE ANN. § 37.2-902(2010). COMMITMENT REVIEW COMMITTEE; MEMBERSHIP

A. The Director shall establish a Commitment Review Committee (CRC) to screen, evaluate, and make recommendations regarding prisoners and defendants for the purposes of this chapter. The CRC shall be under the supervision of the Department of Corrections. Members of the CRC and any licensed psychiatrists or licensed clinical psychologists providing examinations under subsection B of § 37.2-904 shall be immune from personal liability while acting within the scope of their duties except for gross negligence or intentional misconduct.

B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees of the Department of Corrections, appointed by the Director; (ii) three full-time employees of the Department, appointed by the Commissioner, at least one of whom shall be a psychiatrist or psychologist licensed to practice in the Commonwealth who is skilled in the diagnosis, treatment and risk assessment of sex offenders; and (iii) one assistant or deputy attorney general, appointed by the Attorney General. Initial appointments by the Director and the Commissioner shall be for terms as follows: one member each for two years, one member each for three years, and one member each for four years. The initial appointment by the Attorney General shall be for a term of four years. Thereafter, all appointments to the CRC shall be for terms of four years, and vacancies shall be filled for the unexpired terms. Four members shall constitute a quorum.

C. The CRC shall meet at least monthly and at other times as it deems appropriate. The CRC shall elect a chairman from its membership to preside during meetings.

VA. CODE ANN. § 37.2-903(2010). DATABASE OF PRISONERS CONVICTED OF SEXUALLY VIOLENT OFFENSES; MAINTAINED BY DEPARTMENT OF CORRECTIONS; NOTICE OF PENDING RELEASE TO CRC

A. The Director shall establish and maintain a database of each prisoner in his custody who is (i) incarcerated for a sexually violent offense or (ii) serving or will serve concurrent or consecutive time for another offense in addition to time for a sexually violent offense. The database shall include the following information regarding each prisoner: (a) the prisoner's criminal record and (b) the prisoner's sentences and scheduled date of release. A prisoner who is serving or will serve concurrent or consecutive time for other offenses in addition to his time for a sexually violent offense, shall remain in the database until such time as he is released from the custody or supervision of the Department of Corrections or Virginia Parole Board for all of his charges. Prior to the initial assessment of a prisoner under subsection C, the Director shall order a national criminal history records check to be conducted on the prisoner.

B. Each month, the Director shall review the database and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review who receive a score of five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument designated by the Commissioner, or a score of four on the Static-99 or a similar score on a comparable, scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation under this section was a violation of § 18.2-67.3 where the victim was under the age of 13 and suffered physical bodily injury and any of the following where the victim was under the age of 13: § 18.2-61, 18.2-67.1, or 18.2-67.2.

C. If the Director and the Commissioner agree that no specific scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may instead be screened by a licensed psychiatrist, licensed clinical psychologist, or a licensed mental health professional certified by the Board of Psychology as a sex offender treatment provider pursuant to § 54.1-3600 for an initial determination of whether or not the prisoner may meet the definition of a sexually violent predator.

D. Upon the identification of such prisoners, the Director shall forward their names, their scheduled dates of release, and copies of their files to the CRC for assessment.

VA. CODE ANN. § 37.2-904(2010). CRC ASSESSMENT OF PRISONERS OR DEFENDANTS ELIGIBLE FOR COMMITMENT AS SEXUALLY VIOLENT PREDATORS; MENTAL HEALTH EXAMINATION; RECOMMENDATION

A. Within 120 days of receiving notice from the Director pursuant to § 37.2-903 regarding a prisoner who is in the database, or from a court referring a defendant pursuant to § 19.2-169.3, the CRC shall (i) complete its assessment of the prisoner or defendant for possible commitment pursuant to subsection B and (ii) forward its written

recommendation regarding the prisoner or defendant to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners or defendants shall include a mental health examination, including a personal interview, of the prisoner or defendant by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis, treatment, and risk assessment of sex offenders, and not a member of the CRC. If the prisoner's or defendant's name was forwarded to the CRC based upon an evaluation by a licensed psychiatrist or licensed clinical psychologist, a different licensed psychiatrist or licensed clinical psychologist shall perform the examination for the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner or defendant is a sexually violent predator, as defined in § 37.2-900, and forward the results of this evaluation and any supporting documents to the CRC for its review.

The CRC assessment may be based on:

An actuarial evaluation, clinical evaluation, or any other information or evaluation determined by the CRC to be relevant, including but not limited to, a review of (i) the prisoner's or defendant's institutional history and treatment record, if any; (ii) his criminal background; and (iii) any other factor that is relevant to the determination of whether he is a sexually violent predator.

C. Following the examination and review conducted pursuant to subsection B, the CRC shall recommend that the prisoner or defendant (i) be committed as a sexually violent predator pursuant to this chapter; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner or defendant is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC may recommend that a prisoner or defendant enter a conditional release program if it finds that (i) he does not need inpatient treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that, if conditionally released, he would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

E. Notwithstanding any other provision of law, any mental health professional employed or appointed pursuant to subsection B or § 37.2-907 shall be permitted to copy and possess any presentence or postsentence reports and victim impact statements. The mental health professional shall not disseminate the contents of the reports or the actual

reports to any person or entity and shall only utilize the reports for use in examinations, creating reports, and testifying in any proceedings pursuant to this article.

F. If the CRC deems it necessary to have the services of additional experts in order to complete its review of the prisoner or defendant, the Commissioner shall appoint such qualified experts as are needed.

VA. CODE ANN. § 37.2-905(2010). REVIEW OF PRISONERS CONVICTED OF A SEXUALLY VIOLENT OFFENSE; REVIEW OF UNRESTORABLY INCOMPETENT DEFENDANTS CHARGED WITH SEXUALLY VIOLENT OFFENSES; PETITION FOR COMMITMENT; NOTICE TO DEPARTMENT OF CORRECTIONS OR REFERRING COURT REGARDING DISPOSITION OF REVIEW

A. Upon receipt of a recommendation by the CRC regarding an eligible prisoner or an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the Attorney General shall have 90 days to conduct a review of the prisoner or defendant and (i) file a petition for the civil commitment of the prisoner or defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii) notify the Director and Commissioner, in the case of a prisoner, or the referring court and the Commissioner, in the case of an unrestorably incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court for the judicial circuit or district in which the prisoner was last convicted of a sexually violent offense or in the circuit court for the judicial circuit or district in which the defendant was deemed unrestorably incompetent and referred for commitment review pursuant to § 19.2-169.3.

B. If the Attorney General decides not to file a petition for the civil commitment of a prisoner or defendant, or if a petition is filed but is dismissed for any reason, the Attorney General and the Director may share any relevant information with the probation and parole officer who is to supervise the prisoner and with the Department to the extent allowed by state and federal law.

VA. CODE ANN. § 37.2-909(2010). PLACEMENT OF COMMITTED RESPONDENTS

A. Any respondent committed pursuant to this chapter shall be placed in the custody of the Department for control, care, and treatment until such time as the respondent's mental abnormality or personality disorder has so changed that the respondent will not present an undue risk to public safety. The Department shall provide such control, care, and treatment at a secure facility operated by it or may contract with private or public entities, in or outside of the Commonwealth, or with other states to provide comparable control, care, or treatment. At all times, respondents committed for control, care, and treatment by the Department pursuant to this chapter shall be kept in a secure facility. Respondents committed under this chapter shall be segregated by sight and sound at all times from prisoners in the custody of a correctional facility. The Commissioner may make treatment and management decisions regarding committed respondents in his custody without obtaining prior approval of or review by the committing court.

B. Prior to the siting of a new facility or the designation of an existing facility to be operated by the Department for the control, care, and treatment of committed respondents, the Commissioner shall notify the state elected officials for and the local governing body of the jurisdiction of the proposed location, designation, or expansion of the facility. Upon receiving such notice, the local governing body of the jurisdiction of the proposed site or where the existing facility is located may publish a descriptive notice concerning the proposed site or existing facility in a newspaper of general circulation in the jurisdiction.

The Commissioner also shall establish an advisory committee relating to any facility for which notice is required by this subsection or any facility being operated for the purpose of the control, care, and treatment of committed respondents. The advisory committee shall consist of state and local elected officials and representatives of community organizations serving the jurisdiction in which the facility is proposed to be or is located. Upon request, the members of the appropriate advisory committee shall be notified whenever the Department increases the number of beds in the relevant facility.

C. Notwithstanding any other provision of law, when any respondent is committed under this article, the Department of Corrections and the Office of the Attorney General shall provide to the Department of Behavioral Health and Developmental Services, a copy of all relevant criminal history information, medical and mental health records, presentence or postsentence reports and victim impact statements, and the mental health evaluations performed pursuant to subsection B of § 37.2-904 and § 37.2-907, for use in the treatment and evaluation of the committed respondent.

WASHINGTON

WASH. REV. CODE ANN. § 9.95.115 (2010). PAROLE OF LIFE TERM PRISONERS -- CRIMES COMMITTED BEFORE JULY 1, 1984

The indeterminate sentence review board is hereby granted authority to parole any person sentenced to the custody of the department of corrections, under a mandatory life sentence for a crime committed before July 1, 1984, except those persons sentenced to life without the possibility of parole. No such person shall be granted parole unless the person has been continuously confined therein for a period of twenty consecutive years less earned good time: PROVIDED, That no such person shall be released under parole who is subject to civil commitment as a sexually violent predator under chapter 71.09 RCW.

WASH. REV. CODE ANN. § 71.05.195 (2010). NOT GUILTY BY REASON OF INSANITY -- DETENTION OF PERSONS WHO HAVE FLED FROM STATE OF ORIGIN -- PROBABLE CAUSE HEARING

(1) A civil commitment may be initiated under the procedures described in RCW 71.05.150 or 71.05.153 for a person who has been found not guilty by reason of insanity

in a state other than Washington and who has fled from detention, commitment, or conditional release in that state, on the basis of a request by the state in which the person was found not guilty by reason of insanity for the person to be detained and transferred back to the custody or care of the requesting state. A finding of likelihood of serious harm or grave disability is not required for a commitment under this section. The detention may occur at either an evaluation and treatment facility or a state hospital. The petition for seventy-two hour detention filed by the designated mental health professional must be accompanied by the following documents:

(a) A copy of an order for detention, commitment, or conditional release of the person in a state other than Washington on the basis of a judgment of not guilty by reason of insanity;

(b) A warrant issued by a magistrate in the state in which the person was found not guilty by reason of insanity indicating that the person has fled from detention, commitment, or conditional release in that state and authorizing the detention of the person within the state in which the person was found not guilty by reason of insanity;

(c) A statement from the executive authority of the state in which the person was found not guilty by reason of insanity requesting that the person be returned to the requesting state and agreeing to facilitate the transfer of the person to the requesting state.

(2) The person shall be entitled to a probable cause hearing within the time limits applicable to other detentions under this chapter and shall be afforded the rights described in this chapter including the right to counsel. At the probable cause hearing, the court shall determine the identity of the person and whether the other requirements of this section are met. If the court so finds, the court may order continued detention in a treatment facility for up to thirty days for the purpose of the transfer of the person to the custody or care of the requesting state. The court may order a less restrictive alternative to detention only under conditions which ensure the person's safe transfer to the custody or care of the requesting state within thirty days without undue risk to the safety of the person or others.

(3) For the purposes of this section, "not guilty by reason of insanity" shall be construed to include any provision of law which is generally equivalent to a finding of criminal insanity within the state of Washington; and "state" shall be construed to mean any state, district, or territory of the United States.

WASH. REV. CODE ANN. § 71.06.020 (2010). SEXUAL PSYCHOPATHS -- PETITION

Where any person is charged in the superior court in this state with a sex offense and it appears that such person is a sexual psychopath, the prosecuting attorney may file a petition in the criminal proceeding, alleging that the defendant is a sexual psychopath and stating sufficient facts to support such allegation. Such petition must be filed and served on the defendant or his attorney at least ten days prior to hearing on the criminal charge.

WASH. REV. CODE ANN. § 71.06.030 (2010). PROCEDURE ON PETITION -- EFFECT OF ACQUITTAL ON CRIMINAL CHARGE

The court shall proceed to hear the criminal charge. If the defendant is convicted or has previously pleaded guilty to such charge, judgment shall be pronounced, but the execution of the sentence may be deferred or suspended, as in other criminal cases, and the court shall then proceed to hear and determine the allegation of sexual psychopathy. Acquittal on the criminal charge shall not operate to suspend the hearing on the allegation of sexual psychopathy: PROVIDED, That the provisions of RCW 71.06.140 authorizing transfer of a committed sexual psychopath to a correctional institution shall not apply to the committed sexual psychopath who has been acquitted on the criminal charge.

WASH. REV. CODE ANN. § 71.06.060 (2010). PRELIMINARY HEARING -- COMMITMENT, OR OTHER DISPOSITION OF CHARGE

After the superintendent's report has been filed, the court shall determine whether or not the defendant is a sexual psychopath. If said defendant is found to be a sexual psychopath, the court shall commit him to the secretary of social and health services for designation of the facility for detention, care, and treatment of the sexual psychopath. If the defendant is found not to be a sexual psychopath, the court shall order the sentence to be executed, or may discharge the defendant as the case may merit.

WASH. REV. CODE ANN. § 71.06.091 (2010). POSTCOMMITMENT PROCEEDINGS, RELEASES, AND FURTHER DISPOSITIONS

A sexual psychopath committed pursuant to RCW 71.06.060 shall be retained by the superintendent of the institution involved until in the superintendent's opinion he is safe to be at large, or until he has received the maximum benefit of treatment, or is not amenable to treatment, but the superintendent is unable to render an opinion that he is safe to be at large. Thereupon, the superintendent of the institution involved shall so inform whatever court committed the sexual psychopath. The court then may order such further examination and investigation of such person as seems necessary, and may at its discretion, summon such person before it for further hearing, together with any witnesses whose testimony may be pertinent, and together with any relevant documents and other evidence. On the basis of such reports, investigation, and possible hearing, the court shall determine whether the person before it shall be released unconditionally from custody as a sexual psychopath, released conditionally, returned to the custody of the institution as a sexual psychopath, or transferred to the department of corrections to serve the original sentence imposed upon him. The power of the court to grant conditional release for any such person before it shall be the same as its power to grant, amend and revoke probation as provided by chapter 9.95 RCW. When the sexual psychopath has entered upon the conditional release, the state *board of prison terms and paroles shall supervise such person pursuant to the terms and conditions of the conditional release, as set by the court: PROVIDED, That the superintendent of the institution involved shall never release the sexual psychopath from custody without a court release as herein set forth.

WASH. REV. CODE ANN. § 71.06.140 (2010). STATE HOSPITALS FOR CARE OF SEXUAL PSYCHOPATHS -- TRANSFERS TO CORRECTIONAL INstitutions --

Examinations, reports

The department may designate one or more state hospitals for the care and treatment of sexual psychopaths: PROVIDED, That a committed sexual psychopath who has been determined by the superintendent of such mental hospital to be a custodial risk, or a hazard to other patients may be transferred by the secretary of social and health services, with the consent of the secretary of corrections, to one of the correctional institutions within the department of corrections which has psychiatric care facilities. A committed sexual psychopath who has been transferred to a correctional institution shall be observed and treated at the psychiatric facilities provided by the correctional institution. A complete psychiatric examination shall be given to each sexual psychopath so transferred at least twice annually. The examinations may be conducted at the correctional institution or at one of the mental hospitals. The examiners shall report in writing the results of said examinations, including recommendations as to future treatment and custody, to the superintendent of the mental hospital from which the sexual psychopath was transferred, and to the committing court, with copies of such reports and recommendations to the superintendent of the correctional institution.

WASH. REV. CODE ANN. § 71.09.010 (2010). FINDINGS

The legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for the existing involuntary treatment act, chapter 71.05 RCW, which is intended to be a short-term civil commitment system that is primarily designed to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 71.05 RCW, sexually violent predators generally have personality disorders and/or mental abnormalities which are unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually violent behavior. The legislature further finds that sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment act, chapter 71.05 RCW, is inadequate to address the risk to reoffend because during confinement these offenders do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement. The legislature further finds that the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the involuntary treatment act.

WASH. REV. CODE ANN. § 71.09.015 (2010). FINDING -- INTENT -- CLARIFICATION

The legislature finds that presentation of evidence related to conditions of a less restrictive alternative that are beyond the authority of the court to order, and that would not exist in the absence of a court order, reduces the public respect for the rule of law and for the authority of the courts. Consequently, the legislature finds that the decision in In re the Detention of Casper Ross, 102 Wn. App 108 (2000), is contrary to the legislature's intent. The legislature hereby clarifies that it intends, and has always intended, in any

proceeding under this chapter that the court and jury be presented only with conditions that would exist or that the court would have the authority to order in the absence of a finding that the person is a sexually violent predator.

Wash. Rev. Code Ann. § 71.09.020 (2010). Definitions
Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services.

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

(10) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(11) "Prosecuting agency" means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

(12) "Recent overt act" means any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

(13) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(14) "Secretary" means the secretary of social and health services or the secretary's designee.

(15) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(16) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(17) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age

fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(18) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(19) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary.

WASH. REV. CODE ANN. § 71.09.025 (2010). NOTICE TO PROSECUTING ATTORNEY PRIOR TO RELEASE

(1) (a) When it appears that a person may meet the criteria of a sexually violent predator as defined in *RCW 71.09.020(16), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county in which an action under this chapter may be filed pursuant to RCW 71.09.030 and the attorney general, three months prior to:

(i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;

(iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.086(4); or

(iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to **RCW 10.77.020(3).

(b) The agency shall provide the prosecuting agency with all relevant information including but not limited to the following information:

(i) A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;

(ii) A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;

(iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;

(iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and

(v) A current mental health evaluation or mental health records review.

(c) The prosecuting agency has the authority, consistent with RCW 72.09.345(3), to obtain all records relating to the person if the prosecuting agency deems such records are necessary to fulfill its duties under this chapter. The prosecuting agency may only disclose such records in the course of performing its duties pursuant to this chapter, unless otherwise authorized by law.

(d) The prosecuting agency has the authority to utilize the inquiry judge procedures of chapter 10.27 RCW prior to the filing of any action under this chapter to seek the issuance of compulsory process for the production of any records necessary for a determination of whether to seek the civil commitment of a person under this chapter. Any records obtained pursuant to this process may only be disclosed by the prosecuting agency in the course of performing its duties pursuant to this chapter, or unless otherwise authorized by law.

(2) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(3) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services.

WASH. REV. CODE ANN. § 71.09.060 (2010). TRIAL -- DETERMINATION -- COMMITMENT PROCEDURES

(1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. The community protection program under RCW 71A.12.230

may not be considered as a placement condition or treatment option available to the person if unconditionally released from detention on a sexually violent predator petition. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in *RCW 71.09.020(15)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community.

If the court or unanimous jury decides that the state has not met its burden of proving that the person is a sexually violent predator, the court shall direct the person's release.

If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within forty-five days of the date of the mistrial unless the prosecuting agency earlier moves to dismiss the petition. The retrial may be continued upon the request of either party accompanied by a showing of good cause, or by the court on its own motion in the due administration of justice provided that the respondent will not be substantially prejudiced. In no event may the person be released from confinement prior to retrial or dismissal of the case.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be or has been released pursuant to RCW 10.77.086(4), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.086(4) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the

person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) Except as otherwise provided in this chapter, the state shall comply with RCW 10.77.220 while confining the person. During all court proceedings where the person is present, the person shall be detained in a secure facility. If the proceedings last more than one day, the person may be held in the county jail for the duration of the proceedings, except the person may be returned to the department's custody on weekends and court holidays if the court deems such a transfer feasible. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary. The department shall not place the person, even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

(4) A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to RCW 71.09.090 following initial commitment under this section and in accord with the provisions of this chapter.

WASH. REV. CODE ANN. § 71.09.098 (2010). REVOKING OR MODIFYING TERMS OF CONDITIONAL RELEASE TO LESS RESTRICTIVE ALTERNATIVE -- HEARING -- CUSTODY PENDING HEARING ON REVOCATION OR MODIFICATION

(1) Any service provider submitting reports pursuant to RCW 71.09.096(6), the supervising community corrections officer, the prosecuting agency, or the secretary's designee may petition the court for an immediate hearing for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner believes the released person: (a) Violated or is in violation of the terms and conditions of the court's conditional release order; or (b) is in need of additional care, monitoring, supervision, or treatment.

(2) The community corrections officer or the secretary's designee may restrict the person's movement in the community until the petition is determined by the court. The person may be taken into custody if:

(a) The supervising community corrections officer, the secretary's designee, or a law enforcement officer reasonably believes the person has violated or is in violation of the court's conditional release order; or

(b) The supervising community corrections officer or the secretary's designee reasonably believes that the person is in need of additional care, monitoring, supervision, or treatment because the person presents a danger to himself or herself or others if his or her conditional release under the conditions imposed by the court's release order continues.

(3) (a) Persons taken into custody pursuant to subsection (2) of this section shall:

(i) Not be released until such time as a hearing is held to determine whether to revoke or modify the person's conditional release order and the court has issued its decision; and

(ii) Be held in the county jail, at a secure community transition facility, or at the total confinement facility, at the discretion of the secretary's designee.

(b) The court shall be notified before the close of the next judicial day that the person has been taken into custody and shall promptly schedule a hearing.

(4) Before any hearing to revoke or modify the person's conditional release order, both the prosecuting agency and the released person shall have the right to request an immediate mental examination of the released person. If the conditionally released person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(5) At any hearing to revoke or modify the conditional release order:

(a) The prosecuting agency shall represent the state, including determining whether to proceed with revocation or modification of the conditional release order;

(b) Hearsay evidence is admissible if the court finds that it is otherwise reliable; and

(c) The state shall bear the burden of proving by a preponderance of the evidence that the person has violated or is in violation of the court's conditional release order or that the person is in need of additional care, monitoring, supervision, or treatment.

(6) (a) If the court determines that the state has met its burden referenced in subsection (5)(c) of this section, and the issue before the court is revocation of the court's conditional release order, the court shall consider the evidence presented by the parties and the following factors relevant to whether continuing the person's conditional release is in the person's best interests or adequate to protect the community:

(i) The nature of the condition that was violated by the person or that the person was in violation of in the context of the person's criminal history and underlying mental conditions;

(ii) The degree to which the violation was intentional or grossly negligent;

(iii) The ability and willingness of the released person to strictly comply with the conditional release order;

(iv) The degree of progress made by the person in community-based treatment; and

(v) The risk to the public or particular persons if the conditional release continues under the conditional release order that was violated.

(b) Any factor alone, or in combination, shall support the court's determination to revoke the conditional release order.

(7) If the court determines the state has met its burden referenced in subsection (5)(c) of this section, and the issue before the court is modification of the court's conditional release order, the court shall modify the conditional release order by adding conditions if the court determines that the person is in need of additional care, monitoring, supervision, or treatment. The court has authority to modify its conditional release order by substituting a new treatment provider, requiring new housing for the person, or imposing such additional supervision conditions as the court deems appropriate.

(8) A person whose conditional release has been revoked shall be remanded to the custody of the secretary for control, care, and treatment in a total confinement facility as designated in RCW 71.09.060(1). The person is thereafter eligible for conditional release only in accord with the provisions of RCW 71.09.090 and related statutes.

WEST VIRGINIA

W. VA. CODE ANN. § 27-6A-3 (2010). COMPETENCY OF DEFENDANT TO STAND TRIAL DETERMINATION; PRELIMINARY FINDING; HEARING; EVIDENCE; DISPOSITION.

(a) Within five days of the receipt of the qualified forensic evaluator's report and opinion on the issue of competency to stand trial, the court of record shall make a preliminary finding on the issue of whether the defendant is competent to stand trial and if not competent whether there is a substantial likelihood that the defendant will attain competency within the next three months. If the court of record orders, or if the State or defendant or defendant's counsel within twenty days of receipt of the preliminary findings requests, a hearing, then a hearing shall be held by the court of record within fifteen days of the date of the preliminary finding, absent good cause being shown for a continuance. If a hearing order or request is not filed within twenty days, the preliminary findings of the court become the final order.

(b) At a hearing to determine a defendant's competency to stand trial the defendant has the right to be present and he or she has the right to be represented by counsel and introduce evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the issues at the hearing and shall have access to all forensic evaluator's opinions. All rights generally afforded a defendant in criminal proceedings shall be afforded to a defendant in the competency proceedings, except trial by jury.

(c) The court of record pursuant to a preliminary finding or hearing on the issue of a

defendant's competency to stand trial and with due consideration of any forensic evaluation conducted pursuant to sections two [§ 27-6A-2] and three [§ 27-6A-3] of this article shall make a finding of fact upon a preponderance of the evidence as to the defendant's competency to stand trial based on whether or not the defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and whether he or she has a rational as well as a factual understanding of the proceedings against him or her.

(d) If at any point in the proceedings the defendant is found competent to stand trial, the court of record shall forthwith proceed with the criminal proceedings.

(e) If at any point in the proceedings the defendant is found not competent to stand trial, the court of record shall at the same hearing, upon the evidence, make further findings as to whether or not there is a substantial likelihood that the defendant will attain competency within the next ensuing three months.

(f) If at any point in the proceedings the defendant is found not competent to stand trial and is found substantially likely to attain competency, the court of record shall in the same order, upon the evidence, make further findings as to whether the defendant requires, in order to attain competency, inpatient management in a mental health facility. If inpatient management is required, the court shall order the defendant be committed to an inpatient mental health facility designated by the department to attain competency to stand trial and for a competency evaluation. The term of this commitment may not exceed three months from the time of entry into the facility. However, upon request by the chief medical officer of the mental health facility and based on the requirement for additional management to attain competency to stand trial, the court of record may, prior to the termination of the three-month period, extend the period up to nine months from entry into the facility. A forensic evaluation of competency to stand trial shall be conducted by a qualified forensic evaluator and a report rendered to the court, in like manner as subsections (a) and (c), section two [§ 27-6A-2] of this article, every three months until the court determines the defendant is not competent to stand trial and is not substantially likely to attain competency.

(g) If at any point in the proceedings the defendant is found not competent to stand trial and is found not substantially likely to attain competency and if the defendant has been indicted or charged with a misdemeanor or felony which does not involve an act of violence against a person, the criminal charges shall be dismissed. The dismissal order may, however, be stayed for twenty days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five [§§ 27-5-1 et seq.] of this chapter. The defendant shall be immediately released from any inpatient facility unless civilly committed.

(h) If at any point in the proceedings the defendant is found not competent to stand trial and is found not substantially likely to attain competency, and if the defendant has been indicted or charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act of violence against a person, then the court shall determine on the

record the offense or offenses of which the person otherwise would have been convicted, and the maximum sentence he or she could have received. A defendant shall remain under the court's jurisdiction until the expiration of the maximum sentence unless the defendant attains competency to stand trial and the criminal charges reach resolution or the court dismisses the indictment or charge. The court shall order the defendant be committed to a mental health facility designated by the department that is the least restrictive environment to manage the defendant and that will allow for the protection of the public. Notice of the maximum sentence period with an end date shall be provided to the mental health facility. The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be completed within thirty days of admission to the mental health facility and a report rendered to the court within ten business days of the completion of the evaluation. The medical director of the mental health facility shall provide the court a written clinical summary report of the defendant's condition at least annually during the time of the court's jurisdiction. The court's jurisdiction shall continue an additional ten days beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five [§§ 27-5-1 et seq.] of this chapter. The defendant shall then be immediately released from the facility unless civilly committed.

(i) If the defendant has been ordered to a mental health facility pursuant to subsection (h) of this section and the court receives notice from the medical director or other responsible official of the mental health facility that the defendant no longer constitutes a significant danger to self or others, the court shall conduct a hearing within thirty days to consider evidence, with due consideration of the qualified forensic evaluator's dangerousness report or clinical summary report to determine if the defendant shall be released to a less restrictive environment. The court may order the release of the defendant only when the court finds that the defendant is no longer a significant danger to self or others. When a defendant's dangerousness risk factors associated with mental illness are reduced or eliminated as a result of any treatment, the court, in its discretion, may make the continuance of appropriate treatment, including medications, a condition of the defendant's release from inpatient hospitalization. The court shall maintain jurisdiction of the defendant in accordance with said subsection. Upon notice that a defendant ordered to a mental health facility pursuant to said subsection who is released on the condition that he or she continues treatment does not continue his or her treatment, the prosecuting attorney shall, by motion, cause the court to reconsider the defendant's release. Upon a showing that defendant is in violation of the conditions of his or her release, the court shall reorder the defendant to a mental health facility under the authority of the department which is the least restrictive setting that will allow for the protection of the public.

(j) The prosecuting attorney may, by motion, and in due consideration of any chief medical officer's or forensic evaluator's reports, cause the competency to stand trial of a defendant subject to the court's jurisdiction pursuant to subsection (h) of this section or released pursuant to subsection (i) of this section to be determined by the court of record while the defendant remains under the jurisdiction of the court, and in which case the court may order a forensic evaluation of competency to stand trial be conducted by a

qualified forensic evaluator and a report rendered to the court in like manner as subsections (a) and (c), section two [§ 27-6A-2] of this article.

(k) Any defendant found not competent to stand trial may at any time petition the court of record for a hearing on his or her competency.

(l) Notice of court findings of a defendant's competency to stand trial, of commitment for inpatient management to attain competency, of dismissal of charges, of order for inpatient management to protect the public, of release or conditional release, or any hearings to be conducted pursuant to this section shall be sent to the prosecuting attorney, the defendant and his or her counsel, and the mental health facility. Notice of court release hearing or order for release or conditional release pursuant to subsection (i) of this section shall be made available to the victim or next of kin of the victim of the offense for which the defendant was charged. The burden is on the victim or next of kin of the victim to keep the court apprised of that person's current mailing address.

(m) A mental health facility not operated by the State is not obligated to admit or treat a defendant under this section.

W. VA. CODE ANN. § 27-6A-4 (2010). CRIMINAL RESPONSIBILITY OR DIMINISHED CAPACITY EVALUATION; COURT JURISDICTION OVER PERSONS FOUND NOT GUILTY BY REASON OF MENTAL ILLNESS.

(a) If the court of record finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's criminal responsibility or diminished capacity will be a significant factor in his or her defense, the court shall appoint one or more qualified forensic psychiatrists or qualified forensic psychologists to conduct a forensic evaluation of the defendant's state of mind at the time of the alleged offense. However, if a qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial that no criminal responsibility or diminished capacity evaluation may be conducted. The forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant has been ordered to a mental health facility in accordance with subsection (c), section two [§ 27-6A-2] of this article or subsection (f) or (h), section three [§ 27-6A-3] of this article. To the extent possible, qualified forensic evaluators who have conducted evaluations of competency under subsection (a), section two of this chapter shall be used to evaluate criminal responsibility or diminished capacity under this subsection.

(b) The court shall require the party making the motion for the evaluations, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluation within ten business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;

(2) Information pertaining to the alleged crime, including statements by the defendant

made to the police, investigative reports and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical or social records that are considered relevant;

(4) A copy of the defendant's criminal record; and

(5) If the evaluation is to include a diminished capacity assessment, the nature of any lesser criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange within fifteen days of the receipt of appropriate documents the completion of any court-ordered evaluation which may include record review and defendant interview and shall, within ten business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of criminal responsibility and if ordered, on diminished capacity. The court may extend the ten-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed thirty days. If there are no objections by the State or defense counsel, the court may, by order, dismiss the requirement for a written report if the qualified forensic evaluator's opinion may otherwise be made known to the court and interested parties.

(d) If the court determines that the defendant has been uncooperative during a forensic evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section, and the court has reason to believe that an observation period and additional forensic evaluation or evaluations are necessary in order to determine if a defendant was criminally responsible or with diminished capacity, the court may order the defendant be admitted to a mental health facility designated by the department for a period not to exceed fifteen days and an additional evaluation be conducted and a report rendered in like manner as subsections (a) and (b) of this section by one or more qualified forensic psychiatrists or one or more qualified forensic psychologists. At the conclusion of the observation period, the court shall enter a disposition order and the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness, the court shall determine on the record the offense or offenses of which the acquitee could have otherwise been convicted, and the maximum sentence he or she could have received. The acquitee shall remain under the court's jurisdiction until the expiration of the maximum sentence or until discharged by the court. The court shall commit the acquitee to a mental health facility designated by the department that is the least restrictive environment to manage the acquitee and that will allow for the protection of the public. Notice of the maximum sentence period with end date shall be provided to the mental health facility. The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be completed within

thirty days of admission to the mental health facility and a report rendered to the court within ten business days of the completion of the evaluation. The medical director of the mental health facility shall provide the court a written clinical summary report of the defendant's condition at least annually during the time of the court's jurisdiction. The court's jurisdiction continues an additional ten days beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five [§§ 27-5-1 et seq.] of this chapter. The defendant shall then be immediately released from the facility unless civilly committed.

(f) In addition to any court-ordered evaluations completed pursuant to section two [§ 27-6A-2], three [§ 27-6A-3] or four [§ 27-6A-4] of this article, the defendant or the State has the right to an evaluation or evaluations by a forensic evaluator or evaluators of his or her choice and at his or her expense.

(g) A mental health facility not operated by the State is not required to admit or treat a defendant or acquitee under this section.

W. VA. CODE ANN. § 62-11E-1 (2010). LEGISLATIVE FINDINGS AND INTENT.

The Legislature finds:

(1) That a small but extremely dangerous group of sexually violent offenders exist who do not have a mental disease or defect that renders them appropriate for involuntary hospitalization pursuant to chapter twenty-seven [§§ 27-1-1 et seq.] of this code, which is intended to be a short-term civil commitment system that is primarily designed to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast, these offenders, known as sexually violent predators, generally have personality disorders and/or mental abnormalities which are largely unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually violent behavior.

(2) That the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure is inadequate to address the risk to re-offend because during confinement these predators do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement.

(3) That the prognosis for curing sexually violent predators is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from the traditional treatment modalities for people appropriate for commitment under chapter twenty-seven of this code.

(4) It is therefore the purpose of this article to establish a public-private task force to identify and develop measures providing for the appropriate treatment of sexually violent predators lasting until they are no longer dangerous to the public. The measures should

reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.

W. VA. CODE ANN. § 62-11E-2 (2010). SEXUALLY VIOLENT PREDATOR MANAGEMENT TASK FORCE CREATED; DUTIES.

(a) There is hereby created the "Sexually Violent Predator Management Task Force." The task force shall consist of the following persons:

(1) The Commissioner of the Division of Corrections, or his or her designee;

(2) The Commissioner of the Bureau for Behavioral Health and Health Facilities, or his or her designee;

(3) The Executive Director of the West Virginia Prosecuting Attorney's Institute, or his or her designee;

(4) The Executive Director of Public Defender Services, or his or her designee;

(5) The Director of the Division of Criminal Justice Services, or his or her designee;

(6) The President of the Sex Offender Registration Advisory Board, or his or her designee;

(7) The Superintendent of the West Virginia State Police, or his or her designee; and

(8) Four public members appointed by the Governor with the advice and consent of the Senate as follows:

(i) A forensic psychiatrist with experience evaluating persons charged with sexually violent offenses;

(ii) A forensic psychologist with experience evaluating persons charged with sexually violent offenses;

(iii) A prosecuting attorney with experience prosecuting persons for sexually violent offenses; and

(iv) A public defender or private criminal defense attorney: Provided, That the person have experience defending persons charged with committing sexually violent offenses.

(b) The task force also may invite, as it deems necessary, other individuals with certain specialties to join the task force as members, including, but not limited to, probation officers and current or former members of the judiciary in West Virginia. The Commissioner of the Division of Corrections shall chair the task force.

(c) Each ex officio member of the task force is entitled to be reimbursed by their employing agency for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the Department of Administration. All other expenses incurred by the task force shall be paid by the Division of Corrections.

(d) It shall be the duty of the task force to develop measures for the appropriate treatment of sexually violent predators, assess resources and circumstances specific to West Virginia, examine constitutional, statutory and regulatory requirements with which such measures must comply, identify the administrative and financial impact of those measures and develop a plan for implementation of the measures by a date certain. In fulfilling those duties, the task force, at a minimum, shall:

(1) Consult with psychiatrists and psychologists regarding the management of sexually violent predators, including, but not limited to, their diagnosis and treatment;

(2) Evaluate current involuntary commitment procedures set forth in chapter twenty-seven [§§ 27-1-1 et seq.] of this code and how they may interact with the state's management of sexually violent predators;

(3) Survey the mental health resources offered by state agencies, including, but not limited to, current treatment resources for sexually violent predators in all phases of the correctional, probation and parole systems;

(4) Assess what, if any, state resources exist for use in the confinement of sexually violent predators;

(5) Examine the interaction between criminal penalties for sexually violent offenses and the management of sexually violent predators;

(6) Consider other states' approaches to managing sexually violent offenders released after the completion of their criminal sentences;

(7) Conduct interviews with relevant personnel inside and outside of state government; and

(8) Determine the fiscal impact of any of its recommendations.

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WIS. STAT. ANN. § 971.14 (2010). COMPETENCY PROCEEDINGS.

(1g) DEFINITION.

In this section, "department" means the department of health services.

(1r) PROCEEDINGS.

(a) The court shall proceed under this section whenever there is reason to doubt a defendants competency to proceed.

(b) If reason to doubt competency arises after the defendant has been bound over for trial after a preliminary examination, or after a finding of guilty has been rendered by the jury or made by the court, a probable cause determination shall not be required and the court shall proceed under sub. (2) (c) Except as provided in par. (b), the court shall not proceed under sub. (2) until it has found that it is probable that the defendant committed the offense charged. The finding may be based upon the complaint or, if the defendant submits an affidavit alleging with particularity that the averments of the complaint are materially false, upon the complaint and the evidence presented at a hearing ordered by the court. The defendant may call and cross-examine witnesses at a hearing under this paragraph but the court shall limit the issues and witnesses to those required for determining probable cause. Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of the hearing by telephone or live audiovisual means. If the court finds that any charge lacks probable cause, it shall dismiss the charge without prejudice and release the defendant except as provided in s. 971.31 (6)

(2) EXAMINATION.

(a) The court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant. If an inpatient examination is determined by the court to be necessary, the defendant may be committed to a suitable mental health facility for the examination period specified in par. (c), which shall be deemed days spent in custody under s. 973.155 If the examination is to be conducted by the department, the court shall order the individual to the facility designated by the department.

(am) Notwithstanding par. (a), if the court orders the defendant to be examined by the department or a department facility, the department shall determine where the examination will be conducted, who will conduct the examination and whether the examination will be conducted on an inpatient or outpatient basis. Any such outpatient examination shall be conducted in a jail or a locked unit of a facility. In any case under this paragraph in which the department determines that an inpatient examination is necessary, the 15-day period under par. (c) begins upon the arrival of the defendant at the inpatient facility. If an outpatient examination is begun by or through the department, and the department later determines that an inpatient examination is necessary, the sheriff shall transport the defendant to the inpatient facility designated by the department, unless the defendant has been released on bail.

(b) If the defendant has been released on bail, the court may not order an involuntary inpatient examination unless the defendant fails to cooperate in the examination or the examiner informs the court that inpatient observation is necessary for an adequate

examination.

(c) Inpatient examinations shall be completed and the report of examination filed within 15 days after the examination is ordered or as specified in par. (am), whichever is applicable, unless, for good cause, the facility or examiner appointed by the court cannot complete the examination within this period and requests an extension. In that case, the court may allow one 15-day extension of the examination period. Outpatient examinations shall be completed and the report of examination filed within 30 days after the examination is ordered.

(d) If the court orders that the examination be conducted on an inpatient basis, the sheriff of the county in which the court is located shall transport any defendant not free on bail to the examining facility within a reasonable time after the examination is ordered and shall transport the defendant to the jail within a reasonable time after the sheriff and county department of community programs of the county in which the court is located receive notice from the examining facility that the examination has been completed.

(e) The examiner shall personally observe and examine the defendant and shall have access to his or her past or present treatment records, as defined under s. 51.30 (1) (b) (f) A defendant ordered to undergo examination under this section may receive voluntary treatment appropriate to his or her medical needs. The defendant may refuse medication and treatment except in a situation where the medication or treatment is necessary to prevent physical harm to the defendant or others.

(g) The defendant may be examined for competency purposes at any stage of the competency proceedings by physicians or other experts chosen by the defendant or by the district attorney, who shall be permitted reasonable access to the defendant for purposes of the examination.

(3) REPORT.

The examiner shall submit to the court a written report which shall include all of the following:

(a) A description of the nature of the examination and an identification of the persons interviewed, the specific records reviewed and any tests administered to the defendant.

(b) The clinical findings of the examiner.

(c) The examiners opinion regarding the defendants present mental capacity to understand the proceedings and assist in his or her defense.

(d) If the examiner reports that the defendant lacks competency, the examiners opinion regarding the likelihood that the defendant, if provided treatment, may be restored to competency within the time period permitted under sub. (5) (a) The examiner shall provide an opinion as to whether the defendants treatment should occur in an inpatient

facility designated by the department, in a community-based treatment program under the supervision of the department, or in a jail or a locked unit of a facility that has entered into a voluntary agreement with the state to serve as a location for treatment.

(dm) If sufficient information is available to the examiner to reach an opinion, the examiners opinion on whether the defendant needs medication or treatment and whether the defendant is not competent to refuse medication or treatment. The defendant is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the defendant, one of the following is true:

1. The defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

2. The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(e) The facts and reasoning, in reasonable detail, upon which the findings and opinions under pars. (b) to (dm) are based.

(4) HEARING.

(a) The court shall cause copies of the report to be delivered forthwith to the district attorney and the defense counsel, or the defendant personally if not represented by counsel. Upon the request of the sheriff or jailer charged with care and control of the jail in which the defendant is being held pending or during a trial or sentencing proceeding, the court shall cause a copy of the report to be delivered to the sheriff or jailer. The sheriff or jailer may provide a copy of the report to the person who is responsible for maintaining medical records for inmates of the jail, or to a nurse licensed under ch. 441, or to a physician or physician assistant licensed under subch. II of ch. 448 who is a health care provider for the defendant or who is responsible for providing health care services to inmates of the jail. The report shall not be otherwise disclosed prior to the hearing under this subsection.

(b) If the district attorney, the defendant and defense counsel waive their respective opportunities to present other evidence on the issue, the court shall promptly determine the defendants competency and, if at issue, competency to refuse medication or treatment for the defendants mental condition on the basis of the report filed under sub. (3) or (5) In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of the hearing by telephone or live audiovisual means. At the commencement of the hearing, the judge shall ask the defendant whether he or she claims to be competent or incompetent. If the defendant stands mute or claims to be

incompetent, the defendant shall be found incompetent unless the state proves by the greater weight of the credible evidence that the defendant is competent. If the defendant claims to be competent, the defendant shall be found competent unless the state proves by evidence that is clear and convincing that the defendant is incompetent. If the defendant is found incompetent and if the state proves by evidence that is clear and convincing that the defendant is not competent to refuse medication or treatment, under the standard specified in sub. (3) (dm), the court shall make a determination without a jury and issue an order that the defendant is not competent to refuse medication or treatment for the defendants mental condition and that whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.

(c) If the court determines that the defendant is competent, the criminal proceeding shall be resumed.

(d) If the court determines that the defendant is not competent and not likely to become competent within the time period provided in sub. (5) (a), the proceedings shall be suspended and the defendant released, except as provided in sub. (6) (b)

(5) COMMITMENT.

(a)

1. If the court determines that the defendant is not competent but is likely to become competent within the period specified in this paragraph if provided with appropriate treatment, the court shall suspend the proceedings and commit the defendant to the custody of the department for treatment for a period not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. The department shall determine whether the defendant will receive treatment in an appropriate institution designated by the department, while under the supervision of the department in a community-based treatment program under contract with the department, or in a jail or a locked unit of a facility that has entered into a voluntary agreement with the state to serve as a location for treatment. The sheriff shall transport the defendant to the institution, program, jail, or facility, as determined by the department.

2. If, under subd. 1., the department commences services to a defendant in jail or in a locked unit, the department shall, as soon as possible, transfer the defendant to an institution or provide services to the defendant in a community-based treatment program consistent with this subsection.

3. Days spent in commitment under this paragraph are considered days spent in custody under s. 973.155

4. A defendant under the supervision of the department placed under this paragraph in a community-based treatment program is in the custody and control of the department, subject to any conditions set by the department. If the department believes that the

defendant under supervision has violated a condition, or that permitting the defendant to remain in the community jeopardizes the safety of the defendant or another person, the department may designate an institution at which the treatment shall occur and may request that the court reinstate the proceedings, order the defendant transported by the sheriff to the designated institution, and suspend proceedings consistent with subd. 1.
(am) If the defendant is not subject to a court order determining the defendant to be not competent to refuse medication or treatment for the defendants mental condition and if the department determines that the defendant should be subject to such a court order, the department may file with the court, with notice to the counsel for the defendant, the defendant, and the district attorney, a motion for a hearing, under the standard specified in sub. (3) (dm), on whether the defendant is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the defendant needs medication or treatment and that the defendant is not competent to refuse medication or treatment, based on an examination of the defendant by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall, under the procedures and standards specified in sub. (4) (b), determine the defendants competency to refuse medication or treatment for the defendants mental condition. At the request of the defendant, the defendants counsel, or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph.

(b) The defendant shall be periodically reexamined by the department examiners. Written reports of examination shall be furnished to the court 3 months after commitment, 6 months after commitment, 9 months after commitment and within 30 days prior to the expiration of commitment. Each report shall indicate either that the defendant has become competent, that the defendant remains incompetent but that attainment of competency is likely within the remaining commitment period, or that the defendant has not made such progress that attainment of competency is likely within the remaining commitment period. Any report indicating such a lack of sufficient progress shall include the examiners opinion regarding whether the defendant is mentally ill, alcoholic, drug dependent, developmentally disabled or infirm because of aging or other like incapacities.

(c) Upon receiving a report under par. (b) indicating the defendant has regained competency or is not competent and unlikely to become competent in the remaining commitment period, the court shall hold a hearing within 14 days of receipt of the report and the court shall proceed under sub. (4) If the court determines that the defendant has become competent, the defendant shall be discharged from commitment and the criminal proceeding shall be resumed. If the court determines that the defendant is making sufficient progress toward becoming competent, the commitment shall continue.

(d) If the defendant is receiving medication the court may make appropriate orders for the continued administration of the medication in order to maintain the competence of the defendant for the duration of the proceedings. If a defendant who has been restored to competency thereafter again becomes incompetent, the maximum commitment period

under par. (a) shall be 18 months minus the days spent in previous commitments under this subsection, or 12 months, whichever is less.

(6) DISCHARGE; CIVIL PROCEEDINGS.

(a) If the court determines that it is unlikely that the defendant will become competent within the remaining commitment period, it shall discharge the defendant from the commitment and release him or her, except as provided in par. (b) The court may order the defendant to appear in court at specified intervals for redetermination of his or her competency to proceed.

(b) When the court discharges a defendant from commitment under par. (a), it may order that the defendant be taken immediately into custody by a law enforcement official and promptly delivered to a facility specified in s. 51.15 (2), an approved public treatment facility under s. 51.45 (2) (c), or an appropriate medical or protective placement facility. Thereafter, detention of the defendant shall be governed by s. 51.15, 51.45 (11), or 55.135, as appropriate. The district attorney or corporation counsel may prepare a statement meeting the requirements of s. 51.15 (4) or (5), 51.45 (13) (a), or 55.135 based on the allegations of the criminal complaint and the evidence in the case. This statement shall be given to the director of the facility to which the defendant is delivered and filed with the branch of circuit court assigned to exercise criminal jurisdiction in the county in which the criminal charges are pending, where it shall suffice, without corroboration by other petitioners, as a petition for commitment under s. 51.20 or 51.45 (13) or a petition for protective placement under s. 55.075 This section does not restrict the power of the branch of circuit court in which the petition is filed to transfer the matter to the branch of circuit court assigned to exercise jurisdiction under ch. 51 in the county. Days spent in commitment or protective placement pursuant to a petition under this paragraph shall not be deemed days spent in custody under s. 973.155 (c) If a person is committed under s. 51.20 pursuant to a petition under par. (b), the county department under s. 51.42 or 51.437 to whose care and custody the person is committed shall notify the court which discharged the person under par. (a), the district attorney for the county in which that court is located and the persons attorney of record in the prior criminal proceeding at least 14 days prior to transferring or discharging the defendant from an inpatient treatment facility and at least 14 days prior to the expiration of the order of commitment or any subsequent consecutive order, unless the county department or the department of health services has applied for an extension.

(d) Counsel who have received notice under par. (c) or who otherwise obtain information that a defendant discharged under par. (a) may have become competent may move the court to order that the defendant undergo a competency examination under sub. (2) If the court so orders, a report shall be filed under sub. (3) and a hearing held under sub. (4) If the court determines that the defendant is competent, the criminal proceeding shall be resumed. If the court determines that the defendant is not competent, it shall release him or her but may impose such reasonable nonmonetary conditions as will protect the public and enable the court and district attorney to discover whether the person subsequently becomes competent.

WIS. STAT. ANN. § 971.165 (2010). TRIAL OF ACTIONS UPON PLEA OF NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT.

(1) If a defendant couples a plea of not guilty with a plea of not guilty by reason of mental disease or defect:

(a) There shall be a separation of the issues with a sequential order of proof in a continuous trial. The plea of not guilty shall be determined first and the plea of not guilty by reason of mental disease or defect shall be determined second.

(b) If the plea of not guilty is tried to a jury, the jury shall be informed of the 2 pleas and that a verdict will be taken upon the plea of not guilty before the introduction of evidence on the plea of not guilty by reason of mental disease or defect. No verdict on the first plea may be valid or received unless agreed to by all jurors.

(c) If both pleas are tried to a jury, that jury shall be the same, except that:

1. If one or more jurors who participated in determining the first plea become unable to serve, the remaining jurors shall determine the 2nd plea.

2. If the jury is discharged prior to reaching a verdict on the 2nd plea, the defendant shall not solely on that account be entitled to a redetermination of the first plea and a different jury may be selected to determine the 2nd plea only.

3. If an appellate court reverses a judgment as to the 2nd plea but not as to the first plea and remands for further proceedings, or if the trial court vacates the judgment as to the 2nd plea but not as to the first plea, the 2nd plea may be determined by a different jury selected for this purpose.

(d) If the defendant is found not guilty, the court shall enter a judgment of acquittal and discharge the defendant. If the defendant is found guilty, the court shall withhold entry of judgment pending determination of the 2nd plea.

(2) If the plea of not guilty by reason of mental disease or defect is tried to a jury, the court shall inform the jury that the effect of a verdict of not guilty by reason of mental disease or defect is that, in lieu of criminal sentence or probation, the defendant will be committed to the custody of the department of health services and will be placed in an appropriate institution unless the court determines that the defendant would not pose a danger to himself or herself or to others if released under conditions ordered by the court. No verdict on the plea of not guilty by reason of mental disease or defect may be valid or received unless agreed to by at least five-sixths of the jurors.

(3) (a) If a defendant is not found not guilty by reason of mental disease or defect, the court shall enter a judgment of conviction and shall either impose or withhold sentence under s. 972.13 (2) (b) If a defendant is found not guilty by reason of mental disease or defect, the court shall enter a judgment of not guilty by reason of mental disease or

defect. The court shall thereupon proceed under s. 971.17 A judgment entered under this paragraph is interlocutory to the commitment order entered under s. 971.17 and reviewable upon appeal therefrom.

WIS. STAT. ANN. § 971.17 (2010). COMMITMENT OF PERSONS FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR MENTAL DEFECT.

(1) COMMITMENT PERIOD.

(a) Felonies committed before July 30, 2002. Except as provided in par. (c), when a defendant is found not guilty by reason of mental disease or mental defect of a felony committed before July 30, 2002, the court shall commit the person to the department of health services for a specified period not exceeding two-thirds of the maximum term of imprisonment that could be imposed against an offender convicted of the same felony, including imprisonment authorized by any applicable penalty enhancement statutes, subject to the credit provisions of s. 973.155 (b) Felonies committed on or after July 30, 2002. Except as provided in par. (c), when a defendant is found not guilty by reason of mental disease or mental defect of a felony committed on or after July 30, 2002, the court shall commit the person to the department of health services for a specified period not exceeding the maximum term of confinement in prison that could be imposed on an offender convicted of the same felony, plus imprisonment authorized by any applicable penalty enhancement statutes, subject to the credit provisions of s. 973.155 (c) Felonies punishable by life imprisonment. If a defendant is found not guilty by reason of mental disease or mental defect of a felony that is punishable by life imprisonment, the commitment period specified by the court may be life, subject to termination under sub. (5) (d) Misdemeanors. When a defendant is found not guilty by reason of mental disease or mental defect of a misdemeanor, the court shall commit the person to the department of health services for a specified period not exceeding two-thirds of the maximum term of imprisonment that could be imposed against an offender convicted of the same misdemeanor, including imprisonment authorized by any applicable penalty enhancement statutes, subject to the credit provisions of s. 973.155

(1g) If the defendant under sub. (1) is found not guilty of a felony by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.29

(1h) NOTICE OF RESTRICTIONS ON POSSESSION OF BODY ARMOR.

If the defendant under sub. (1) is found not guilty of a violent felony, as defined in s. 941.291 (1) (b), by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.291

(1j) SEXUAL ASSAULT; LIFETIME SUPERVISION.

(a) In this subsection, "serious sex offense" has the meaning given in s. 939.615 (1) (b) (b) If a person is found not guilty by reason of mental disease or defect of a serious sex offense, the court may, in addition to committing the person to the department of health

services under sub. (1), place the person on lifetime supervision under s. 939.615 if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

(1m) SEXUAL ASSAULT; REGISTRATION AND TESTING.

(a) If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b)

1m.

a. Except as provided in subd. 2m., if the defendant under sub. (1) is found not guilty by reason of mental disease or defect for any violation, or for the solicitation, conspiracy, or attempt to commit any violation, of ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the defendant to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the defendant report under s. 301.45

b. If a court under subd. 1m. a. orders a person to comply with the reporting requirements under s. 301.45 in connection with a finding of not guilty by reason of mental disease or defect for a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09 and the person was under the age of 21 when he or she committed the offense, the court may provide that upon termination of the commitment order under sub. (5) or expiration of the order under sub. (6) the person be released from the requirement to comply with the reporting requirements under s. 301.45

2m. If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the defendant was not the victims parent, the court shall require the defendant to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the defendant, that the defendant is not required to comply under s. 301.45 (1m)

3. In determining under subd. 1m. a. whether it would be in the interest of public protection to have the defendant report under s. 301.45, the court may consider any of the following:

a. The ages, at the time of the violation, of the defendant and the victim of the violation.

b. The relationship between the defendant and the victim of the violation.

c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

d. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

e. The probability that the defendant will commit other violations in the future.

g. Any other factor that the court determines may be relevant to the particular case.

4. If the court orders a defendant to comply with the reporting requirements under s. 301.45, the court may order the defendant to continue to comply with the reporting requirements until his or her death.

5. If the court orders a defendant to comply with the reporting requirements under s. 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding of not guilty by reason of mental disease or defect on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding has been reversed, set aside or vacated.

(2) INVESTIGATION AND EXAMINATION.

(a) The court shall enter an initial commitment order under this section pursuant to a hearing held as soon as practicable after the judgment of not guilty by reason of mental disease or mental defect is entered. If the court lacks sufficient information to make the determination required by sub. (3) immediately after trial, it may adjourn the hearing and order the department of health services to conduct a predisposition investigation using the procedure in s. 972.15 or a supplementary mental examination or both, to assist the court in framing the commitment order.

(b) If a supplementary mental examination is ordered under par. (a), the court may appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the person. In lieu thereof, the court may commit the person to an appropriate mental health facility for the period specified in par. (c), which shall count as days spent in custody under s. 973.155 (c) An examiner shall complete an inpatient examination under par. (b) and file the report within 15 days after the examination is ordered unless, for good cause, the examiner cannot complete the examination and requests an extension. In that case, the court may allow one 15-day extension of the examination period. An examiner shall complete an outpatient examination and file the report of examination within 15 days after the examination is ordered.

(d) If the court orders an inpatient examination under par. (b), it shall arrange for the transportation of the person to the examining facility within a reasonable time after the examination is ordered and for the person to be returned to the jail or court within a reasonable time after the examination has been completed.

(e) The examiner appointed under par. (b) shall personally observe and examine the person. The examiner or facility shall have access to the persons past or present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c) If the examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(f) The costs of an examination ordered under par. (a) shall be paid by the county upon the order of the court as part of the costs of the action.

(g) Within 10 days after the examiners report is filed under par. (c), the court shall hold a hearing to determine whether commitment shall take the form of institutional care or conditional release.

(3) COMMITMENT ORDER.

(a) An order for commitment under this section shall specify either institutional care or conditional release. The court shall order institutional care if it finds by clear and convincing evidence that conditional release of the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage. If the court does not make this finding, it shall order conditional release. In determining whether commitment shall be for institutional care or conditional release, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the persons mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(b) If the state proves by clear and convincing evidence that the person is not competent to refuse medication or treatment for the persons mental condition, under the standard specified in s. 971.16 (3), the court shall issue, as part of the commitment order, an order that the person is not competent to refuse medication or treatment for the persons mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

(c) If the court order specifies institutional care, the department of health services shall place the person in an institution under s. 51.37 (3) that the department considers appropriate in light of the rehabilitative services required by the person and the protection of public safety. If the person is not subject to a court order determining the person to be not competent to refuse medication or treatment for the persons mental condition and if the institution in which the person is placed determines that the person should be subject

to such a court order, the institution may file with the court, with notice to the person and his or her counsel and the district attorney, a motion for a hearing, under the standard specified in s. 971.16 (3), on whether the person is not competent to refuse medication or treatment. A report on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the person needs medication or treatment and that the person is not competent to refuse medication or treatment, based on an examination of the person by a licensed physician. Within 10 days after a motion is filed under this paragraph, the court shall determine the persons competency to refuse medication or treatment for the persons mental condition. At the request of the person, his or her counsel or the district attorney, the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed under this paragraph. If the district attorney, the person and his or her counsel waive their respective opportunities to present other evidence on the issue, the court shall determine the persons competency to refuse medication or treatment on the basis of the report accompanying the motion. In the absence of these waivers, the court shall hold an evidentiary hearing on the issue. If the state proves by evidence that is clear and convincing that the person is not competent to refuse medication or treatment, under the standard specified in s. 971.16 (3), the court shall order that the person is not competent to refuse medication or treatment for the persons mental condition and that whoever administers the medication or treatment to the person shall observe appropriate medical standards.

(d) If the court finds that the person is appropriate for conditional release, the court shall notify the department of health services. The department of health services and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the persons need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health services may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 21 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health services and person to be released request additional time to develop the plan. If the county department of the persons county of residence declines to prepare a plan, the department of health services may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the individual will be living in that county.

(e) An order for conditional release places the person in the custody and control of the department of health services. A conditionally released person is subject to the conditions set by the court and to the rules of the department of health services. Before a person is conditionally released by the court under this subsection, the court shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement under this paragraph does not apply if a municipal

department or county sheriff submits to the court a written statement waiving the right to be notified. If the department of health services alleges that a released person has violated any condition or rule, or that the safety of the person or others requires that conditional release be revoked, he or she may be taken into custody under the rules of the department. The department of health services shall submit a statement showing probable cause of the detention and a petition to revoke the order for conditional release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located within 72 hours after the detention, excluding Saturdays, Sundays, and legal holidays. The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the department of health services may detain the person in a jail or in a hospital, center or facility specified by s. 51.15 (2) The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked. If the court determines after hearing that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked, it may revoke the order for conditional release and order that the released person be placed in an appropriate institution under s. 51.37 (3) until the expiration of the commitment or until again conditionally released under this section.

(4) PETITION FOR CONDITIONAL RELEASE.

(a) Any person who is committed for institutional care may petition the committing court to modify its order by authorizing conditional release if at least 6 months have elapsed since the initial commitment order was entered, the most recent release petition was denied or the most recent order for conditional release was revoked. The director of the facility at which the person is placed may file a petition under this paragraph on the persons behalf at any time.

(b) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney and, subject to sub. (7) (b), refer the matter to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (j) If the person petitions through counsel, his or her attorney shall serve the district attorney.

(c) Within 20 days after receipt of the petition, the court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners shall have reasonable access to the person for purposes of examination and to the persons past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c) If any such examiner believes that the person is appropriate for conditional release, the examiner shall report on the type of treatment and services that the person may need while in the community on conditional release.

(d) The court, without a jury, shall hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) The court shall grant the petition unless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage if conditionally released. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the persons mental history and present mental condition, where the person will live, how the person will support himself or herself, what arrangements are available to ensure that the person has access to and will take necessary medication, and what arrangements are possible for treatment beyond medication.

(e)

1. If the court finds that the person is appropriate for conditional release, the court shall notify the department of health services. Subject to subd. 2. and 3., the department of health services and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall address the persons need, if any, for supervision, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The department of health services may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for conditional release, unless the county department, department of health services and person to be released request additional time to develop the plan.

2. If the county department of the persons county of residence declines to prepare a plan, the department of health services may arrange for any other county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. This subdivision does not apply if the person was found not guilty of a sex offense, as defined in s. 301.45 (1d) (b), by reason of mental disease or defect.

3. If the county department for the persons county of residence declines to prepare a plan for a person who was found not guilty of a sex offense, as defined in s. 301.45 (1d) (b), by reason of mental disease or defect, the department may arrange for any of the following counties to prepare a plan if the county agrees to do so:

a. The county in which the person was found not guilty by reason of mental disease or defect, if the person will be living in that county.

b. A county in which a treatment facility for sex offenders is located, if the person will be living in that facility.

(4m) NOTICE ABOUT CONDITIONAL RELEASE.

(a) In this subsection:

1. "Crime" has the meaning designated in s. 949.01 (1)

2. "Member of the family" means spouse, domestic partner under ch. 770, child, sibling, parent or legal guardian.

3. "Victim" means a person against whom a crime has been committed.

(b) If the court conditionally releases a defendant under this section, the district attorney shall do all of the following in accordance with par. (c):

1. Make a reasonable attempt to notify the victim of the crime committed by the defendant or, if the victim died as a result of the crime, an adult member of the victims family or, if the victim is younger than 18 years old, the victims parent or legal guardian.

2. Notify the department of corrections.

(c) The notice under par. (b) shall inform the department of corrections and the person under par. (b) 1. of the defendants name and conditional release date. The district attorney shall send the notice, postmarked no later than 7 days after the court orders the conditional release under this section, to the department of corrections and to the last-known address of the person under par. (b) 1. (d) Upon request, the department of health services shall assist district attorneys in obtaining information regarding persons specified in par. (b) 1.

(5) PETITION FOR TERMINATION.

A person on conditional release, or the department of health services on his or her behalf, may petition the committing court to terminate the order of commitment. If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney and, subject to sub. (7) (b), refer the matter to the state public defender for determination of indigency and appointment of counsel under s. 977.05 (4) (j) If the person petitions through counsel, his or her attorney shall serve the district attorney. The petition shall be determined as promptly as practicable by the court without a jury. The court shall terminate the order of commitment unless it finds by clear and convincing evidence that further supervision is necessary to prevent a significant risk of bodily harm to the person or to others or of serious property damage. In making this determination, the court may consider, without limitation because of enumeration, the nature and circumstances of the crime, the persons mental history and current mental condition, the persons behavior while on conditional release, and plans for the persons living arrangements, support, treatment and other required services after termination of the commitment order. A petition under this subsection may not be filed unless at least 6

months have elapsed since the person was last placed on conditional release or since the most recent petition under this subsection was denied.

(6) EXPIRATION OF COMMITMENT ORDER.

(a) At least 60 days prior to the expiration of a commitment order under sub. (1), the department of health services shall notify all of the following:

1. The court that committed the person.

2. The district attorney of the county in which the commitment order was entered.

3. The appropriate county department under s. 51.42 or 51.437 (b) Upon the expiration of a commitment order under sub. (1), the court shall discharge the person, subject to the right of the department of health services or the appropriate county department under s. 51.42 or 51.437 to proceed against the person under ch. 51 or 55 If none of those departments proceeds against the person under ch. 51 or 55, the court may order the proceeding.

(6m) NOTICE ABOUT TERMINATION OR DISCHARGE.

(a) In this subsection:

1. "Crime" has the meaning designated in s. 949.01 (1)

2. "Member of the family" means spouse, domestic partner under ch. 770, child, sibling, parent or legal guardian.

3. "Victim" means a person against whom a crime has been committed.

(b) If the court orders that the defendants commitment is terminated under sub. (5) or that the defendant be discharged under sub. (6), the department of health services shall do all of the following in accordance with par. (c):

1. If the person has submitted a card under par. (d) requesting notification, make a reasonable attempt to notify the victim of the crime committed by the defendant, or, if the victim died as a result of the crime, an adult member of the victims family or, if the victim is younger than 18 years old, the victims parent or legal guardian.

2. Notify the department of corrections.

(c) The notice under par. (b) shall inform the department of corrections and the person under par. (b) 1. of the defendants name and termination or discharge date. The department of health services shall send the notice, postmarked at least 7 days before the defendants termination or discharge date, to the department of corrections and to the last-known address of the person under par. (b) 1. (d) The department of health services shall

design and prepare cards for persons specified in par. (b) 1. to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the applicable defendant and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in par. (b) 1. These persons may send completed cards to the department. All departmental records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1), except as needed to comply with a request under sub. (4m) (d) or s. 301.46 (3) (d)

(7) HEARINGS AND RIGHTS.

(a) The committing court shall conduct all hearings under this section. The person shall be given reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(b) Without limitation by enumeration, at any hearing under this section, the person has the right to:

1. Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1)

2. Remain silent.

3. Present and cross-examine witnesses.

4. Have the hearing recorded by a court reporter.

(c) If the person wishes to be examined by a physician, as defined in s. 971.16 (1) (a), or a psychologist, as defined in s. 971.16 (1) (b), or other expert of his or her choice, the procedure under s. 971.16 (4) shall apply. Upon motion of an indigent person, the court shall appoint a qualified and available examiner for the person at public expense. Examiners for the person or the district attorney shall have reasonable access to the person for purposes of examination, and to the persons past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (c) (d) Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audiovisual means.

(7m) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL.

(a) A motion for postdisposition relief from a final order or judgment by a person subject to this section shall be made in the time and manner provided in ss. 809.30 to 809.32 An appeal by a person subject to this section from a final order or judgment under this section or from an order denying a motion for postdisposition relief shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32 The person shall file a

motion for postdisposition relief in the circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(b) An appeal by the state from a final judgment or order under this section may be taken to the court of appeals within the time specified in s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809

(8) APPLICABILITY.

This section governs the commitment, release and discharge of persons adjudicated not guilty by reason of mental disease or mental defect for offenses committed on or after January 1, 1991. The commitment, release and discharge of persons adjudicated not guilty by reason of mental disease or mental defect for offenses committed prior to January 1, 1991, shall be governed by s. 971.17, 1987 stats., as affected by 1989 Wisconsin Act 31

WIS. STAT. ANN. § 975.01 (2010). END OF COMMITMENTS; DECLARATION OF POLICY.

(1) No person may be committed under this chapter after July 1, 1980.

(2) The legislature finds and declares that persons violating s. 940.225, 948.02, 948.025 or 948.06 or committing crimes when motivated by a desire for sexual excitement may be in need of specialized treatment. The legislature intends that the department should provide treatment for those persons.

WIS. STAT. ANN. § 980.01 (2010). DEFINITIONS.

In this chapter:

(1b) "Act of sexual violence" means conduct that constitutes the commission of a sexually violent offense.

(1d) "Agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(1h) "Department" means the department of health services.

(1j) "Incarceration" includes confinement in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), if the person was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(1m) "Likely" means more likely than not.

(2) "Mental disorder" means a congenital or acquired condition affecting the emotional or

volitional capacity that predisposes a person to engage in acts of sexual violence.

(3) Except in ss. 980.075, 980.09, and 980.095, "petitioner" means the agency or person that filed a petition under s. 980.02

(4) "Secretary" means the secretary of health services.

(4m) "Serious child sex offender" means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in s. 948.02 (1) or (2), 948.025 (1), or 948.085 against a child who had not attained the age of 13 years.

(5) "Sexually motivated" means that one of the purposes for an act is for the actors sexual arousal or gratification or for the sexual humiliation or degradation of the victim.

(6) "Sexually violent offense" means any of the following:

(a) Any crime specified in s. 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085 (am) An offense that, prior to June 2, 1994, was a crime under the law of this state and that is comparable to any crime specified in par. (a) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19 (2), (4), (5), or (6), 940.195 (4) or (5), 940.30, 940.305, 940.31, 941.32, 943.10, 943.32, or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

(bm) An offense that, prior to June 2, 1994, was a crime under the law of this state, that is comparable to any crime specified in par. (b) and that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

(c) Any solicitation, conspiracy, or attempt to commit a crime under par. (a), (am), (b), or (bm)

(7) "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence.

(8) "Significant progress in treatment" means that the person has done all of the following:

(a) Meaningfully participated in the treatment program specifically designed to reduce his or her risk to reoffend offered at a facility described under s. 980.065 (b) Participated in the treatment program at a level that was sufficient to allow the identification of his or her specific treatment needs and then demonstrated, through overt behavior, a willingness to work on addressing the specific treatment needs.

(c) Demonstrated an understanding of the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to his or her sexual offending and an ability to identify when the thoughts, emotions, behaviors, or sexual arousal occur.

(d) Demonstrated sufficiently sustained change in the thoughts, attitudes, emotions, and behaviors and sufficient management of sexual arousal such that one could reasonably assume that, with continued treatment, the change could be maintained.

(9) "Substantially probable" means much more likely than not.

(10) "Treating professional" means a licensed physician, licensed psychologist, licensed social worker, or other mental health professional who provides, or supervises the provision of, sex offender treatment at a facility described under s. 980.065

WIS. STAT. ANN. § 980.015 (2010). NOTICE TO THE DEPARTMENT OF JUSTICE AND DISTRICT ATTORNEY.

(2) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning 90 days prior to the applicable date of the following:

(a) The anticipated discharge or release, on parole, extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for a sexually violent offense, from a continuous term of incarceration, any part of which was imposed for a sexually violent offense, or from a placement in a Type 1 prison under s. 301.048 (3) (a) 1., any part of which was required as a result of a conviction for a sexually violent offense.

(b) The anticipated release from a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), if the person was placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(c) The anticipated release of a person on conditional release under s. 971.17, the anticipated termination of a commitment order under 971.17, or the anticipated discharge of a person from a commitment order under s. 971.17, if the person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(d) The anticipated release on parole or discharge of a person committed under ch. 975 for a sexually violent offense.

(3) The agency with jurisdiction shall provide the district attorney and department of justice with all of the following:

(a) The persons name, identifying factors, anticipated future residence and offense history.

(b) If applicable, documentation of any treatment and the persons adjustment to any institutional placement.

WIS. STAT. ANN. § 980.02 (2010). SEXUALLY VIOLENT PERSON PETITION; CONTENTS; FILING.

(1) A petition alleging that a person is a sexually violent person may be filed by one of the following:

(a) The department of justice at the request of the agency with jurisdiction over the person.

(b) If the department of justice does not file a petition under par. (a), the district attorney for one of the following:

1. The county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a juvenile correctional facility, as defined in s. 938.02 (10p), from a residential care center for children and youth, as defined in s. 938.02 (15g), or from a commitment order.

3. The county in which the person is in custody under a sentence, a placement to a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), or a commitment order.

(1m) A petition filed under this section shall be filed before the person is released or discharged.

(2) A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(a) The person satisfies any of the following criteria:

1. The person has been convicted of a sexually violent offense.

2. The person has been found delinquent for a sexually violent offense.

3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the persons mental disorder makes it likely that he or she will engage in acts of sexual violence.

(3) A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under sub. (2) (a) was an act that was sexually motivated as provided under s. 980.01 (6) (b), the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(4) A petition under this section shall be filed in one of the following:

(a) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

(am) The circuit court for the county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a juvenile correctional facility, as defined in s. 938.02 (10p), from a secured residential care center for children and youth, as defined in s. 938.02 (15g), or from a commitment order.

(b) The circuit court for the county in which the person is in custody under a sentence, a placement to a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), or a commitment order.

(5) Notwithstanding sub. (4), if the department of justice decides to file a petition under sub. (1) (a), it may file the petition in the circuit court for Dane County.

(6) A court assigned to exercise jurisdiction under chs. 48 and 938 does not have jurisdiction over a petition filed under this section alleging that a person who was adjudicated delinquent as a child is a sexually violent person.

WIS. STAT. ANN. § 980.06 (2010). COMMITMENT.

If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person. A commitment order under this section shall specify that the person be placed in institutional care.

WYOMING

WYO. STAT. ANN. § 7-11-303 (2010). EXAMINATION OF ACCUSED TO DETERMINE FITNESS TO PROCEED; REPORTS; COMMITMENT; DEFENSES AND OBJECTIONS.

(a) If it appears at any stage of a criminal proceeding, by motion or upon the court's own motion, that there is reasonable cause to believe that the accused has a mental illness or deficiency making him unfit to proceed, all further proceedings shall be suspended.

(b) The court shall order an examination of the accused by a designated examiner. The order may include, but is not limited to, an examination of the accused at the Wyoming state hospital on an inpatient or outpatient basis, at a local mental health center on an inpatient or outpatient basis, or at his place of detention. In selecting the examination site, the court may consider proximity to the court, availability of an examiner, and the necessity for security precautions. If the order provides for commitment of the accused to a designated facility, the commitment shall continue no longer than a thirty (30) day period for the study of the mental condition of the accused. The prosecuting attorney and counsel for the accused shall cooperate in providing the relevant information and materials to the designated examiner, and the court may order as necessary that relevant information be provided to the examiner.

(c) Written reports of the examination shall be filed with the clerk of court. The report shall include:

(i) Detailed findings;

(ii) An opinion as to whether the accused has a mental illness or deficiency, and its probable duration;

(iii) An opinion as to whether the accused, as a result of mental illness or deficiency, lacks capacity to comprehend his position, to understand the nature and object of the proceedings against him, to conduct his defense in a rational manner, and to cooperate with his counsel to the end that any available defense may be interposed;

(iv) Repealed by Laws 2009, ch. 31, § 2.

(v) A recommendation as to whether the accused should be held in a designated facility for treatment pending determination by the court of the issue of mental fitness to proceed; and

(vi) A recommendation as to whether the accused, if found by the court to be mentally fit to proceed, should be detained in a designated facility pending further proceedings.

(d) The clerk of court shall deliver copies of the report to the district attorney and to the accused or his counsel. The report is not a public record or open to the public. After

receiving a copy of the report, both the accused and the state may, upon written request and for good cause shown, obtain an order granting them an examination of the accused by a designated examiner of their own choosing. For each examination ordered, a report conforming to the requirements of subsection (c) of this section shall be furnished to the court and the opposing party.

(e) If the initial report contains the recommendation that the accused should be held in a designated facility pending determination of the issue of mental fitness to proceed, the court may order that the accused be committed to or held in a designated facility pending determination of mental fitness to proceed. The court may order the involuntary administration of antipsychotic medications to a person accused of a serious crime as defined in W.S. 7-6-102(a)(v) to render the accused competent to stand trial, provided the court finds:

(i) There are important governmental interests at stake including, but not limited to:

(A) Bringing the accused to trial;

(B) Timely prosecution;

(C) Assuring the accused has a fair trial.

(ii) The involuntary administration of antipsychotic medications will significantly further the governmental interest and the administration of the medication is:

(A) Substantially likely to render the accused competent to stand trial; and

(B) Substantially unlikely to have side effects that will interfere significantly with the ability of the accused to assist counsel in conducting a trial defense, thereby rendering the trial unfair.

(iii) That any alternative and less intrusive treatments are unlikely to achieve substantially the same results; and

(iv) The administration pursuant to a prescription by a licensed psychiatrist of the antipsychotic medications is medically appropriate and is in the best medical interests of the accused in light of the accused's medical condition.

(f) If neither the state, nor the accused or his counsel contests the opinion referred to in paragraph (c)(iii) of this section relative to fitness to proceed, the court may make a determination and finding of record on this issue on the basis of the report filed or the court may hold a hearing on its own motion. If the opinion relative to fitness to proceed is contested the court shall hold a hearing on the issue. The report or reports may be received in evidence at any hearing on the issue. The party contesting any opinion relative to fitness to proceed has the right to summon and cross-examine the persons who rendered the opinion and to offer evidence upon the issue.

(g) If the court determines that the accused is mentally fit to proceed, the court may order that the accused be held in confinement, be committed to a designated facility pending further proceedings, or be released on bail or other conditions. If the court determines that the accused lacks mental fitness to proceed, the proceedings against him shall be suspended and the court shall commit him to a designated facility to determine whether there is substantial probability that the accused will regain his fitness to proceed:

(i) The examiner shall provide a full report to the court, the prosecuting attorney and the accused or his counsel within ninety (90) days of arrival of the accused at the designated treating facility. If the examiner is unable to complete the assessment within ninety (90) days the examiner shall provide to the court and counsel a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner may have up to an additional ninety (90) days to provide the full report for good cause shown, as follows:

(A) The full report shall assess:

(I) The facility's or program's capacity to provide appropriate treatment for the accused;

(II) The nature of treatments provided to the accused;

(III) What progress toward competency restoration has been made with respect to the factors identified by the court in its initial order;

(IV) The accused's current level of mental disorder or mental deficiency and need for treatment, if any; and

(V) The likelihood of restoration of competency and the amount of time estimated to achieve competency.

(B) Upon receipt of the full report, the court shall hold a hearing to determine the accused's current status. The burden of proving that the accused is fit to proceed shall be on the proponent of the assertion. Following the hearing, the court shall determine by a preponderance of the evidence whether the accused is:

(I) Fit to proceed;

(II) Not fit to proceed with a substantial probability that the accused may become fit to proceed in the foreseeable future; or

(III) Not fit to proceed without a substantial probability that the accused may become fit to proceed in the foreseeable future.

(C) If the court makes a determination pursuant to subdivision (B)(I) of this

paragraph, the court shall proceed with the trial or any other procedures as may be necessary to adjudicate the charges;

(D) If the court makes a determination pursuant to subdivision (B)(II) of this paragraph, the court may order that the accused remain committed to the custody of the designated facility for the purpose of treatment intended to restore the accused to competency;

(E) If the court makes a determination pursuant to subdivision (B)(III) of this paragraph, the court shall order the accused released from the custody of the designated facility unless proper civil commitment proceedings have been instituted and held as provided in title 25 of the Wyoming statutes. The continued retention, hospitalization and discharge of the accused shall be the same as for other patients.

(ii) If it is determined pursuant to subdivision (i)(B)(II) of this subsection that there is substantial probability that the accused will regain his fitness to proceed, the commitment of the accused at a designated facility shall continue until the head of the facility reports to the court that in his opinion the accused is fit to proceed. If this opinion is not contested by the state, the accused or his counsel, the criminal proceeding shall be resumed. If the opinion is contested, the court shall hold a hearing as provided in subsection (f) of this section. While the accused remains at a designated facility under this subsection, the head of the facility shall issue a full report at least once every three (3) months in accordance with the requirements of subparagraph (i)(A) of this subsection on the progress the accused is making towards regaining his fitness to proceed.

(h) A finding by the court that the accused is mentally fit to proceed shall not prejudice the accused in a defense to the crime charged on the ground that at the time of the act he was afflicted with a mental illness or deficiency excluding responsibility. Nor shall the finding be introduced in evidence on that issue or otherwise brought to the notice of the jury. No statement made by the accused in the course of any examination or treatment pursuant to this section and no information received by any person in the course of the examination or treatment shall be admitted in evidence in any criminal proceeding then or thereafter pending on any issue other than that of the mental condition of the accused.

(j) Notwithstanding any provision of this section, counsel for the accused may make any and all legal objections which are susceptible of a fair determination prior to trial without the personal participation of the accused.

WYO. STAT. ANN. § 7-11-304 (2010). RESPONSIBILITY FOR CRIMINAL CONDUCT; PLEA; EXAMINATION; COMMITMENT; USE OF STATEMENTS BY DEFENDANT.

(a) A person is not responsible for criminal conduct if at the time of the criminal conduct, as a result of mental illness or deficiency, he lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. As used in this section, the terms mental illness or deficiency mean only those severely abnormal mental conditions that grossly and demonstrably impair a person's

perception or understanding of reality and that are not attributable primarily to self-induced intoxication as defined by W.S. 6-1-202(b).

(b) As used in this section, the terms "mental illness or deficiency" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) Evidence that a person is not responsible for criminal conduct by reason of mental illness or deficiency is not admissible at the trial of the defendant unless a plea of "not guilty by reason of mental illness or deficiency" is made. A plea of "not guilty by reason of mental illness or deficiency" may be pleaded orally or in writing by the defendant or his counsel at the time of his arraignment. The court, for good cause shown, may also allow that plea to be entered at a later time. Such a plea does not deprive the defendant of other defenses.

(d) In all cases where a plea of "not guilty by reason of mental illness or deficiency" is made, the court shall order an examination of the defendant by a designated examiner. The order may include, but is not limited to, an examination of the defendant at the Wyoming state hospital on an inpatient or outpatient basis, at a local mental health center on an inpatient or outpatient basis, or at his place of detention. In selecting the examination site, the court may consider proximity to the court, availability of an examiner and the necessity for security precautions. If the order provides for commitment of the defendant to a designated facility, the commitment shall continue no longer than a forty-five (45) day period for the observation and evaluation of the mental condition of the defendant, which time may be extended by the approval of the court.

(e) If an examination of a defendant's fitness to proceed has been ordered pursuant to W.S. 7-11-303, an examination following a plea of "not guilty by reason of mental illness or deficiency" shall not occur, or be ordered, until the court has found the defendant is competent to proceed under W.S. 7-11-303.

(f) A written report of the examination shall be filed with the clerk of court. The report shall include:

(i) Detailed findings, including, but not limited to, the data and reasoning that link the opinions specified in paragraphs (ii) and (iii) of this subsection;

(ii) An opinion as to whether the defendant has a mental illness or deficiency;

(iii) An opinion as to whether at the time of the alleged criminal conduct the defendant, as a result of mental illness or deficiency, lacked substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(g) The clerk of court shall deliver copies of the report to the district attorney and to the defendant or his counsel. The report shall not be a public record or open to the public. If an examination provided under subsection (d) of this section was conducted, the report may be received in evidence and no new examination shall be required unless requested

under this subsection. Within five (5) days after receiving a copy of the report, the defendant or the state, upon written request, may obtain an order granting an examination of the defendant by a designated examiner chosen by the requester of the examination.

(h) Except as otherwise provided in this subsection, no statement made by the defendant in the course of any examination or treatment pursuant to this section and no information received by any person in the course thereof is admissible in evidence in any criminal proceeding on any issue other than that of the mental condition of the defendant. If the defendant testifies in his own behalf, any statement made by him in the course of any examination or treatment pursuant to this section may be admitted:

(i) For impeachment purposes; or

(ii) As evidence in a criminal prosecution for perjury.

WYO. STAT. ANN. § 7-11-306 (2010). DISPOSITION OF PERSONS FOUND NOT GUILTY BY REASON OF MENTAL ILLNESS OR DEFICIENCY EXCLUDING RESPONSIBILITY.

(a) After entry of a judgment of not guilty by reason of mental illness or deficiency excluding responsibility, the court shall, on the basis of evidence given at trial or at a separate hearing, make an order as provided in subsection (b), (c) or (d) of this section.

(b) If the court finds that the person is no longer affected by mental illness or deficiency, or that he no longer presents a substantial risk of danger to himself or others and is not in need of care, supervision or treatment, the court shall order him discharged from custody.

(c) If the court finds that the person is affected by mental illness or deficiency and presents a substantial risk of danger to himself or others, but can be controlled adequately and given proper care, supervision and treatment if released on supervision, the court shall order him released subject to the supervisory orders of the court as are appropriate in the interests of justice and the welfare of the defendant. The court may appoint any person or state, county or local agency which the court considers capable of supervising the person upon release. Upon receipt of an order issued under this subsection, the person or agency appointed shall assume the supervision of the person pursuant to the direction of the court. Conditions of release in the order of the court may be modified from time to time and supervision may be terminated by order of the court. If upon a hearing the state shows by a preponderance of the evidence that the person released on supervision under this subsection can no longer be controlled adequately by supervision, the court may order the person committed to the Wyoming state hospital or other designated facility for custody, care and treatment.

(d) If the court finds that the person is affected by mental illness or deficiency and presents substantial risk of danger to himself or others and that he is not a proper subject for release or supervision, the court shall order him committed to the Wyoming state hospital or other designated facility for custody, care and treatment.

(e) Following the first ninety (90) days of commitment to the Wyoming state hospital or other designated facility under this section, if at any time the head of the facility is of the opinion that the person is no longer affected by mental illness or deficiency, or that he no longer presents a substantial risk of danger to himself or others, the head of the facility shall apply to the court which committed the person for an order of discharge. The application shall be accompanied by a report setting forth the facts supporting the opinion of the head of the facility. Copies of the application and report shall be transmitted by the clerk of the court to the district attorney. The court shall hold a hearing on this matter as soon as possible. If the state opposes the recommendation of the head of the facility, the state has the burden of proof by a preponderance of the evidence to show that the person continues to be affected by mental illness or deficiency and continues to present a substantial risk of danger to himself or others and should remain in the custody of the designated facility.

(f) Ninety (90) days after the order of commitment, any person committed to the designated facility under this section may apply to the district court of the county from which he was committed for an order of discharge upon the grounds that he is no longer affected by mental illness or deficiency, or that he no longer presents a substantial risk of danger to himself or others. The application for discharge shall be accompanied by a report of the head of the facility which shall be prepared and transmitted as provided in subsection (e) of this section. The court shall hold a hearing on this matter as soon as possible. The applicant shall prove by a preponderance of the evidence his fitness for discharge. An application for an order of discharge under this subsection filed within six (6) months of the date of a previous hearing shall be subject to summary disposition by the court.

(g) If the court, after a hearing upon any application for discharge, or application for modification or termination of release on supervision, under subsections (c) through (f) of this section, finds that the person is no longer affected by mental illness or deficiency, or that he no longer presents a substantial risk of danger to himself or others, the court shall order him discharged from custody or from supervision. If the court finds that the person is still affected by a mental illness or deficiency and presents a substantial risk of danger to himself or others, but can be controlled adequately if he is released on supervision, the court shall order him released on supervision as provided in subsection (c) of this section. If the court finds that the person has not recovered from his mental illness or deficiency and presents a substantial risk of danger to himself or others and cannot adequately be controlled if he is released on supervision, the court shall order him remanded for continued care and treatment.

(h) In any hearing under this section the court may appoint one (1) or more designated examiners to examine the person and submit reports to the court. Reports filed with the court shall include, but need not be limited to, an opinion as to the mental condition of the person and whether the person presents a substantial risk of danger to himself or others. To facilitate examination, the court may order the person placed in the temporary custody of any designated facility. If neither the district attorney nor the defendant or his counsel, if any, contests the findings of the report filed with the court, the court may

make the determination on the basis of the report filed with the court. If the report is contested, the court shall hold a hearing on the issue. If the report is received in evidence at the hearing, the party who contests the report has the right to summon and to cross-examine the examiners who submitted the report and to offer evidence upon the issue. Other evidence regarding the person's mental condition may be introduced by either party.

WYO. STAT. ANN. § 7-11-307 (2010). TREATMENT OF DEFENDANT COMMITTED TO STATE HOSPITAL.

In all cases in which the defendant is committed to the Wyoming state hospital under the provisions of this act, the defendant shall be received and treated in the same manner as all other persons committed to the institution and be subject to the same rules and regulations. Due caution shall be exercised to prevent the escape of the defendant.

FEDERAL LEGISLATION

18 U.S.C.S. § 4241 (2010). DETERMINATION OF MENTAL COMPETENCY TO STAND TRIAL OR TO UNDERGO POSTRELEASE PROCEEDINGS

(a) Motion to determine competency of defendant. At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) Psychiatric or psychological examination and report. Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c) [18 USCS § 4247(b) and (c)].

(c) Hearing. The hearing shall be conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)].

(d) Determination and disposition. If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a

suitable facility--

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and

(2) for an additional reasonable period of time until--

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248 [18 USCS §§ 4246 and 4248].

(e) Discharge. When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)], to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial or other proceedings. Upon discharge, the defendant is subject to the provisions of chapters 207 and 227 [18 USCS §§ 3141 et seq. and 3551 et seq.].

(f) Admissibility of finding of competency. A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

18 U.S.C.S. § 4243 (2010). HOSPITALIZATION OF A PERSON FOUND NOT GUILTY ONLY BY REASON OF INSANITY

(a) Determination of present mental condition of acquitted person. If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (e).

(b) Psychiatric or psychological examination and report. Prior to the date of the hearing, pursuant to subsection (c), the court shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c) [18 USCS §

4247(b) and (c)].

(c) Hearing. A hearing shall be conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)] and shall take place not later than forty days following the special verdict.

(d) Burden of proof. In a hearing pursuant to subsection (c) of this section, a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

(e) Determination and disposition. If, after the hearing, the court fails to find by the standard specified in subsection (d) of this section that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until--

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(f) Discharge. When the director of the facility in which an acquitted person is hospitalized pursuant to subsection (e) determines that the person has recovered from his mental disease or defect to such an extent that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)], to determine whether he should be released. If, after the hearing, the court finds by the standard specified in subsection (d) that the person has

recovered from his mental disease or defect to such an extent that--

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall--

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(g) Revocation of conditional discharge. The director of a medical facility responsible for administering a regimen imposed on an acquitted person conditionally discharged under subsection (f) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(h) Limitations on furloughs. An individual who is hospitalized under subsection (e) of this section after being found not guilty only by reason of insanity of an offense for which subsection (d) of this section creates a burden of proof of clear and convincing evidence, may leave temporarily the premises of the facility in which that individual is hospitalized only--

(1) with the approval of the committing court, upon notice to the attorney for the Government and such individual, and after opportunity for a hearing;

(2) in an emergency; or

(3) when accompanied by a Federal law enforcement officer (as defined in section 115 of this title [18 USCS § 115]).

(i) Certain persons found not guilty by reason of insanity in the District of Columbia.

(1) Transfer to custody of the Attorney General. Notwithstanding section 301(h) of title 24 of the District of Columbia Code, and notwithstanding subsection 4247(j) of this title, all persons who have been committed to a hospital for the mentally ill pursuant to section 301(d)(1) of title 24 of the District of Columbia Code, and for whom the United States

has continuing financial responsibility, may be transferred to the custody of the Attorney General, who shall hospitalize the person for treatment in a suitable facility.

(2) Application.

(A) In general. The Attorney General may establish custody over such persons by filing an application in the United States District Court for the District of Columbia, demonstrating that the person to be transferred is a person described in this subsection.

(B) Notice. The Attorney General shall, by any means reasonably designed to do so, provide written notice of the proposed transfer of custody to such person or such person's guardian, legal representative, or other lawful agent. The person to be transferred shall be afforded an opportunity, not to exceed 15 days, to respond to the proposed transfer of custody, and may, at the court's discretion, be afforded a hearing on the proposed transfer of custody. Such hearing, if granted, shall be limited to a determination of whether the constitutional rights of such person would be violated by the proposed transfer of custody.

(C) Order. Upon application of the Attorney General, the court shall order the person transferred to the custody of the Attorney General, unless, pursuant to a hearing under this paragraph, the court finds that the proposed transfer would violate a right of such person under the United States Constitution.

(D) Effect. Nothing in this paragraph shall be construed to--

(i) create in any person a liberty interest in being granted a hearing or notice on any matter;

(ii) create in favor of any person a cause of action against the United States or any officer or employee of the United States; or

(iii) limit in any manner or degree the ability of the Attorney General to move, transfer, or otherwise manage any person committed to the custody of the Attorney General.

(3) Construction with other sections. Subsections (f) and (g) and section 4247 [18 USCS § 4247] shall apply to any person transferred to the custody of the Attorney General pursuant to this subsection.

18 U.S.C.S. § 4244 (2010). HOSPITALIZATION OF A CONVICTED PERSON SUFFERING FROM MENTAL DISEASE OR DEFECT

(a) Motion to determine present mental condition of convicted defendant. A defendant found guilty of an offense, or the attorney for the Government, may, within ten days after the defendant is found guilty, and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of the defendant if the motion is supported by substantial information indicating that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order such a hearing on its own motion, if it is of the opinion that there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.

(b) Psychiatric or psychological examination and report. Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be

conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c) [18 USCS § 4247(b) and (c)]. In addition to the information required to be included in the psychiatric or psychological report pursuant to the provisions of section 4247(c) [18 USCS § 4247(c)]; if the report includes an opinion by the examiners that the defendant is presently suffering from a mental disease or defect but that it is not such as to require his custody for care or treatment in a suitable facility, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best accord the defendant the kind of treatment he does need.

(c) Hearing. The hearing shall be conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)].

(d) Determination and disposition. If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence of imprisonment to the maximum term authorized by law for the offense for which the defendant was found guilty.

(e) Discharge. When the director of the facility in which the defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall proceed finally to sentencing and may modify the provisional sentence.

18 U.S.C.S. § 4246 (2010). HOSPITALIZATION OF A PERSON DUE FOR RELEASE BUT SUFFERING FROM MENTAL DISEASE OR DEFECT

(a) Institution of proceeding. If the director of a facility in which a person is hospitalized certifies that a person in the custody of the Bureau of Prisons whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 4241(d) [18 USCS § 4241(d)], or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, and that suitable arrangements for State custody and care of the person are not available, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d) [18 USCS § 4241(d)], to the clerk of the court that ordered the commitment. The

court shall order a hearing to determine whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) Psychiatric or psychological examination and report. Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c) [18 USCS § 4247(b) and (c)].

(c) Hearing. The hearing shall be conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)].

(d) Determination and disposition. If, after the hearing, the court finds by clear and convincing evidence that the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility, until--

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(e) Discharge. When the director of the facility in which a person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)], to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person has recovered from his mental disease or defect to such an extent that--

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall--

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) Revocation of conditional discharge. The director of a medical facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(g) Release to State of certain other persons. If the director of a facility in which a person is hospitalized pursuant to this chapter [18 USCS §§ 4241 et seq.] certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than ten days after certification by the director of the facility.

(h) Definition. As used in this chapter the term "State" includes the District of Columbia.

18 U.S.C.S. § 4247 (2010). GENERAL PROVISIONS FOR CHAPTER

(a) Definitions. As used in this chapter [18 USCS §§ 4241 et seq.]--

(1) "rehabilitation program" includes--

(A) basic educational training that will assist the individual in understanding the society to which he will return and that will assist him in understanding the magnitude of his offense and its impact on society;

(B) vocational training that will assist the individual in contributing to, and in participating in, the society to which he will return;

(C) drug, alcohol, and sex offender treatment programs, and other treatment programs that will assist the individual in overcoming a psychological or physical dependence or any condition that makes the individual dangerous to others; and

(D) organized physical sports and recreation programs;

(2) "suitable facility" means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant;

(3) "State" includes the District of Columbia;

(4) "bodily injury" includes sexual abuse;

(5) "sexually dangerous person" means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others; and

(6) "sexually dangerous to others" with respect a person, means that the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

(b) Psychiatric or psychological examination. A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court, except that if the examination is ordered under section 4245, 4246, or 4248 [18 USCS § 4245, 4246, or 4248], upon the request of the defendant an additional examiner may be selected by the defendant. For the purposes of an examination pursuant to an order under section 4241, 4244, or 4245 [18 USCS § 4241, 4244, or 4245], the court may commit the person to be examined for a reasonable period, but not to exceed thirty days, and under section 4242, 4243, 4246, or 4248 [18 USCS § 4242, 4243, 4246, or 4248], for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility. Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension, but not to exceed fifteen days under section 4241, 4244, or 4245 [18 USCS § 4241, 4244, or 4245], and not to exceed thirty days under section 4242, 4243, 4246, or 4248 [18 USCS § 4242, 4243, 4246, or 4248], upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant.

(c) Psychiatric or psychological reports. A psychiatric or psychological report ordered pursuant to this chapter shall be prepared by the examiner designated to conduct the psychiatric or psychological examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include--

(1) the person's history and present symptoms;

(2) a description of the psychiatric, psychological, and medical tests that were employed and their results;

(3) the examiner's findings; and

(4) the examiner's opinions as to diagnosis, prognosis, and--

(A) if the examination is ordered under section 4241 [18 USCS § 4241], whether the person is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense;

(B) if the examination is ordered under section 4242 [18 USCS § 4242], whether the person was insane at the time of the offense charged;

(C) if the examination is ordered under section 4243 or 4246 [18 USCS § 4243 or 4246], whether the person is suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another;

(D) if the examination is ordered under section 4248 [18 USCS § 4248], whether the person is a sexually dangerous person;

(E) if the examination is ordered under section 4244 or 4245 [18 USCS § 4244 or 4245], whether the person is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility; or

(F) if the examination is ordered as a part of a presentence investigation, any recommendation the examiner may have as to how the mental condition of the defendant should affect the sentence.

(d) Hearing. At a hearing ordered pursuant to this chapter [18 USCS §§ 4241 et seq.] the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to section 3006A [18 USCS § 3006A]. The person shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

(e) Periodic report and information requirements.

(1) The director of the facility in which a person is committed pursuant to--

(A) section 4241 [18 USCS § 4241] shall prepare semiannual reports; or

(B) section 4243, 4244, 4245, 4246, or 4248 [18 USCS § 4243, 4244, 4245, 4246, or 4248] shall prepare annual reports concerning the mental condition of the person and containing recommendations concerning the need for his continued commitment. The reports shall be submitted to the court that ordered the person's commitment to the facility and copies of the reports shall be submitted to such other persons as the court may direct. A copy of each such report concerning a person committed after the beginning of a prosecution of that person for violation of section 871, 879, or 1751 of this title [18 USCS § 871, 879, or 1751] shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title [18 USCS § 3056(a)].

(2) The director of the facility in which a person is committed pursuant to section 4241, 4243, 4244, 4245, 4246, or 4248 [18 USCS § 4241, 4243, 4244, 4245, 4246, or 4248]

shall inform such person of any rehabilitation programs that are available for persons committed in that facility.

(f) Videotape record. Upon written request of defense counsel, the court may order a videotape record made of the defendant's testimony or interview upon which the periodic report is based pursuant to subsection (e). Such videotape record shall be submitted to the court along with the periodic report.

(g) Habeas corpus unimpaired. Nothing contained in section 4243, 4246, or 4248 [18 USCS § 4243, 4246, or 4248] precludes a person who is committed under either of such sections from establishing by writ of habeas corpus the illegality of his detention.

(h) Discharge. Regardless of whether the director of the facility in which a person is committed has filed a certificate pursuant to the provisions of subsection (e) of section 4241, 4244, 4245, 4246, or 4248 [18 USCS § 4241, 4244, 4245, 4246, or 4248], or subsection (f) of section 4243 [18 USCS § 4243], counsel for the person or his legal guardian may, at any time during such person's commitment, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be committed. A copy of the motion shall be sent to the director of the facility in which the person is committed and to the attorney for the Government.

(i) Authority and responsibility of the Attorney General. The Attorney General--
(A) may contract with a State, a political subdivision, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this chapter [18 USCS §§ 4241 et seq.];
(B) may apply for the civil commitment, pursuant to State law, of a person committed to his custody pursuant to section 4243, 4246, or 4248 [18 USCS § 4243, 4246, or 4248];
(C) shall, before placing a person in a facility pursuant to the provisions of section 4241, 4243, 4244, 4245, 4246, or 4248 [18 USCS § 4241, 4243, 4244, 4245, 4246, or 4248], consider the suitability of the facility's rehabilitation programs in meeting the needs of the person; and
(D) shall consult with the Secretary of the Department of Health and Human Services in the general implementation of the provisions of this chapter [18 USCS §§ 4241 et seq.] and in the establishment of standards for facilities used in the implementation of this chapter [18 USCS §§ 4241 et seq.].

(j) Sections 4241, 4242, 4243, and 4244 [18 USCS §§ 4241, 4242, 4243, and 4244] do not apply to a prosecution under an Act of Congress applicable exclusively to the District of Columbia or the Uniform Code of Military Justice.

18 U.S.C.S. § 4248 (2010). CIVIL COMMITMENT OF A SEXUALLY DANGEROUS PERSON

(a) Institution of proceedings. In relation to a person who is in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General pursuant to

section 4241(d) [18 USCS § 4241(d)], or against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d) [18 USCS § 4241(d)], to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) Psychiatric or psychological examination and report. Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c) [18 USCS § 4247(b) and (c)].

(c) Hearing. The hearing shall be conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)].

(d) Determination and disposition. If, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall place the person for treatment in a suitable facility, until--

(1) such a State will assume such responsibility; or

(2) the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment; whichever is earlier.

(e) Discharge. When the Director of the facility in which a person is placed pursuant to subsection (d) determines that the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d) [18 USCS § 4247(d)], to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person's condition is such that--

(1) he will not be sexually dangerous to others if released unconditionally, the court

shall order that he be immediately discharged; or

(2) he will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the court shall--

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the Director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) Revocation of conditional discharge. The director of a facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that he is sexually dangerous to others in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

(g) Release to State of certain other persons. If the director of the facility in which a person is hospitalized or placed pursuant to this chapter certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is a sexually dangerous person, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than 10 days after certification by the director of the facility.

U.S. TERRITORIES

AMERICAN SAMOA

AM. SAMOA CODE ANN. § 46.1305 (2007). HEARING TO DETERMINE STATUS.

Upon completion of the mental examination of the defendant, the court conducts a hearing to determine the defendant's mental status. If on the basis of the hearing the court finds:

(1) That the defendant is not mentally competent to stand trial, then the court orders the defendant confined. If the defendant is confined on this basis only, the order shall contain a provision for a hearing within 120 days, unless, for good cause shown, the court orders an extension not to exceed 120 days. The purpose of the hearing is to determine whether there is a substantial probability that the defendant will recover mental competence to stand trial within 1 year from the date of the hearing or the maximum imprisonment imposable under the charge filed against the defendant whichever is lesser. If the court determines there is a substantial probability that the defendant will attain mental competence to stand trial within that period, then the defendant may be further confined; provided, that confinement is justified by progress toward attainment of competency to stand trial and is accompanied by appropriate mental health care and treatment. If the court determines at the hearing or any time later that there is not a substantial probability that the defendant will attain mental competence to stand trial within that period, then the defendant must be released or recommitted under alternative commitment procedures.

(2) That the defendant was insane at the time of the commission of the criminal act, then the court shall order the defendant to be confined, unless it appears to the court that the defendant has fully recovered his sanity, in which case the defendant is released. After a finding of insanity and within 6 months, an additional hearing is held to determine whether the defendant's sanity has been fully recovered. Upon a finding that defendant's sanity has not been recovered, the defendant may make further applications for hearings on the defendant's recovery of sanity provided that 1 year elapses between the applications, and further provided that:

(A) the burden of proving recovery of sanity is on the defendant;

(B) upon the expiration of the maximum imprisonment imposable against the defendant provided by virtue of the criminal charges filed against defendant, the defendant must be released or recommitted according to alternative commitment procedures.

AM. SAMOA CODE ANN. § 46.1909 (2007). PRESENTENCE COMMITMENT FOR STUDY.

(a) In felony cases where the circumstances surrounding the commission of the crime or other circumstances brought to the attention of the court indicate a strong likelihood that the defendant is suffering from a mental disease or disorder, and the court desires more detailed information about the defendant's mental condition before making an authorized disposition under 46.1901 through 46.1905, it may order the commitment of the defendant for mental examination.

(b) The court may commit the defendant to the Department of Health and order the defendant examined by a person or persons as the court or that department may designate. The cost of guarding and transporting any confined defendant to and from any

place of examination shall be borne by the territory. Any commitment shall be for a period not exceeding 120 days.
(c) Within 40 days after the examination the person or persons making the examination or examinations shall transmit to the court a report of it including answers to any specific questions submitted by the court. The Clerk of the Court shall immediately supply copies of the report to the prosecuting attorney and to the defendant or his attorney.
(d) Any period of commitment to a facility of the Department of Health for the purpose of this section shall be credited against any term of imprisonment imposed upon the defendant.

GUAM

GUAM CODE ANN. TIT. 9, § 7.28 (2009). ACQUITTAL: ORDER FOR CIVIL COMMITMENT.

In any case in which evidence of mental illness, disease or defect has been introduced pursuant to the provisions of § 7.19 and in which the defendant is acquitted, the court may order an evaluation of his condition and initiation of proceedings pursuant to the provisions of 10 GCA Chapter 82.

GUAM CODE ANN. TIT. 9, § 7.31 (2009). ACQUITTAL: VERDICT MUST STATE REASON AS MENTAL DISEASE DEFECT.

Whenever a plea of not guilty by reason of mental illness, disease or defect is entered and the defendant is acquitted on the plea, the verdict or, if trial by jury has been waived, the finding of the court and the judgment shall so state.

GUAM CODE ANN. TIT. 9, § 7.34 (2009). ACQUITTAL: COURT ORDER OF COMMITMENT OR RELEASE; PETITION FOR DISCHARGE.

(a) After entry of judgment of not guilty by reason of mental illness, disease or defect, the court shall, on the basis of the evidence given at the trial or at a separate hearing, make an order as follows:

(1) If the court finds that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others and is not in need of care, supervision or treatment, the court shall order him discharged from custody.

(2) If the court finds that the person is affected by mental illness, disease or defect and that he presents a substantial danger to himself or the person or property of others, but he can be controlled adequately and given proper care, supervision and treatment if he is released on supervision, the court shall order him released subject to such supervisory orders of the court, including supervision by the probation department, as are appropriate in the interest of justice and the welfare of the defendant. Conditions of release in such

orders may be modified from time to time and supervision may be terminated by order of the court as provided in Subsection (b).

(3) If the court finds that the person presents a substantial risk of danger to himself or the person or property of others and that he is not a proper subject for release on supervision, the court shall order him committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment.

(b) At any time within five years of the original entry of the order of release on supervision made pursuant to Paragraph (2) of Subsection (a), the court shall, upon motion of either the prosecution or such person, or upon its own motion, and after notice to the prosecution and such person, conduct a hearing to determine if, or to what extent, the person remains affected by mental illness, disease or defect. If the court determines that the person remains affected by mental illness, disease or defect, the court may release him on further supervision, as provided in Subsection (a), but for not longer than five years from the original entry of the order of release on supervision, or if the court determines that the person is affected by mental illness, disease or defect and presents a substantial danger to himself or to the person or property of others and cannot adequately be controlled if released on supervision, it may make an order committing the person to the Administrator of the Guam Memorial Hospital for custody, care and treatment. If the court determines that the person has recovered from his mental illness, disease or defect or, if affected by mental illness, disease or defect, no longer presents a substantial danger to himself or the person or property of others and no longer requires supervision, care or treatment, the court shall order him discharged from custody.

(c) If, after at least ninety days from the commitment of any person to the custody of the Administrator, the Administrator is of the opinion that the person is no longer affected by mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others, the Administrator may apply to the court which committed the person for an order of discharge. The application shall be accompanied by a report setting forth the facts supporting the opinion of the Administrator. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.

(d) Any person who has been committed to the Administrator for custody, care and treatment, after the expiration of ninety days from the date of the order of commitment, may apply to the court by which he was committed for an order or discharge upon the grounds that he is no longer affected by mental illness, disease or defect, or if so affected, that he no longer presents a substantial danger to himself or the person or property of others. Copies of the application and the report shall be transmitted by the clerk of the court to the Attorney General.

(e) The court shall conduct a hearing upon any application for release or modification filed pursuant to Subsections (c) and (d). If the court finds that the person is no longer suffering from mental illness, disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person or property of others, the court shall

order him discharged from custody or from supervision. If the court finds that the person would not be a substantial danger to himself or to the person or property of others, and can be controlled adequately if he is released on supervision, the court shall order him released as provided in Paragraph (2) of Subsection (a). If the court finds that the person has not recovered from his mental illness, disease or defect and cannot adequately be con trolled if he is released on supervision, the court shall order him remanded for care and treatment.

In any hearing under this Subsection, the court may appoint one or more qualified psychiatrists or other qualified persons to examine the person and to submit reports to the court.

Reports filed with the court pursuant to such appointment shall include, but need not be limited to, an opinion as to the mental condition of the person and whether the person presents a substantial danger to himself or the person or property of others. To facilitate the expert's examination of the person, the court may order him placed in the temporary custody of any suitable facility.

(f) Any person who, to this Section, has been in the custody of the Administrator of the Guam Memorial Hospital or on release on supervision by the court for a period in excess of five years shall, in any event, be discharged if he does not present a substantial danger to the person of others.

GUAM CODE ANN. TIT. 9, § 7.43 (2009). SAME: HEARING PROCEDURE FOR COMMITMENT AND RELEASE.

(a) If at least one psychiatrist concludes in hi report filed pursuant to § 7.25 that the defendant may be incompetent to be proceeded against or to be sentenced, the court shall order the issue of his competency to be determined within ten days after the filing of the reports pursuant to § 7.25, unless the court, for good cause, orders the issue tried at a later date.

(b) Any hearing under this Section shall be by the court without a jury.

(c) If the court finds that the defendant is competent to be proceeded against or to be sentenced, the proceedings shall be resumed, or judgment be pronounced.

(d) If the court finds that the defendant is incompetent to be proceeded against or sentenced but that there is a substantial likelihood that he will regain his competency in the foreseeable future, the court shall order him committed to the Administrator of the Guam Memorial Hospital for custody, care and treatment and shall require the Administrator to furnish the court with reports on the defendant's progress at least once every six months.

(e) Whenever, in the opinion of the Administrator or any officer designated in writing by him, the defendant regains his competency, the Administrator or such officer shall, in writing, certify that fact to the clerk of the court in which the proceedings are pending.

Such certification, unless contested by the defendant or the people, shall be sufficient to authorize the court to find the defendant competent and to order the criminal prosecution to continue. If the certification is contested, a hearing before the court shall be held, after notice to the parties, and the party so contesting shall have the burden of proving by a preponderance of the evidence that the defendant remains incompetent.

Upon a finding of competency, the defendant may apply for his release pending trial in the manner provided by Chapter 40 (commencing with '40.10) of the Criminal Procedure Code.

Upon written request by the court or either party, filed with the clerk of the court and served upon the superintendent of the institution in which the defendant is or was confined, the superintendent shall file with the clerk of the court the defendant's complete medical records, or such portion thereof as is designated in the request, or a certified copy thereof, while at said institution.

(f) If at any time the court determines that the defendant is incompetent and that there is no substantial likelihood that he will regain his competency in the foreseeable future, the court, upon its own motion, or upon motion of either party, and after reasonable notice to the other party and an opportunity to be heard, shall dismiss the pending indictment, information, or other criminal charges and order the defendant to be released or order the commencement of any available civil commitment proceedings.

(g) A finding or certificate that the defendant is mentally competent shall in no way prejudice the defendant in his defense on the plea under § 7.22 or in his defense under § 7.19. Such finding or certificate shall not be introduced in evidence on such issues or otherwise brought to the notice of the jury.

(h) The proceedings under this section shall be part of the criminal proceedings and included in the file of that case.

(i) Any period for which the defendant is committed pursuant to this Section shall be credited against any sentence which may later be imposed on him for the offense with which he charged.

GUAM CODE ANN. TIT. 9, § 80.20 (2009). CIVIL COMMITMENTS IN LIEU OF PROSECUTION IN CERTAIN CASES.

(a) When a person prosecuted for a felony of the third degree, misdemeanor or petty misdemeanor is a chronic alcoholic, narcotic addict or person suffering from mental abnormality, the court may:

(1) order the civil commitment of such person to a hospital or other institution for medical, psychiatric or other rehabilitative treatment; and
(2) dismiss the prosecution.

The order of commitment may be made after conviction, in which event the court may set

aside the verdict or judgment of conviction and dismiss the prosecution.

(b) The court shall not make an order under Subsection (a) unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

GUAM CODE ANN. TIT. 10, § 82204 (2009). RELATION TO PENDING CRIMINAL ACTIONS.

Involuntary Hospitalization by the Court of an Individual Found Not Guilty by Reason of Insanity Shall be Pursuant to Titles 8 and 9 of the GCA.

PUERTO RICO

U.S. VIRGIN ISLANDS