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Assorted Competency Statutes & Court Rules

Competency to Stand Trial

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Background

In *Dusky v. United States*, the Supreme Court ruled that it is not enough that the defendant is oriented to time and place and has some recollection of events to have him be adjudged competent to stand trial. Rather, the test it formulated is "whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." It is clear that due process requires a level of effective participation by an accused in criminal proceedings against him.

The question of a defendant's competency to stand trial may be raised at any time, including prior to the preliminary hearing or long after trial, conviction, and sentencing have occurred. While a determination of competency immediately prior to or concurrent with the trial is preferred, a reliable retrospective hearing nonetheless may be made where there is sufficient data available. To be meaningful, a retrospective hearing on competency must include a full review of the facts of the case, taking into account the quantity and quality of available data and the opinion of experts. Time is a relevant, though not determinative, factor, and even the passage of considerable time should not present an insurmountable obstacle. In *Drope v Missouri*, the Supreme Court inferred that in certain cases it may be permissible to defer inquiry into a defendant's competence to stand trial until after the trial has been completed, at least where the defendant was present at the trial and the appropriate inquiry was implemented with proper dispatch.

Preliminary Review of Fitness

The right to a hearing to determine a defendant's competency to stand trial is not absolute. A competency hearing is required only where evidence from any source, including the trial judge's own doubts about the defendant's competence, raises a "bona fide doubt" as to the defendant's competency. The determination of whether a bona fide doubt of the defendant's fitness exists rests within the sound discretion of the trial judge, who is in a superior position to observe the defendant and his conduct. Rather than speaking in terms of a "bona fide doubt," many courts state that a hearing to determine a defendant's competence is required where the doubt as to the defendant's competency is "substantial," "real, substantial, and legitimate," or "clear and unequivocal," or where "reasonable grounds" exist to support a hearing. All of these terms describe the same standard, which is whether there is "reasonable ground to believe" that the defendant is not fit to stand trial.

The hearing to determine a defendant's competence to stand trial is a special proceeding of a civil nature, collateral to the criminal proceedings, and it should be completely separate from the trial proceedings. Absolute compliance with the statute prescribing the elements of and procedure for the competency hearing is not required. Substantial compliance will usually suffice. There is no federal constitutional right to have a jury impaneled to determine a defendant's competency to stand trial or plead guilty. Many states, however, either allow or require a jury to make this determination. While the issue

of the defendant's sanity at the time of the alleged crime is a question for the trial jury, the issue of his competency to stand trial is usually determined by a special jury. In some states, the defendant is entitled to have his competency plea determined by a jury if the issue is raised prior to or during trial. If competency is not raised until after trial, the judge is vested with the discretion of deciding the question himself.

A person is presumed competent unless his incompetence is proved by a preponderance of the evidence. It follows, therefore, that the burden of proving incompetency to stand trial is usually on the defendant. In some jurisdictions, however, whenever the issue of a defendant's fitness to proceed is raised, the burden falls upon the prosecution to prove competency by a preponderance of the evidence.

Fit-to-Proceed Hearing

Under the typical procedure, once the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings or assist in the preparation of his defense, the court shall suspend the proceedings and immediately fix a time for a hearing to determine whether the defendant is fit to proceed. Two disinterested psychiatrists are then appointed to examine the defendant for the purpose of forming an opinion as to whether the defendant is competent to stand trial. If, after a full hearing, the court or jury finds that the defendant is fit to proceed, the trial shall proceed. However, if the defendant is found unfit, the trial is delayed, and the defendant is committed to the department of mental health, to be confined in an appropriate mental health institution.

The first thing the court must determine is whether in fact the defendant suffers from a mental illness. An instructive opinion on this point is Bruce v Estelle, wherein the court states: "Before the court can meaningfully apply [the Dusky] standard, however, it must often ascertain the nature of petitioner's allegedly incapacitating illness. It is at this initial juncture that expert testimony is particularly valuable, for the existence of even a severe psychiatric defect is not always apparent to laymen. Because of this difficulty in detecting medical diseases, the trial court may find it necessary to make an initial factfinding on whether the accused suffers from a mental defect at all."

A defendant has been held to be unfit to stand trial where he had (1) a long history of treatment in mental hospitals, (2) a history of mental aberration and suicide attempts during trial, and (3) a long history of "pronounced irrational behavior," and where he was suffering withdrawal from narcotics addiction.

Fitness Restoration

When a defendant has been found incompetent to stand trial, he can neither be tried nor plead guilty until his competency is established at a fitness restoration hearing. At such hearing, the burden is on the state to prove that the defendant is competent to stand trial, the defendant being presumed to continue to be incompetent until it is shown that his mental competence has returned. A defendant who is presumptively incompetent is not sui juris until so declared by the court, and thus he cannot waive a fitness restoration hearing. Prior to *Jackson v Indiana*, discussed below, a defendant found incompetent to stand trial was committed to a mental hospital or other treatment facility until he regained his sanity. If the

defendant never regained competency, he remained in the treatment facility, in effect serving a life sentence. This was true regardless of the crime involved, be it first-degree murder or simple assault.

In *Jackson*, the United States Supreme Court held that this practice violated the guaranties of equal protection and due process, as it subjected the criminal defendant to more lenient commitment standards and more stringent release standards than individuals committed under a state's civil commitment laws. The Supreme Court ruled that when a person charged by a state with a criminal offense is committed solely on account of his incapacity to proceed to trial, he cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future.

Release or Civil Commitment

If it is determined that the defendant will not become competent in the foreseeable future, the state must either institute customary civil commitment proceedings or release the defendant. On the other hand, if the defendant probably will be able to stand trial soon, his continued confinement must be justified by progress toward that goal. As the Supreme Court noted, "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." The Court did not attempt to prescribe time limits, but noted that in the case before it, the defendant had been confined for three and one-half years, and the record sufficiently established the lack of substantial probability that he would ever be able to participate fully in a trial.

Sources & Additional Information

- National Judicial Task Force to Examine State Courts' Responses to Mental Illness (NJTF): Report and Recommendations
- NJTF Leading Reform: Competence to Stand Trial Systems
- The Equitas Project: Model Legal Processes to Support Clinical Intervention for Persons with Serious Mental Illness
- Maryland Law Review: Commitment After Acquittal on Grounds of Insanity
- Just and Well: Rethinking How States Approach Competency to Stand Trial
- Closing the "GAP" Between Competency and Commitment in Minnesota: Ideas from National Standards and Practices in Other States
- 40 Am. Jur. Proof of Facts 2d 171 (Originally published in 1984) (October 2022 Update)
- Thomas Reuters Westlaw

Table 1: Sample State Statutes and Court Rules (Non-Exhaustive)

Jurisdiction	Citation	Assorted Restoration, Release, and Commitment Text Excerpts*
Alabama	ARCrP Rule 11.1 et seq.	(2) If after the hearing the judge or jury determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within a reasonable period of time, and (i) if the judge or jury further determines, based on clear and convincing evidence, that the defendant's being at large poses a real and present threat of substantial harm to the defendant or to others, and that the

		defendant is mentally ill or has a mental defect and, if not treated, will continue to suffer mental distress and will continue to experience deterioration of the ability to function independently, and that the defendant is unable to make a rational and informed decision as to whether treatment would be desirable, the court shall order the defendant committed to the custody of the Department of Mental Health and Mental Retardation for a period not to exceed six (6) months or until the defendant's earlier restoration to competency, unless the court further finds that, as a result of an ongoing supervised regimen of medical treatment or therapy, the risk of harm threatened by the defendant's being at large has been sufficiently minimized or abated, in which case the court shall order that the defendant be released, upon the conditions provided in Rule 7.3 and upon such other appropriate conditions as may be reasonably necessary to ensure that the defendant continues to receive necessary treatment or therapy; but (ii) if the judge or jury does not find that the threat of substantial harm referred to in the preceding subsection (c)(2)(i) exists, the court shall dismiss the charges against the defendant, either with or without prejudice to the right of the State to bring the charges again, and it shall order the defendant released forthwith. (3) If after the hearing the judge or the jury determines that the defendant is incompetent to stand trial, but that there is a substantial probability that the defendant will be restored to competency within a reasonable period of time, and (i) if the judge or the jury also determines, based on clear and convincing evidence, that the defendant's being at large poses a real and present threat of substantial harm to the defendant or to others, and that the defendant is mentally ill or has a mental defect and, if not treated, will continue to suffer mental distress and will experience deterioration of the ability to function independently, and that the defendant is unable to make a rational and informed decision as to whether treatment would be desirable, the court shall order the defendant committed to the custody of the Department of Mental Health and Mental Retardation for therapy and treatment, in an institution suitable to receive such persons, for a period not to exceed six (6) months or until the defendant's earlier restoration to competency; but (ii) if the judge or jury does not also find that the threat of substantial harm referred to in the preceding subsection (c)(3)(i) exists, the court shall release the defendant, as provided in Rule 7.3, under such conditions as the court deems necessary to ensure that the defendant receives therapy and treatment designed to restore the defendant to competency within a reasonable period of time, and when applicable, to minimize or abate any risk of harm threatened by the defendant's being at large.
Alaska	AS § 12.47.010 et seq.	(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. (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. (a) If an offender has been committed to the custody of the commissioner of health and social services under AS 12.47.090, the victim of that crime is entitled to notice of a pending or actual change in the status of the offender. The commissioner of health and social services shall give notice as required by this section if (1) the offender has been continued in commitment following expiration of the maximum term of imprisonment under AS 12.47.090(f) and the commissioner gives notice of release of the offender; (2) the court is to consider modification of an order of conditional release for the offender under AS 12.47.092(e); (3) a court is to consider conditional release of the offender under AS 12.47.090(j) and 12.47.092(a); (4) the offender petitions for discharge under AS 12.47.092(f); or (5) the offender escapes, is released from custody on conditional release, furlough or authorized absence, or is discharged or released from custody for any reason. (b) If a victim desires notice under this section, the victim shall maintain a current, valid mailing address on

		file with the commissioner of health and social services. The commissioner shall send the notice required by this section to the victim's last known address. The victim's address may not be disclosed to the offender or offender's attorney. (c) The commissioner of health and social services is required to give notice of a change in the status of an offender under this section to any victim who has requested notice. (d) If more than one person who qualifies as a victim under AS 12.55.185 desires notice, the commissioner of health and social services shall designate one person for purposes of receiving any notice required and exercising the rights granted by this section. (e) A victim who has received notice under (a) of this section that a change in the status of the offender is pending before a court has the right to submit to the court a written statement, or to appear personally at a hearing to present a written statement, and to give sworn testimony or an unsworn oral presentation to the court.
Arizona		C. If the court initially finds that the defendant is incompetent to stand trial, the court shall order treatment for the restoration of competency unless there is clear and convincing evidence that the defendant will not be restored to competency within fifteen months. The court may extend the restoration treatment by six months if the court determines that the defendant is making progress toward the goal of restoration. A. The court may order a defendant to undergo out of custody competency restoration treatment. If the court determines that confinement is necessary for treatment, the court shall commit the defendant for competency restoration treatment to the competency restoration treatment program designated by the county board of supervisors. B. If the county board of supervisors has not designated a program to provide competency restoration treatment, the court may commit the defendant for competency restoration treatment to the Arizona state hospital, subject to funding appropriated by the legislature to the Arizona state hospital for inpatient competency restoration treatment services, or to any other facility that is approved by the court. If a defendant is committed to the state hospital for the reason that he is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense, if charged with a crime, or for the reason that he is found insane after conviction and prior to pronouncing sentence, he shall be detained in the state hospital until he becomes sane. When the defendant becomes sane, the superintendent of the state hospital shall give notice of that fact to the sheriff and county attorney of the county. The sheriff shall thereupon, without delay, bring the defendant from the state hospital and place him in proper custody, until he is brought to trial or sentenced, or is legally discharged. When a defendant in a criminal action, any time prior to pronouncement of sentence, is committed to the state hospital, the expenses of transporting him to and from the hospital and of maintaining him while confined therein shall be a charge against the county in which the indictment was found or information filed, but the county may recover such expenses from the estate of the defendant or from a relative, town, city or county required by law to provide for and maintain the defendant. A. The person who supervises the treatment of a defendant who has been ordered to undergo treatment pursuant to § 13-4512 shall submit a written report to the court which shall make the report available to the prosecutor, the defense attorney and the clinical liaison as follows: 1. For inpatient treatment, after the first one hundred twenty days of the original treatment order and after each one hundred eighty days of treatment thereafter. 2. For outpatient treatment, every sixty days. 3. Whenever the person believes the defendant is competent to stand trial.

		4. Whenever the person believes 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. 5. Fourteen days before the expiration of the maximum time that an order issued pursuant to § 13-4512 or this section is in effect. A. An order or combination of orders that is issued pursuant to § 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to § 13-702, § 13-703, § 13-704, subsection A, B, C, D or E, § 13-705, § 13-706, subsection A, § 13-708, subsection D or § 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under § 13-703 or 13-704 for prior convictions. B. The court shall only consider the time a defendant actually spends in a restoration to competency program when calculating the time requirements pursuant to subsection A of this section. A. 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 an evaluating agency for the institution of civil commitment proceedings pursuant to title 36, chapter 5.1 If the defendant is remanded, the prosecutor shall file a petition for evaluation and provide any known criminal history for the defendant. 2. Appoint a guardian ad litem to investigate whether the defendant is or may be in need of a guardian, a conservator or any other protective order pursuant to title 14, chapter 5.2 3. Release the defendant from custody and dismiss the charges against the defendant without prejudice.
Arkansas	A.C. § 5-2-301 et seq.	(a) No person who lacks the capacity to understand a proceeding against him or her or to assist effectively in his or her own defense as a result of mental disease or defect shall be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures. (b) A court shall not enter a judgment of acquittal on the ground of mental disease or defect against a defendant who lacks the capacity to understand a proceeding against him or her or to assist effectively in his or her own defense as a result of mental disease or defect. (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 under § 5-2-327 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. (a) A person or entity that provides treatment or other mental health services under this subchapter may impose a charge for the cost of the treatment or other mental health services rendered. (b) A charge for the cost of treatment or other mental health services under this section may not exceed the actual cost of the treatment or other mental health services provided. (c)(1) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall promulgate rules establishing reasonable charges for the cost of treatment or other mental health services under this section. (2) Rules establishing reasonable charges for the cost of treatment or other mental health services under this section shall provide for waiving or postponing the collection of the charges based on: (A) Clinical considerations; (B) The defendant's inability to pay; or (C) A court determination that the defendant is wholly or partly indigent and qualifies for the appointment of an attorney under § 16-87-213.
California	Cal. Penal Code § 1367 et seq.	(a) A person shall not be tried or adjudged to punishment or have their probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of a mental health disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may do either of the following: (1)(A) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter. (B) If the court opts to conduct a hearing pursuant to this paragraph, the hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing. (C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. (D) If the court finds the defendant ineligible for diversion based on the circumstances set forth in

		subdivision (b) or (d) of Section 1001.36, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following: (i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider. (ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385. (iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible 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. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed pursuant to Section 1385. (2) Dismiss the charges 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 the director's designee. (c) If the defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may modify the terms and conditions of supervision to include appropriate mental health treatment. (d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion. A defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion. “Actual custody” has the same meaning as in Section 4019. (e) This section shall apply only as provided in subdivision (b) of Section 1367. A person committed to the care of the State Department of State Hospitals because he or she is incompetent to stand trial or to be adjudged to punishment is eligible for compassionate release pursuant to Section 4146 of the Welfare and Institutions Code. In any case in which the criteria for compassionate release apply, the State Department of State Hospitals shall follow the procedures and standards in Section 4146 of the Welfare and Institutions Code to determine if the department should recommend to the court that the person's commitment for treatment and the underlying criminal charges be suspended for compassionate release.

		(a) If the defendant is found mentally competent during a postrelease community supervision or parole revocation hearing, the revocation proceedings shall resume. The formal hearing on the revocation shall occur within a reasonable time after resumption of the proceedings, but in no event may the defendant be detained in custody for over 180 days from the date of arrest. (b) If the defendant is found mentally incompetent, the court shall dismiss the pending revocation matter and return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may, using the least restrictive option to meet the mental health needs of the defendant, also do any of the following: (1) Modify the terms and conditions of supervision to include appropriate mental health treatment. (2) Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant. (3) Refer the matter to the public guardian of the county of commitment to initiate conservatorship proceedings pursuant to Sections 5352 and 5352.5 of the Welfare and Institutions Code. The public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. The court shall order the matter to the public guardian pursuant to this paragraph only if there are no other reasonable alternatives to the establishment of a conservatorship to meet the mental health needs of the defendant. (c)(1) Notwithstanding any other law, if a person subject to parole pursuant to Section 3000.1 or paragraph (4) of subdivision (b) of Section 3000 is found mentally incompetent, the court shall order the parolee to undergo treatment pursuant to Section 1370 for restoring the person to competency, except that if the parolee is not restored to competency within the maximum period of confinement and the court dismisses the revocation, the court shall return the parolee to parole supervision. (2) If the parolee is returned to parole supervision, the court may, using the least restrictive option to meet the mental health needs of the parolee, do any of the following: (A) Modify the terms and conditions of parole to include appropriate mental health treatment. (B) Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the parolee. (C) Refer the matter to the public guardian of the county of commitment to initiate conservatorship proceedings pursuant to Sections 5352 and 5352.5 of the Welfare and Institutions Code. The public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. The court shall order the matter to the public guardian pursuant to this subparagraph only if there are no other reasonable alternatives to the establishment of a conservatorship to meet the mental health needs of the parolee. (d) If a conservatorship is established for a defendant or parolee pursuant to subdivision (b) or (c), the county or the Department of Corrections and Rehabilitation shall not compassionately release the defendant or parolee or otherwise cause the termination of his or her supervision or parole based on the establishment of that conservatorship. 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. When a defendant who has been found incompetent is on outpatient status under Title 15 (commencing with Section 1600) of Part 2 and the outpatient treatment staff is of the opinion that the defendant has recovered competence, the supervisor shall communicate such opinion to the community program director. If the community program director concurs, that opinion shall be certified by such director to the committing court. The court shall calendar the case for further proceeding pursuant to Section 1372.

		(a) If a mentally incompetent defendant is admitted to a county jail treatment facility pursuant to Section 1370, the department shall provide restoration of competency treatment at the county jail treatment facility and shall provide payment to the county jail treatment facility for the reasonable costs of the bed during the restoration of competency treatment as well as for the reasonable costs of any necessary medical treatment not provided within the county jail treatment facility, unless otherwise agreed to by the department and the facility. (1) If the county jail treatment facility is able to provide restoration of competency services, upon approval by the department and subject to funding appropriated in the annual Budget Act, the county jail treatment facility may provide those services and the State Department of State Hospitals may provide payment to the county jail treatment facility for the reasonable costs of the bed during the restoration of competency treatment as well as the reasonable costs of providing restoration of competency services and for any necessary medical treatment not provided within the county jail treatment facility, unless otherwise agreed to by the department and the facility. (2) Transportation to a county jail treatment facility for admission and from the facility upon the filing of a certificate of restoration of competency, or for transfer of a person to another county jail treatment facility or to a state hospital, shall be provided by the committing county unless otherwise agreed to by the department and the facility. (3) In the event the State Department of State Hospitals and a county jail treatment facility are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under such a contract, each shall indemnify the other to the extent of its comparative fault. (b) If the community-based residential system is selected by the court pursuant to Section 1370, the State Department of State Hospitals shall provide reimbursement to the community-based residential treatment system for the cost of restoration of competency treatment as negotiated with the State Department of State Hospitals. (c) The State Department of State Hospitals may provide payment to either a county jail treatment facility or a community-based residential treatment system directly through invoice, or through a contract, at the discretion of the department in accordance with the terms and conditions of the contract or agreement.
Colorado	C.R.S. § 16-8.5-101 et seq.	(1) While a defendant is incompetent to proceed, the defendant shall not be tried or sentenced, nor shall the court consider or decide pretrial matters that are not susceptible of fair determination without the personal participation of the defendant. However, a determination that a defendant is incompetent to proceed shall not preclude the furtherance of the proceedings by the court to consider and decide matters, including a preliminary hearing and motions, that are susceptible of fair determination prior to trial and without the personal participation of the defendant. Those proceedings may be later reopened if, in the discretion of the court, substantial new evidence is discovered after and as a result of the restoration to competency of the defendant. (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 charged with an offense as outlined in section 16-8.5-116(7) and the competency evaluation has determined that the defendant meets the standard for civil certification pursuant to article 65 of title 27, the court may forgo any order of restoration and immediately order that proceedings be initiated by the county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113(6) for the civil certification of the defendant and dismiss the charges without prejudice in the interest of justice once civil certification proceedings have been initiated. (a.5) If the evaluator has provided an opinion that the defendant is incompetent to proceed and there is not a substantial probability that the defendant, with restoration services, will attain competency within the

		reasonably foreseeable future pursuant to section 16-8.5-105(5)(e)(I)(B), (5)(e)(I)(C), or (5)(e)(I)(D), in lieu of ordering restoration treatment the court shall set a hearing within thirty-five days of receiving the report on the issue of whether there is a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future and, in the case of a finding pursuant to section 16-8.5-105(5)(e)(I)(D), maintain competency through the adjudication of the case. At the hearing, there is a presumption that the defendant will not attain competency within the reasonably foreseeable future. A party attempting to overcome that presumption must prove by a preponderance of the evidence that there is a substantial probability that restoration efforts will be successful within the reasonably foreseeable future. At the conclusion of the hearing when there is an opinion pursuant to section 16-8.5-105(5)(e)(I)(D), if the court finds that there is not a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future and maintain competency throughout the case, the court shall dismiss the case and may consider ordering the initiation of proceedings pursuant to section 16-8.5-116(6)(b) or (6)(c). If the court determines that there is insufficient evidence to make an immediate finding of no substantial probability of restoration to competency within the reasonably foreseeable future, then the court shall order restoration education for an initial period of time not to exceed ninety-one days as provided for in this section and review of the case pursuant to section 16-8.5-116(3) and (4). At the initial and subsequent review hearings, if the evaluator continues to opine that the defendant is incompetent to proceed and still unlikely to be restored, the court shall presume that there is not a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future and maintain competency through the adjudication of the case, and the court shall dismiss the case unless there is clear and convincing evidence that the person has made progress toward attaining competency and can maintain competency through the adjudication of the case. If the case is ordered dismissed, the department will have the same obligations pursuant to section 16-8.5-105(5)(e)(I). (b)(I) If the defendant is on bond or summons, the court shall order that restoration to competency take place on an outpatient basis, unless the department recommends inpatient restoration services pursuant to section 16-8.5-105(5)(e)(II). (II)(A) If the defendant is in custody and the recommendation is for outpatient restoration services, the court shall consider the release of the defendant on bond consistent with article 4 of this title 16 and the Colorado rules of criminal procedure. (B) As a condition of bond, the court shall order that the restoration take place on an outpatient basis. Pursuant to section 27-60-105, the behavioral health administration in the department is the entity responsible for the oversight of restoration education and coordination of all competency restoration services. As a condition of release for outpatient restoration services, the court may require pretrial services, if available, to work with the behavioral health administration and the restoration services provider under contract with the behavioral health administration to assist in securing appropriate support and care management services, which may include housing resources. The individual agency responsible for providing outpatient restoration services for the defendant shall notify the court or other designated agency within twenty-one days if restoration services have not commenced. (C) When the defendant is in custody on a misdemeanor, petty offense, or traffic offense, the court, within seven days of the defendant being found incompetent to proceed, shall set a hearing on bond. At the bond hearing there is a presumption that the court shall order a personal recognizance bond and outpatient restoration services. If the court does not order a personal recognizance bond and the defendant is committed for inpatient restoration, the court shall make findings of fact that extraordinary circumstances exist to overcome the presumption of release by clear and convincing evidence. If the court denies a personal recognizance bond, the court shall notify the department of the specific facts and findings that it relied upon in the order for restoration treatment. (c) If the court finds that the defendant is not eligible for release from custody or not able to post the

		monetary condition of bond, 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 pursuant to 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. (d) If the court has ordered outpatient restoration services and the department determines that it is unable, within a reasonable time, to provide restoration services on an outpatient basis, the department shall notify the court within fourteen days after its determination, at which point the court shall review the case and determine what interim mental health services can be provided within the community by the department or other community provider. If a court liaison is appointed, the department shall report to the court liaison every twenty-eight days thereafter concerning the availability of restoration services on an outpatient basis. (e) If the court commits the defendant to the custody of the department, the executive director has the same powers with respect to a commitment provided for in section 16-8-105.5(4). (f)(I) If the court has ordered inpatient restoration services, the department shall provide restoration services at an appropriate inpatient restoration services program. On and after July 1, 2019, the department shall offer tier 1 defendants admission for restoration services within seven days after receipt of the court order and collateral materials. On and after July 1, 2021, the department shall offer admission to tier 2 defendants within twenty-eight days after receipt of the court order and collateral materials. For tier 2 defendants, the department shall advise the court and, if a court liaison is appointed, the court liaison every twenty-eight days after the initial twenty-eight day period regarding the availability of a bed and when admission will be offered. (II) If the defendant is not offered admission and transported to the inpatient restoration services program within the time frames provided or in accordance with other court orders, the court may: (A) Review the case for consideration of outpatient restoration services and appropriate and necessary case management services coordinated with the department; if a court liaison is appointed, the court liaison; and pretrial services, if available; or (B) Make any other order determined to be necessary in order to secure the necessary restoration services. (g) If a defendant is receiving inpatient restoration services and the executive director concludes that a less restrictive facility would be more clinically appropriate, the executive director, with proper notice to the court, and consistent with the provisions of part 3 of article 4.1 of title 24, has the authority to move the defendant to a less restrictive facility if, in the executive director's opinion, the defendant is not yet restored to competency but he or she could be properly restored to competency in a less restrictive facility. If the defendant is not released from custody, the court shall order the department to provide inpatient services at a location determined by the department. (h)(I) If the defendant is receiving inpatient restoration services and the executive director concludes that community-based restoration services would be more clinically appropriate, the department shall: (A) Notify the court and request that the defendant be considered for release on a nonmonetary bond if the defendant is not currently released on bond; and (B) Provide to the court information regarding the appropriate outpatient restoration services, developed in conjunction with the court liaison, when assigned, and the reasons why the defendant could be properly restored to competency on an outpatient basis. (II) The court shall rule on the request within fourteen days after receipt of the request from the department. (i) For a defendant allowed to reside out of the state of Colorado, the department may offer assistance to an out-of-state provider providing restoration services to the defendant in the state where the defendant resides. (3)(a) When the department submits a report to the court that it is the position of the department that the defendant is restored to competency, the defendant may be returned to the custody of the county jail. If the

		recommendation is that the defendant be returned to the custody of the county jail, the department shall notify the sheriff of the jurisdiction where the defendant is to be returned and the court liaison. Within seventy-two hours after receipt of the notice, the sheriff shall return the defendant to the jail. When a defendant is transferred to the physical custody of the sheriff, the department shall work with the sheriff and any behavioral health providers in the jail to ensure that the jail has the necessary information to prevent any decompensation by the defendant while the defendant is in jail, which must include medication information when clinically appropriate. The report to the court must also include a statement that the department is returning the defendant to the custody of the county jail. (b) If the defendant was released on bond prior to the inpatient hospitalization, the defendant must be released pursuant to the bond with the conditions imposed by the court. The department shall assist the defendant with any and all necessary transportation and provide the necessary case and medication information for the defendant to the community agency that will provide ongoing services and medication support. The department shall notify the court and the court liaison that the department is returning the defendant to the community on bond status. The department, the court liaison, and the court, including pretrial services, shall coordinate to ensure that the defendant is advised of his or her next court appearance and all of the required terms and conditions of the release on bond. (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, consistent with the requirements of section 16-8.5-111. (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. (1) Subject to the time periods and legal standards set forth in this section, whichever is shortest, a defendant committed to the custody of the department or otherwise confined as a result of a determination of incompetency to proceed must not remain confined for a period in excess of the maximum term of confinement that could be imposed for only the single most serious offense with which the defendant is charged, less thirty percent for a misdemeanor offense and less fifty percent for a felony offense. At the end of such time period, the court shall dismiss the charges, and certification proceedings or provision of services, if any, are governed by article 65 or 10.5 of title 27. (2)(a) Within ninety-one days after the entry of the court's order of commitment or order to receive outpatient restoration, the court shall review the case of a defendant who has been determined to be incompetent to proceed with regard to the probability that the defendant will be restored to competency within the reasonably foreseeable future and with regard to the justification for certification, confinement, or continued restoration treatment. The review may be held in conjunction with a restoration hearing held pursuant to section 16-8.5-113. However, if at the review hearing, there is a request by the defendant for a restoration hearing pursuant to section 16-8.5-113, the court shall set the restoration hearing within thirty-five days after the request pursuant to the provisions of section 16-8.5-113. (b) On and after July 1, 2020, at least ten days before each review, the individual or entity evaluating the defendant shall provide the court with a report describing:

		(I) An opinion regarding the defendant's competency; (II) Whether there is a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future; (III) Whether there is a substantial probability that the defendant will be restored to competency within the time periods established by this section; (IV) Whether the defendant meets the requirements for certification set forth in article 65 of title 27 or is eligible for services pursuant to article 10.5 of title 27; (V) Any and all efforts made for restoration through medication, therapy, education, or other services and the outcome of those efforts in relation to restoring the defendant to competency; (VI) Repealed by Laws 2022, (H.B. 22-1386), § 4, eff. July 1, 2022. (VII) If the defendant has failed to cooperate with treatment, whether the incompetency and mental or intellectual and developmental disability contributes to the defendant's refusal or inability to cooperate with restoration or prevents the ability of the defendant to cooperate with restoration; and (VIII) A summary of the observations of the defendant by the treating staff at the facility or other location where inpatient services were delivered. (c) Additionally, on and after July 1, 2020, at least ten days before each review, the department treating team shall provide to the court an additional report that summarizes: (I) What restorative education has been provided and the frequency of that education; (II) What medication has been administered, including voluntary or involuntary medications; (III) What release plans have been made for the defendant after release, including a discussion of the support from family members; (IV) Whether or not the defendant would agree to voluntary admission to the hospital for certification pursuant to article 65 of title 27; (V) The opinion of the treating team on the defendant's mental health functioning and ability to function on an outpatient basis for restoration services; and (VI) Whether the defendant, based on observations of the defendant's behavior in the facility, presents a substantial risk to the physical safety of himself or herself, of another person, or of the community if released for community restoration. (3) After the initial review pursuant to subsection (2)(a) of this section, the court shall review the case of the defendant every ninety-one days thereafter until four reviews have been conducted. At least ten days before each review, the individual or entity evaluating the defendant shall provide the court with an updated report as described in subsection (2)(b) of this section and the treatment staff shall provide an updated summary of observations as described in subsection (2)(c) of this section. (4) After the fourth review, the court shall review the competency of the defendant every ninety-one days until the defendant is restored to competency or the court determines, based on available evidence, that there is not a substantial probability that the defendant will be restored to competency in the reasonably foreseeable future. If the court determines based on available evidence there is not a substantial probability that the defendant will be restored to competency in the reasonably foreseeable future, the court shall dismiss the case subject to the provisions of subsection (10) of this section. (5) The court shall forward a copy of each report and summary received pursuant to subsections (2), (3), and (4) of this section to the county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113(6) for the county in which the case is pending and, when a court liaison is appointed, to the court liaison. (6) Notwithstanding the time periods provided in subsections (7), (8), and (9) of this section and to ensure compliance with relevant constitutional principles, for any offense for which the defendant is ordered to receive competency restoration services in an inpatient or outpatient setting, if the court determines, based on available evidence, that there is not a substantial probability that the defendant will be restored to

		competency within the reasonably foreseeable future, the court may order the defendant's release from commitment pursuant to this article 8.5 through one or more of the following means: (a) Upon motion of the district attorney, the defendant, or on its own motion, the court may terminate the criminal proceedings, the commitment, or the restoration services order; (b) The court may, in coordination with the county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113(6) for the county in which the defendant is charged, order the commencement of certification proceedings pursuant to the provisions of article 65 of title 27 if the defendant meets the requirements for certification pursuant to article 65 of title 27; (c) In the case of a defendant who has been found eligible for services pursuant to article 10.5 of title 27 due to an intellectual and developmental disability, the court or a party may initiate an action to restrict the rights of the defendant pursuant to article 10.5 of title 27; or (d) On and after July 1, 2020, the department shall ensure that case management services and support are made available to any defendant released from commitment pursuant to this article 8.5 due to the substantial probability that the defendant will not be restored to competency in the reasonable foreseeable future. (7) At any review hearing held concerning the defendant's competency to proceed, the court shall dismiss the charges against the defendant and release the defendant from confinement, subject to the provisions of subsection (10) of this section, if: (a) The defendant: (I) Is charged with a misdemeanor, a misdemeanor drug offense, a petty offense, or a traffic offense; (II) Has been committed to the custody of the department or otherwise confined as a result of a determination of incompetency to proceed; (III) Has received competency restoration services while committed or otherwise confined for an aggregate time of six months; and (b) The court determines, based on available evidence, that the defendant remains incompetent to proceed. (8) At any review hearing held concerning the defendant's competency to proceed, the court shall dismiss the charges against the defendant and release the defendant from confinement, subject to the provisions of subsection (10) of this section, if: (a) The defendant: (I) Is charged with a class 5 or class 6 felony, except for those offenses enumerated in section 24-4.1-302(1), or with a level 3 or level 4 drug felony; (II) Has been committed to the custody of the department or otherwise confined as a result of a determination of incompetency to proceed; and (III) Has received competency restoration services while committed or otherwise confined for an aggregate time of one year; and (b) The court determines, based on available evidence, that the defendant remains incompetent to proceed. (9) If the defendant is charged with any other felony offense except a class 1, 2, or 3 felony offense; a sex offense as defined in section 18-1.3-1003(5); a crime of violence as defined in section 18-1.3-406(2); or a level 1 or level 2 drug felony, and has been committed to the custody of the department or otherwise confined as a result of a determination of incompetency to proceed, the following provisions apply: (a) If the defendant has received competency restoration services while committed or otherwise confined for an aggregate time of two years and the court determines, based on available evidence, that the defendant is not restored to competency, then the court shall dismiss the charges against the defendant, subject to the provisions of subsection (10) of this section, unless any party objects to dismissal. (b) If a party objects to dismissal of charges pursuant to subsection (9)(a) of this section, the court shall set the matter for a hearing. Upon completion of the hearing, the court shall dismiss the charges unless the court determines that the party objecting to the dismissal establishes by clear and convincing evidence that

		there is a compelling public interest in continuing the prosecution and there is a substantial probability that the defendant will attain competency in the foreseeable future. If the court declines to dismiss the charges, the court shall address the appropriateness of continued confinement and may alter or reduce bond if appropriate pursuant to article 4 of this title 16 or the decision to commit the defendant to the department pursuant to section 16-8.5-111. (10) Prior to the dismissal of charges pursuant to subsection (1), (4), (6), (7), (8), or (9) of this section, the court shall identify whether the defendant meets the requirements for certification pursuant to article 65 of title 27, or for the provision of services pursuant to article 10.5 of title 27, or whether the defendant will agree to a voluntary commitment. If the court finds the requirements for certification or provision of services are met or the defendant does not agree to a voluntary commitment, the court may stay the dismissal for twenty-one days and notify the department and county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113(6) in the relevant jurisdiction of the pending dismissal so as to provide the department and the county attorney or district attorney with the opportunity to pursue certification proceedings or the provision of necessary services. (11) In any circumstance where the defendant's case was dismissed or the defendant was released from confinement, the court shall enter a written decision explaining why the court did or did not terminate the criminal proceeding or the commitment or restoration order. (12) If charges against a defendant are dismissed pursuant to this section, such charges are not eligible for sealing pursuant to section 24-72-705. (13) The department shall promulgate such rules as necessary to consistently enforce the provisions of this article 8.5. (14) On and after July 1, 2020, the court may, at any time of the restoration process, order the department to provide the court with an appropriate release plan for the reintegration of the defendant into the community with appropriate services. (15) When the defendant is charged with an offense in municipal court and the defendant is found incompetent to proceed, or when civil commitment proceedings are initiated pursuant to article 65 of title 27, the municipal court shall dismiss the case. (1) The general assembly shall appropriate to the department twenty-eight million five hundred sixty-two thousand eight hundred twenty-eight dollars from the economic recovery and relief cash fund created in section 24-75-228(2)(a) to contract for additional inpatient beds for competency services provided pursuant to section 16-8.5-111 or for additional inpatient beds for individuals receiving mental health care and treatment pursuant to article 65 of title 27. If any unexpended or unencumbered money appropriated for a fiscal year remains at the end of that fiscal year, the department may expend the money for the same purposes in the next fiscal year without further appropriation. (2) The general assembly shall appropriate to the department eight hundred thousand dollars from the behavioral and mental health cash fund created in section 24-75-230(2)(a) to contract for a feasibility study of renovating and staffing a facility in Adams county to provide inpatient beds for competency services provided pursuant to section 16-8.5-111 and individuals receiving mental health care and treatment pursuant to article 65 of title 27. The department must receive the results from the feasibility study on or before September 15, 2022. (3) This section is repealed, effective December 31, 2024.
Connecticut	C.G.S. § 54-56d	(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 383b1 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 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or section 14-227a or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n, subdivision (2) of subsection (a) of section 53-21 or section 53a-56b, 53a-60d, 53a-70, 53a-70a, 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 (A) in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Developmental Services, except that any defendant placed for treatment with the Commissioner of Mental Health and Addiction Services may remain in the custody of the Department of Correction pursuant to subsection (p) of this section; or, (B) 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 facility for persons with intellectual disability. 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 examiners shall transmit information obtained about the defendant during the course of an examination 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, or the Commissioner of Mental Health and Addiction Services with respect to any defendant who is in the custody of the Commissioner of Correction pursuant to subsection (p) of this section, 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; (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; or (5) whenever he or she believes that the defendant is still not competent but has improved sufficiently such that continued inpatient commitment is no longer the least restrictive placement appropriate and available to restore competency. 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, or the Commissioner of Mental Health and Addiction Services with respect to any defendant who is in the custody of the Commissioner of Correction pursuant to subsection (p) of this section, 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) Whenever 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, (iv) the defendant would be eligible for civil commitment pursuant to subdivision (2) of subsection (h) of this section, or (v) the defendant is still not competent but has improved sufficiently such that continued inpatient commitment is no longer the least restrictive placement appropriate and available to restore competency, 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. With respect to a defendant who is in the custody of the Commissioner of Correction pursuant to subsection (p) of this section, the Commissioner of Mental Health and Addiction Services shall retain responsibility for providing testimony at any hearing under this subsection. The court shall determine whether the defendant is competent or is making progress toward attaining 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 but that the defendant is making progress toward attaining competency and inpatient placement is no longer the least restrictive placement appropriate and available to restore competency, the court shall consider whether the availability of such less restrictive placement is a sufficient basis on which to release the defendant on a promise to appear, conditions of release, cash bail or bond and may order continued treatment to restore competency on an outpatient basis. 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 532 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 a facility for persons with intellectual disability 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. Report to court prior to release from placement. (1) 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. If the court orders the defendant placed in the custody of the Commissioner of Mental Health and Addiction Services and orders the commissioner to apply for civil commitment pursuant to this subsection, the court may order the commissioner to give the court notice when the defendant is released from the commissioner's custody if such release is prior to the expiration of the time within which

		the defendant may be prosecuted for the crime with which the defendant is charged, provided such order indicates when such time expires. If the court orders the defendant placed in the custody of the Commissioner of Developmental Services for purposes of commitment under any provision of sections 17a-270 to 17a-282, inclusive, the court may order the Commissioner of Developmental Services to give the court notice when the defendant's commitment is terminated if such termination is prior to the expiration of the time within which the defendant may be prosecuted for the crime with which the defendant is charged, provided such order indicates when such time expires. (2) 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. (3) 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 with a violation of section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or subdivision (2) of subsection (a) of section 53-21, subdivision (2) of subsection (a) of section 53a-60 or section 53a-60a, 53a-70, 53a-70a, 53a-71, 53a-72a or 53a-72b, or orders the placement of such defendant in the custody of the Commissioner of Mental Health and Addiction Services or the Commissioner of Developmental 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 at intervals of not less than six months. If, at any time after the initial periodic examination, the court finds again, based upon an examiner's recommendation, that there is a substantial probability that the defendant, if provided with a course of treatment, will never regain competency, then any subsequent periodic examination of the defendant as to the defendant's competency shall be at intervals of not less than eighteen months. Such an examination shall be conducted in accordance with subsection (d) of this section. 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, has expired, whichever occurs first. (4) 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. (5) 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, has expired. Notwithstanding the record 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. 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-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 defendant who presents significant security, safety or medical risk. Defendant remaining in custody of Commissioner of Correction. (1) This section shall not be construed to require the Commissioner of Mental Health and Addiction Services to place any defendant who presents a significant security, safety or medical risk in a hospital for psychiatric disabilities which does not have the trained staff, facilities or security to accommodate such a person, as determined by the Commissioner of Mental Health and Addiction Services in consultation with the Commissioner of Correction. (2) If a defendant is placed for treatment with the Commissioner of Mental Health and Addiction Services pursuant to subsection (i) of this section and such defendant is not placed in a hospital for psychiatric disabilities pursuant to a determination made by the Commissioner of Mental Health and Addiction Services under subdivision (1) of this subsection, the defendant shall remain in the custody of the Commissioner of Correction. The Commissioner of Correction shall be responsible for the medical and psychiatric care of the defendant, and the Commissioner of Mental Health and Addiction Services shall remain responsible to provide other appropriate services to restore competency. (3) If a defendant remains in the custody of the Commissioner of Correction pursuant to subdivision (2) of this subsection and 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 subsection (k) of this section. Nothing in this subdivision shall prevent the court from making any other finding or order set forth in subsection (k) of this section. (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	11 Del. C. § 401 et seq.	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. (a) Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or serious mental disorder, 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. (a) Whenever the court is satisfied that a prisoner has developed a mental illness 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. (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 did in fact have a mental illness 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 had a mental illness 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 culpable persons with a mental illness 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.
Florida	Fla. R. Crim. P. Rule 3.190 et seq.	A person accused of an offense or a violation of probation or community control who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent. (c) Commitment on Finding of Incompetence. If the court finds the defendant is incompetent to proceed, or that the defendant is competent to proceed but that the defendant's competence depends on the continuation of appropriate treatment for a mental illness or intellectual disability, the court shall consider issues relating to treatment necessary to restore or maintain the defendant's competence to proceed. (1) The court may order the defendant to undergo treatment if the court finds that the defendant is mentally ill or intellectually disabled and is in need of treatment and that treatment appropriate for the defendant's condition is available. If the court finds that the defendant may be treated in the community on bail or other release conditions, the court may make acceptance of reasonable medical treatment a condition of continuing bail or other release conditions. (2) If the defendant is incarcerated, the court may order treatment to be administered at the custodial facility or may order the defendant transferred to another facility for treatment or may commit the defendant as provided in subdivision (3). (3) A defendant may be committed for treatment to restore a defendant's competence to proceed if the court finds that: (A) the defendant meets the criteria for commitment as set forth by statute; (B) there is a substantial probability that the mental illness or intellectual disability causing the defendant's incompetence will respond to treatment and that the defendant will regain competency to proceed in the reasonably foreseeable future; (C) treatment appropriate for restoration of the defendant's competence to proceed is available; and (D) no appropriate treatment alternative less restrictive than that involving commitment is available. (4) If the court commits the defendant, the order of commitment shall contain: (A) findings of fact relating to the issues of competency and commitment addressing the factors set forth in rule 3.211 when applicable; (B) copies of the reports of the experts filed with the court pursuant to the order of examination; (C) copies of any other psychiatric, psychological, or social work reports submitted to the court relative to the mental state of the defendant; and (D) copies of the charging instrument and all supporting affidavits or other documents used in the determination of probable cause. (5) The treatment facility shall admit the defendant for hospitalization and treatment and may retain and treat the defendant. No later than 6 months from the date of admission, the administrator of the facility shall file with the court a report that shall address the issues and consider the factors set forth in rule 3.211, with copies to all parties. If, at any time during the 6-month period or during any period of extended commitment that may be ordered pursuant to this rule, the administrator of the facility determines that the defendant no longer meets the criteria for commitment or has become competent to proceed, the administrator shall

		notify the court by such a report, with copies to all parties. (A) If, during the 6-month period of commitment and treatment or during any period of extended commitment that may be ordered pursuant to this rule, counsel for the defendant shall have reasonable grounds to believe that the defendant is competent to proceed or no longer meets the criteria for commitment, counsel may move for a hearing on the issue of the defendant's competence or commitment. The motion shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is now competent to proceed or no longer meets the criteria for commitment. To the extent that it does not invade the attorney-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant that have formed the basis for the motion. (B) If, upon consideration of a motion filed by counsel for the defendant or the prosecuting attorney and any information offered the court in support thereof, the court has reasonable grounds to believe that the defendant may have regained competence to proceed or no longer meets the criteria for commitment, the court shall order the administrator of the facility to report to the court on such issues, with copies to all parties, and shall order a hearing to be held on those issues. (6) The court shall hold a hearing within 30 days of the receipt of any such report from the administrator of the facility on the issues raised thereby. If, following the hearing, the court determines that the defendant continues to be incompetent to proceed and that the defendant meets the criteria for continued commitment or treatment, the court shall order continued commitment or treatment for a period not to exceed 1 year. When the defendant is retained by the facility, the same procedure shall be repeated prior to the expiration of each additional 1-year period of extended commitment. (7) If, at any time after such commitment, the court decides, after hearing, that the defendant is competent to proceed, it shall enter its order so finding and shall proceed. (8) If, after any such hearing, the court determines that the defendant remains incompetent to proceed but no longer meets the criteria for commitment, the court shall proceed as provided in rule 3.212(d). (d) Release on Finding of Incompetence. If the court decides that a defendant is not mentally competent to proceed and there is a substantial probability that the defendant will gain competency to proceed in the foreseeable future, but does not meet the criteria for commitment, the defendant may be released on appropriate release conditions. The court may order that the defendant receive outpatient treatment at an appropriate local facility and that the defendant report for further evaluation at specified times during the release period as conditions of release. A report shall be filed with the court after each evaluation by the persons appointed by the court to make such evaluations, with copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of General Practice and Judicial Administration 2.420. If a defendant is found to be mentally incompetent to proceed and there is no substantial probability that the defendant will gain competency to proceed in the foreseeable future, the defendant must be released, or the State must initiate civil commitment proceedings. (a) Dismissal without Prejudice during Continuing Incompetency. After a determination that a person is incompetent to stand trial or proceed with a probation or community control violation hearing, the charge(s): (1) shall be dismissed 1 year after a finding if the charge is a misdemeanor; (2) shall be dismissed no later than 2 years after a finding if incompetency is due to intellectual disability or autism; (3) may be dismissed 3 years after a finding, unless a charge is listed in section 916.145, Florida Statutes; or (4) shall be dismissed after a finding that the defendant has remained incompetent for 5 continuous and uninterrupted years; provided that the court finds that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing unless the court in its order specifies its

		reasons for believing that the defendant is expected to become competent to proceed. A dismissal under this rule shall be without prejudice to the state to refile the charge(s) should the defendant be declared competent to proceed in the future. (b) Commitment or Treatment during Continuing Incompetency. (1) If the defendant meets the criteria for commitment under section 394.467, Florida Statutes, the court shall commit the defendant to the Department of Children and Families for involuntary hospitalization solely under the provisions of law. If the defendant meets the criteria of section 394.4655, Florida Statutes, the court may order that the defendant receive outpatient treatment at any other facility or service on an outpatient basis subject to the provisions of those statutes. In the order of commitment, the judge shall order that the administrator of an inpatient facility notify the state attorney of the committing circuit no less than 30 days prior to the anticipated date of release of the defendant. (2) If the continuing incompetency is due to intellectual disability or autism, and the defendant either lacks the ability to provide for his or her well-being or is likely to physically injure himself or herself, or others, the defendant may be involuntarily admitted to residential services as provided by law. (a) Commitment; 6-Month Report. The Department of Children and Families shall admit to an appropriate facility a defendant found not guilty by reason of insanity under rule 3.217 and found to meet the criteria for commitment for hospitalization and treatment and may retain and treat the defendant. No later than 6 months from the date of admission, the administrator of the facility shall file with the court a report, and provide copies to all parties, which shall address the issues of further commitment of the defendant. If at any time during the 6-month period, or during any period of extended hospitalization that may be ordered under this rule, the administrator of the facility shall determine that the defendant no longer meets the criteria for commitment, the administrator shall notify the court by such a report and provide copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of General Practice and Judicial Administration 2.420. (b) Right to Hearing if Committed upon Acquittal. The court shall hold a hearing within 30 days of the receipt of any report from the administrator of the facility on the issues raised thereby, and the defendant shall have a right to be present at the hearing. If the court determines that the defendant continues to meet the criteria for continued commitment or treatment, the court shall order further commitment or treatment for a period not to exceed 1 year. The same procedure shall be repeated before the expiration of each additional 1-year period in which the defendant is retained by the facility. (c) Evidence to Determine Continuing Insanity. Before any hearing held under this rule, the court may, on its own motion, and shall, on motion of counsel for the state or defendant, appoint no fewer than 2 nor more than 3 experts to examine the defendant relative to the criteria for continued commitment or placement of the defendant and shall specify the date by which the experts shall report to the court on these issues and provide copies to all parties.
Georgia	Ga. Code Ann., § 17-7-130 et seq.	(c) If the court finds the accused is mentally incompetent to stand trial, the court may order a department physician or licensed psychologist to evaluate and diagnose the accused as to whether there is a substantial probability that the accused will attain mental competency to stand trial in the foreseeable future. The court shall retain jurisdiction over the accused and shall transfer the accused to the physical custody of the department. At its discretion, the court may allow the evaluation to be performed on the accused as an outpatient if the accused is charged with a nonviolent offense. Such evaluation shall be performed within 90 days after the department has received actual custody of an accused or, in the case of an outpatient, a court order requiring evaluation of an accused. If the accused is a child, the department shall be authorized to place such child in a secure facility designated by the department. If the evaluation shows: (1) That the accused is mentally competent to stand trial, the department shall immediately report that determination and the reasons therefor to the court, and the court shall submit such determination to the

		attorney for the accused or, if pro se, to the accused and to the prosecuting attorney. The accused shall be returned to the court as provided for in subsection (d) of this Code section; (2) That the accused is mentally incompetent to stand trial and that there is not a substantial probability that the accused will attain competency in the foreseeable future, the court shall follow the procedures set forth in subsection (e) of this Code section for civil commitment or release; or (3) That the accused is mentally incompetent to stand trial but there is a substantial probability that the accused 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 court and shall retain custody over the accused for the purpose of continued treatment for an additional period not to exceed nine months; provided, however, that if the accused is charged with a misdemeanor offense or a nonviolent offense, the court shall retain jurisdiction over the accused but may, in its discretion, allow continued treatment to be done on an outpatient basis by the department. The department shall monitor the accused's outpatient treatment for the additional period not to exceed nine months. If, by the end of the nine-month period or at any prior time the accused's condition warrants, the accused is still determined by the department physician or licensed psychologist to be mentally incompetent 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 court. The court shall then follow the procedures in subsection (e) of this Code section for civil commitment or release. (d)(1) If the department's physician or licensed psychologist determines at any time that the accused is mentally competent to stand trial, the department shall notify the court, and the accused shall be discharged into the custody of a sheriff of the jurisdiction of the court unless the charges which led to the evaluation or civil commitment have been dismissed, in which case, the accused shall be discharged from the department. In the event a sheriff does not appear and take custody of the accused within 20 days after notice to the appropriate sheriff of the jurisdiction of the court, the presiding judge of the court, and the prosecuting attorney for the court, the department shall itself return the accused to one of the court's detention facilities, and the cost of returning the accused shall be paid by the county in which the court is located. All notifications under this paragraph shall be sent by certified mail or statutory overnight delivery, return receipt requested. As an alternative to returning the accused to the sheriff of the jurisdiction of the court, the department may hold the accused at the department's secure facility instead of at the court's detention facilities whenever a department physician or licensed psychologist provides written notice to the court that such detention in the court's facilities would be detrimental to the well-being of the accused. Such alternative detention shall continue only until the date of the accused's trial. Regardless of where the accused is held, the court shall hold a bench trial to determine the accused's mental competency to stand trial within 45 days of receiving the department's evaluation or, if demanded, shall conduct a special jury trial within six months of receiving the department's evaluation. (2) If the accused is an outpatient and the department's physician or licensed psychologist determines at any time that the accused is mentally competent to stand trial, the accused may remain in the community under conditions of bond or other conditions ordered by the court, if any, until the date of the accused's trial, which shall be within 45 days of the court receiving the department's evaluation if tried by the court or within six months of receiving the department's evaluation if a special jury trial is demanded. (e) If the evaluation performed pursuant to subsection (c) of this Code section shows that the accused is mentally incompetent to stand trial and that there is not a substantial probability that the accused will attain competency in the foreseeable future: (1) If the accused is charged with a misdemeanor, the department shall return the physical custody of the accused to a sheriff of the jurisdiction of the court; provided, however, that as an alternative to returning the accused to the sheriff of the jurisdiction of the court, the department may hold the accused at the department's secure facility instead of at the court's detention facilities whenever a department physician or

		licensed psychologist provides written notice to the court that such detention in the court's facilities would be detrimental to the well-being of the accused. Such alternative detention shall continue only until the date of the accused's trial. Regardless of where the accused is held, the court shall, within 45 days of receiving the department's evaluation: (A) Consider entry of a nolle prosequi of the charges pursuant to Code Section 17-8-3 and, if the accused is not a child, request that the department petition the probate court of the jurisdiction of the accused's residence for civil commitment of the accused; or (B) If the court finds that the accused does not meet the criteria for civil commitment, the accused shall be released in accordance with the provisions of Chapter 6 of this title; or (2) If the accused is charged with a felony, the department shall return the physical custody of the accused to a sheriff of the jurisdiction of the court; provided, however, that as an alternative to returning the accused to the sheriff of the jurisdiction of the court, the department may hold the accused at the department's secure facility instead of at the court's detention facilities whenever a department physician or licensed psychologist provides written notice to the court that such detention in the court's facilities would be detrimental to the well-being of the accused. Such alternative detention shall continue only until the date of the accused's trial. The department shall report to the court its finding regarding the accused's mental competency to stand trial, the reasons therefor, and its opinion as to whether the accused currently meets the criteria for civil commitment. The court may order an independent evaluation of the accused 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 accused. Regardless of where the accused is held, the court shall, within 45 days of receiving the department's evaluation: (A) Consider entry of a nolle prosequi of the charges pursuant to Code Section 17-8-3 and, if the accused is not a child, request that the department petition the probate court of the jurisdiction of the accused's residence for civil commitment of the accused; or (B) Retain jurisdiction of the accused and conduct a trial at which the court shall hear evidence and consider all psychiatric and psychological evaluations submitted to the court and determine whether the state has proved by clear and convincing evidence that the accused meets the criteria for civil commitment. The burden of proof in such trials shall be upon the state. Following the trial: (i) If the court finds that the accused does not meet the criteria for civil commitment, the accused shall be released in accordance with the provisions of Chapter 6 of this title; (ii) If the court finds that the accused meets the criteria for civil commitment, the judge may issue an order civilly committing the accused, and the court shall order the civil commitment to be on an inpatient or outpatient placement; provided, however, that if the accused is a child, the department shall be authorized to place such child in a secure facility designated by the department; (iii) If the accused is civilly committed pursuant to division (ii) of this subparagraph and was charged with a nonviolent offense, the court may order civil commitment on an annual basis, but in no case for a period to exceed the maximum period for which the accused could have been sentenced on the most serious nonviolent offense charged or a period to exceed five years, whichever is less, provided that civil commitment shall be reevaluated by a department physician or licensed psychologist on an annual basis; (iv) If the accused is civilly committed pursuant to division (ii) of this subparagraph and was charged with a violent offense, the court may order civil commitment on an annual basis, but in no case for a period to exceed the maximum period for which the accused could have been sentenced on the most serious violent offense charged, provided that civil commitment shall be reevaluated by a department physician or licensed psychologist on an annual basis; (v) Following the civil commitment pursuant to division (ii) of this subparagraph, a department physician or licensed psychologist shall submit to the court his or her annual evaluation as to whether the civilly committed accused continues to meet the criteria for civil commitment. The court shall mail the annual

		evaluation to the attorney for the accused or, if pro se, to the accused and to the prosecuting attorney. The court shall review the case annually and enter the appropriate order to renew the civil commitment, to change the civil commitment status, or, in the event the charges are dismissed, to transfer the jurisdiction of the case to the probate court of the jurisdiction of the accused's residence for further civil commitment; provided, however, that after the department submits its annual evaluation, if the state or the accused requests a hearing regarding civil commitment, the court shall hold a hearing on such issue; and (vi) An accused who is civilly committed pursuant to division (ii) of this subparagraph may make an application for release from civil commitment but shall only be released from that civil commitment by order of the 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 civilly committed accused is indigent, the accused may petition the court to have an evaluation performed by a physician or licensed psychologist of the accused's choice, and the court may order the cost of such evaluation be paid for by the county. (f) If, at any time, the department's physician or licensed psychologist determines that the accused is mentally incompetent to stand trial but later determines that the accused is mentally competent to stand trial, the court shall be so notified and shall order the accused detained or discharged in accordance with paragraph (1) of subsection (d) of this Code section. Any accused determined by a department physician or licensed psychologist to be mentally competent to stand trial and returned to the court as provided in subsection (d) of this Code section shall again be entitled to file a special plea as provided for in this Code section. (g) If an accused is determined by a department physician or licensed psychologist to be mentally incompetent to stand trial, whether or not civilly committed pursuant to this Code section, the state may file at any time a motion for rehearing on the issue of the accused's mental competency to stand trial. If the state's motion is granted, the case shall proceed as provided in this Code section. (h) Nothing in this Code section shall prevent the accused or the state from seeking a court order for a nondepartment mental competency evaluation of the accused at the cost of the movant. If a nondepartment mental competency evaluation is ordered, the court shall abide by the time frames for trial as set forth in this Code section unless the court determines, for good cause shown, that such time frames require adjustment for a nondepartment evaluation. (i) The “Crime Victims' Bill of Rights,” as set forth in Chapter 17 of this title, shall be applicable to any judicial proceeding held pursuant to this Code section, and notice shall be provided to any victim as set forth in such chapter.

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