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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2024**

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS -- INCOMPETENCY TO STAND TRIAL AND PERSONS ADJUDGED NOT  
GUILTY BY REASON OF INSANITY

Introduced By: Senator Matthew L. LaMountain

Date Introduced: March 01, 2024

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 40.1-5.3-3 and 40.1-5.3-6 of the General Laws in Chapter 40.1-5.3  
2 entitled "Incompetency to Stand Trial and Persons Adjudged Not Guilty by Reason of Insanity" are  
3 hereby amended to read as follows:

4           **40.1-5.3-3. Competency to stand trial.**

5           (a) Definitions. As used in this section:

6           (1) "Attorney for the state" means the attorney general, an authorized assistant attorney  
7 general, or other person as may be authorized by law to act as a representative of the state in a  
8 criminal proceeding.

9           (2) "Competent" or "competency" means mental ability to stand trial. A person is mentally  
10 competent to stand trial if he or she is able to understand the character and consequences of the  
11 proceedings against him or her and is able properly to assist in his or her defense.

12           (3) "Department" means the state department of behavioral healthcare, developmental  
13 disabilities and hospitals.

14           (4) "Director" means the director of the state department of behavioral healthcare,  
15 developmental disabilities and hospitals.

16           (5) "Incompetent" or "incompetency" means mentally incompetent to stand trial. A person  
17 is mentally incompetent to stand trial if he or she is unable to understand the character and  
18 consequences of the proceedings against him or her or is unable properly to assist in his or her

1 defense.

2 (b) Presumption of competency. A defendant is presumed competent. The burden of  
3 proving that the defendant is not competent shall be by a preponderance of the evidence, and the  
4 burden of going forward with the evidence shall be on the party raising the issue. The burden of  
5 going forward shall be on the state if the court raises the issue.

6 (c) Request for examination. If at any time during a criminal proceeding, prior to the  
7 imposition of sentence, it appears that the defendant is not competent, counsel for the defendant or  
8 the state, or the court, on its own motion, may request an examination to determine the defendant's  
9 competency.

10 (d) Examination of defendant.

11 (1) If the court finds that the request for examination is justified, the court shall order an  
12 examination of the defendant. The scope of the examination shall be limited to the question of  
13 whether the defendant is competent.

14 (2) ~~The examination shall take place on an outpatient basis if the defendant is to be released~~  
15 ~~on bail or recognizance. If the defendant is ordered confined at the adult correctional institutions,~~  
16 ~~the examination shall take place at that facility. The department shall appoint or designate the~~  
17 ~~physician(s) who will conduct the examinations.~~

18 The examination may take place on an outpatient basis, or, at the place where the person  
19 is confined, unless the court, for good cause shown, determines that the defendant should be  
20 confined in the facility established pursuant to § 40.1-5.3-1 or any portion of the institute of mental  
21 health that the department designates as appropriate.

22 (3) If the defendant is ordered confined to ~~the adult correctional institutions~~ a facility, the  
23 physician shall complete the examination within five (5) days. If the physician determines that the  
24 defendant is incompetent to stand trial, the defendant shall be immediately transferred for  
25 admission to the Rhode Island state psychiatric hospital or the Eleanor Slater hospital, pending the  
26 hearing provided for in subsection (g). At the discretion of the director, pending the hearing  
27 provided for in subsection (g), the defendant may be discharged from one state-operated hospital  
28 for the purpose of contemporaneously admitting the defendant to the other state-operated hospital  
29 pursuant to the procedures enumerated in § 40.1-5.3-2.

30 (e) Bail or recognizance during examination.

31 (1) A defendant for whom a competency examination has been ordered shall be entitled to  
32 release on bail or recognizance to the same extent and on the same terms and conditions as if the  
33 issue of competency had not been raised.

34 (2) The court may order the defendant to appear at a designated time and place for

1 outpatient examination, and such an appearance may be made a condition of pretrial release.

2 (f) Reports of examining physicians. Each examining physician shall prepare a report, in  
3 writing, in which the physician shall state the physician's findings concerning the defendant's  
4 competency, together with the medical and other data upon which the physician's findings are  
5 based. The report shall be filed with the court within ~~ten (10)~~ five (5) business days if the defendant  
6 was ordered confined at ~~the adult correctional institutions~~ a facility, and as soon as practicable if  
7 the defendant was released on bail or recognizance, and copies given to the attorney for the state  
8 and to the defendant or the defendant's counsel.

9 (g) Hearing. Upon receipt of the report and appropriate notice to the parties, the court shall  
10 hold a hearing unless the report concludes that the defendant is competent and the defendant and  
11 the attorney for the state in open court state their assent to the findings on the record. At the hearing,  
12 the report shall be introduced; other evidence bearing on the defendant's competence may be  
13 introduced by the parties; and the defendant may testify, confront witnesses, and present evidence  
14 on the issue of the defendant's competency. On the basis of the evidence introduced at the hearing,  
15 the court shall decide if the defendant is competent.

16 (h) Commitment of the defendant.

17 (1) If the court finds, after the hearing, that a defendant is competent, it shall proceed with  
18 the criminal case.

19 (2) If the court finds that a defendant is incompetent, it shall commit him or her to the  
20 custody of the director for the purpose of determining whether or not the defendant is likely to  
21 imperil the peace and safety of the people of the state or the safety of himself or herself and whether  
22 the defendant will regain competency within the maximum period of any placement under this  
23 chapter.

24 (3) Not later than fifteen (15) days from the date of the order of commitment, the director  
25 shall prepare and file with the court a written report in which the director shall state the director's  
26 opinion regarding the defendant's dangerousness; the likelihood of the defendant becoming  
27 competent to stand trial within the maximum period of any placement order; and the  
28 recommendations of the department regarding appropriate care and treatment of the defendant.

29 (4) In the event the director is unable to complete the examination of the person in time to  
30 render the director's report within the fifteen-day (15) period, the director shall report that fact, in  
31 writing, to the court with a statement of the reasons why the examination and report could not be  
32 completed within the prescribed period. A copy of the director's statement shall be given to the  
33 attorney general and to the defendant, or the defendant's counsel, any of whom may respond in  
34 writing, or if the court deems it appropriate, orally, to the director's statement. The court may

1 thereupon enter an order extending for an additional twenty (20) days the time in which the director  
2 is to file the director's report.

3 (i) Hearing.

4 (1) Upon receipt of the report and appropriate notice to the director, the attorney general,  
5 and the defendant, or the defendant's counsel, the court shall hold a hearing at which the report  
6 shall be introduced, other evidence bearing on the question of the mental condition of the person  
7 may be introduced by the parties, and the person may testify, confront witnesses, and present  
8 evidence.

9 (2) If the court finds that a defendant who is incompetent may be placed on outpatient status  
10 without imperiling the peace or safety of the public or the safety of himself or herself, it may  
11 commit the defendant to an appropriate outpatient facility that agrees to provide treatment to the  
12 defendant and to adhere to the requirements of this section, in order that the defendant may receive  
13 treatment to restore or establish his or her competency.

14 (3) If the court finds that a defendant who is incompetent is likely to imperil the peace or  
15 safety of the people of the state or the peace and safety of himself or herself, it may order the  
16 defendant to the Rhode Island state psychiatric hospital or the Eleanor Slater hospital, pursuant to  
17 § 40.1-5.3-1. A person who is ordered to be treated on inpatient status shall not be paroled,  
18 furloughed, placed on outpatient status or removed from a locked facility, or otherwise released  
19 from the institution where the person is being treated except upon petition to the court by the  
20 director, on notice to the attorney general and the defendant, or the defendant's counsel, and after  
21 hearing thereon and entry of an order by a judge of the court authorizing release. The commitment  
22 ordered pursuant to this section shall terminate upon the occurrence of any of the following:

23 (i) The defendant is determined by the court to be competent; or

24 (ii) The charges against the defendant are dismissed pursuant to subsection (j); or

25 (iii) The charges against the defendant are dismissed or a nolle prosequi is entered; or

26 (iv) The defendant is civilly committed pursuant to § 40.1-5-8; or

27 (v) The court finds there is no reasonable likelihood that in the foreseeable future the  
28 defendant will become competent and the defendant's condition is such that the defendant cannot  
29 properly be committed under § 40.1-5-8.

30 (j) Period of commitment. When a court commits a defendant pursuant to subsection (i)(2)  
31 or (i)(3), it shall compute, counting from the date of entry to the order of commitment, the date of  
32 the expiration of the period of time equal to two thirds ( $\frac{2}{3}$ ) of the maximum term of imprisonment  
33 for the most serious offense with which the defendant is charged. If the maximum term for the most  
34 serious offense charged is life imprisonment or death, the court shall, for the purpose of

1 computation, deem the offense to be punishable by a maximum term of thirty (30) years. In the  
2 order of commitment, the court shall provide that if, on the date so computed, the defendant is still  
3 committed under the order, the charges against the defendant shall be dismissed.

4 (k) Periodic review. The director shall petition the court to review the state of competency  
5 of a defendant committed pursuant to subsection (i)(2) or (i)(3) not later than six (6) months from  
6 the date of the order of commitment and every six (6) months thereafter, or when the director  
7 believes the defendant is no longer incompetent, whichever occurs first. Outpatient facilities that  
8 are providing treatment to defendants in accordance with subsection (i)(2) shall prepare reports to  
9 be submitted to the director in accordance with the requirements of this section. The director shall  
10 attach to the petition a report on the condition of the defendant. If the report indicates that the  
11 defendant remains incompetent, it shall include a prognosis regarding the likelihood that the  
12 defendant will become competent prior to the dismissal of the charges pursuant to subsection (j).  
13 Copies of the report shall be given to the attorney for the state and to the defendant or the  
14 defendant's counsel.

15 (l) Defendant's right to petition. A defendant committed pursuant to subsection (i)(2) or  
16 (i)(3) may at any time petition the court to review the state of the defendant's competency.

17 (m) Hearing on petition. Upon receipt of a petition pursuant to subsection (k) or (l) and  
18 appropriate notice to the defendant, the state, and the director, the court shall hold a hearing at  
19 which the parties may introduce evidence as to the defendant's competency, including any reports  
20 of the director, and the defendant may testify, confront witnesses, and present evidence as to the  
21 defendant's competency and prognosis. On the basis of the evidence, the court shall make a finding  
22 as to the defendant's competency and, if the defendant is found to be incompetent, whether a  
23 reasonable likelihood exists that the defendant will become competent prior to the dismissal of the  
24 charges pursuant to subsection (j). If the court finds that the defendant is competent, it shall enter  
25 an order to that effect. If the court finds that the defendant is incompetent and that a reasonable  
26 likelihood exists that the defendant will become competent prior to the dismissal of the charges  
27 pursuant to subsection (j), it shall order continuation of the commitment of the defendant. If the  
28 court finds that the defendant is incompetent and that a reasonable likelihood does not exist that the  
29 defendant will become competent prior to the dismissal of the charges pursuant to subsection (j), it  
30 shall order that thirty (30) days thereafter the defendant be discharged from detention under the  
31 order of commitment. Upon entry of the order, the state may commence proceedings seeking to  
32 commit the defendant pursuant to § 40.1-5-8.

33 (n) Statements inadmissible. No statements made by a defendant in the course of an  
34 examination conducted pursuant to subsection (d) or during a hearing conducted pursuant to

1 subsection (i) or (m) shall be admissible in evidence against the defendant in any criminal action  
2 on any issue other than the defendant's mental condition. The statements shall be admissible on the  
3 issue of the defendant's mental condition even though they might otherwise be deemed to be  
4 privileged communications.

5 (o) Disposition of charges. The court may, at any time, proceed to a disposition of the  
6 charges pending against a defendant who has been committed pursuant to subsection (i)(2) or (i)(3)  
7 if the factual and legal issues involved can be resolved without regard to the competency of the  
8 defendant.

9 **40.1-5.3-6. Examination of persons awaiting trial or convicted and imprisoned for**  
10 **crime.**

11 On a petition of the director of the department of behavioral healthcare, developmental  
12 disabilities and hospitals, or on the petition of the director of the department of corrections, setting  
13 forth that any person awaiting trial or convicted of a crime and imprisoned for the crime in the adult  
14 correctional institutions [or detained at any other facility](#) is mentally ill and requires specialized  
15 mental health care and psychiatric in-patient services that cannot be provided in a correctional  
16 facility, a judge of the district court or justice of the superior court may order the examination of  
17 the person as in his or her discretion he or she shall deem appropriate.

18 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS -- INCOMPETENCY TO STAND TRIAL AND PERSONS ADJUDGED NOT  
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- 1           This act would require any competency examinations of criminal defendants take place on
- 2 an outpatient basis or at the facility in which they are detained.
- 3           This act would take effect upon passage.

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