

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS -- MENTAL HEALTH--COMPETENCY TO STAND TRIAL

Introduced By: Senators Jabour, Pinga, Metts, and Miller

Date Introduced: February 28, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

4           **40.1-5.3-3. Competency to stand trial.** -- (a) Definitions. - As used in this section:

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

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

11           (3) "Department" means the state department of mental health, retardation, and hospitals.

12           (4) "Director" means the director of the state department of mental health, retardation,  
13 and hospitals;

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

18           (b) Presumption of competency. - A defendant is presumed competent. The burden of

1 proving that the defendant is not competent shall be by a preponderance of the evidence, and the  
2 burden of going forward with the evidence shall be on the party raising the issue. The burden of  
3 going forward shall be on the state if the court raises the issue.

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

8 (d) Examination of defendant. - (1) If the court finds that the request for examination is  
9 justified, the court shall order an examination of the defendant. The scope of the examination  
10 shall be limited to the question of whether the defendant is competent.

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

15 (3) If the defendant is ordered confined to the adult correctional institutions, the  
16 physician shall complete the examination within five (5) days. If the physician determines that the  
17 defendant is incompetent to stand trial, the defendant shall be immediately transferred to the  
18 institute of mental health's forensic unit pending the hearing provided for in subsection (g).

19 (e) Bail or recognizance during examination. - (1) A defendant for whom a competency  
20 examination has been ordered shall be entitled to release on bail or recognizance to the same  
21 extent and on the same terms and conditions as if the issue of competency had not been raised.

22 (2) The court may order the defendant to appear at a designated time and place for  
23 outpatient examination, and such an appearance may be made a condition of pretrial release.

24 (f) Reports of examining physicians. - Each examining physician shall prepare a report,  
25 in writing, in which he or she shall state his or her findings concerning the defendant's  
26 competency together with the medical and other data upon which his or her findings are based.  
27 The report shall be filed with the court within ten (10) business days if the defendant was ordered  
28 confined at the adult correctional institutions and as soon as practicable if the defendant was  
29 released on bail or recognizance and copies given to the attorney for the state and to the defendant  
30 or his or her counsel.

31 (g) Hearing. - Upon receipt of the report and appropriate notice to the parties, the court  
32 shall hold a hearing unless the report concludes that the defendant is competent and the defendant  
33 and the attorney for the state in open court state ~~in writing~~ their assent to the findings on the  
34 record. At the hearing, the report shall be introduced, other evidence bearing on the defendant's

1 competence may be introduced by the parties, and the defendant may testify, confront witnesses,  
2 and present evidence on the issue of his or her competency. On the basis of the evidence  
3 introduced at the hearing, the court shall decide if the defendant is competent.

4 (h) Commitment of the defendant. - (1) If the court finds, after the hearing, that a  
5 defendant is competent it shall proceed with the criminal case.

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

11 (3) Not later than fifteen (15) days from the date of the order of commitment, the director  
12 shall prepare and file with the court a written report in which he or she shall state his or her  
13 opinion regarding the defendant's dangerousness, the likelihood of the defendant becoming  
14 competent to stand trial within the maximum period of any placement order and the  
15 recommendations of the department regarding appropriate care and treatment of the defendant.

16 (4) In the event the director is unable to complete the examination of the person in time  
17 to render his or her report within the fifteen (15) day period, he or she shall report that fact, in  
18 writing, to the court with a statement of the reasons why the examination and report could not be  
19 completed within the prescribed period. A copy of the director's statement shall be given to the  
20 attorney general and to the defendant or his or her counsel, any of whom may respond in writing,  
21 or if the court deems it appropriate, orally, to the director's statement. The court may thereupon  
22 enter an order extending for an additional twenty (20) days the time in which the director is to file  
23 his or her report.

24 (i) Hearing. - (1) Upon receipt of the report and appropriate notice to the director, the  
25 attorney general and the defendant or his or her counsel, the court shall hold a hearing at which  
26 the report shall be introduced, other evidence bearing on the question of the mental condition of  
27 the person may be introduced by the parties, and the person may testify, confront witnesses, and  
28 present evidence.

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

34 (3) If the court finds that a defendant who is incompetent is likely to imperil the peace or

1 safety of the people of the state or the peace and safety of himself or herself, it may order the  
2 defendant to the facility established pursuant to section 40.1-5.3-1 or to the general wards of the  
3 institute of mental health, if the director agrees that the defendant should be placed on the general  
4 wards. A person who is ordered to be treated on inpatient status shall not be paroled, furloughed,  
5 placed on outpatient status or removed from a locked facility or otherwise released from the  
6 institution where he or she is being treated except upon petition to the court by the director, on  
7 notice to the attorney general and the defendant or his or her counsel, and after hearing thereon  
8 and entry of an order by a judge of the court authorizing such release. The commitment ordered  
9 pursuant to this section shall terminate upon the occurrence of any of the following:

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

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

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

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

14 (v) The court finds there is no reasonable likelihood that in the foreseeable future the  
15 defendant will become competent and his or her condition is such that he or she cannot properly  
16 be committed under section 40.1-5-8.

17 (j) Period of commitment. - When a court commits a defendant pursuant to subsection  
18 (i)(2) or (i)(3) it shall compute, counting from the date of entry to the order of commitment, the  
19 date of the expiration of the period of time equal to two thirds (  $2/3$ ) of the maximum term of  
20 imprisonment for the most serious offense with which the defendant is charged. If the maximum  
21 term for the most serious offense charged is life imprisonment or death, the court shall for the  
22 purpose of computation deem such offense to be punishable by a maximum term of thirty (30)  
23 years. In the order of commitment, the court shall provide that if, on the date so computed, the  
24 defendant is still committed under the order, the charges against him or her shall be dismissed.

25 (k) Periodic review. - The director shall petition the court to review the state of  
26 competency of a defendant committed pursuant to subsection (i)(2) or (i)(3) not later than six (6)  
27 months from the date of the order of commitment and every six (6) months thereafter, or when  
28 the director believes the defendant is no longer incompetent, whichever occurs first. Outpatient  
29 facilities which are providing treatment to defendants in accordance with subsection (i)(2) shall  
30 prepare reports to be submitted to the director in accordance with the requirements of this section.  
31 The director shall attach to the petition a report on the condition of the defendant. If the report  
32 indicates that the defendant remains incompetent, it shall include a prognosis regarding the  
33 likelihood that he or she will become competent prior to the dismissal of the charges pursuant to  
34 subsection (j). Copies of the report shall be given to the attorney for the state and to the defendant

1 or his or her counsel.

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

4 (m) Hearing on petition. - Upon receipt of a petition pursuant to subsection (k) or (l) and  
5 appropriate notice to the defendant, the state, and the director, the court shall hold a hearing at  
6 which the parties may introduce evidence as to the defendant's competency, including any reports  
7 of the director, and the defendant may testify, confront witnesses, and present evidence as to his  
8 or her competency and prognosis. On the basis of the evidence, the court shall make a finding as  
9 to the defendant's competency and, if he or she is found to be incompetent, whether a reasonable  
10 likelihood exists that he or she will become competent prior to the dismissal of the charges  
11 pursuant to subsection (j). If the court finds that the defendant is competent, it shall enter an order  
12 to that effect. If the court finds that the defendant is incompetent and that a reasonable likelihood  
13 exists that he or she will become competent prior to the dismissal of the charges pursuant to  
14 subsection (j), it shall order continuation of the commitment of the defendant. If the court finds  
15 that the defendant is incompetent and that a reasonable likelihood does not exist that he or she  
16 will become competent prior to the dismissal of the charges pursuant to subsection (j), it shall  
17 order that thirty (30) days thereafter the defendant be discharged from detention under the order  
18 of commitment. Upon entry of the order the state may commence proceedings seeking to commit  
19 the defendant pursuant to section 40.1-5-8.

20 (n) Statements inadmissible. - No statements made by a defendant in the course of an  
21 examination conducted pursuant to subsection (d) or during a hearing conducted pursuant to  
22 subsection (i) or (m) shall be admissible in evidence against the defendant in any criminal action  
23 on any issue other than his or her mental condition. The statements shall be admissible on the  
24 issue of his or her mental condition even though they might otherwise be deemed to be privileged  
25 communications.

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

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

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LC01292  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS -- MENTAL HEALTH--COMPETENCY TO STAND TRIAL

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1           This act would clarify existing laws to require each examining physician, evaluating a  
2 criminal defendant's competency to stand trial, to file their report with the court within ten (10)  
3 business days if the defendant was ordered confined to the adult correctional institution.

4           This act would take effect upon passage.

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