

MENTAL HEALTH CODE (EXCERPT)
Act 258 of 1974

INCOMPETENCE TO STAND TRIAL

330.2020 Defendant presumed competent to stand trial; determination of incompetency; effect of medication; statement by physician.

Sec. 1020. (1) A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in the preparation of his defense and during his trial.

(2) A defendant shall not be determined incompetent to stand trial because psychotropic drugs or other medication have been or are being administered under proper medical direction, and even though without such medication the defendant might be incompetent to stand trial. However, when the defendant is receiving such medication, the court may, prior to making its determination on the issue of incompetence to stand trial, require the filing of a statement by the treating physician that such medication will not adversely affect the defendant's understanding of the proceedings or his ability to assist in his defense.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2022 Proceeding against incompetent defendant prohibited; pretrial motions; preservation and admissibility of evidence.

Sec. 1022. (1) A defendant who is determined incompetent to stand trial shall not be proceeded against while he is incompetent.

(2) Any pretrial motion may be made by either the defense or prosecution while a defendant is incompetent to stand trial, and the issues presented by the motion shall be heard and decided if the presence of the defendant is not essential for a fair hearing and decision on the motion.

(3) When it appears that evidence essential to the case the defense or prosecution plans to present might not be available at the time of trial, the court shall allow such evidence to be taken and preserved. Evidence so taken shall be admissible at the trial only if it is not otherwise available. Procedures for the taking and preserving of evidence under this subsection, and the conditions under which such evidence shall be admissible at trial, shall be provided by court rule.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2024 Raising issue of incompetence to stand trial.

Sec. 1024. The issue of incompetence to stand trial may be raised by the defense, court, or prosecution. The time and form of the procedure for raising the issue shall be provided by court rule.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2026 Examination of defendant.

Sec. 1026. (1) Upon a showing that the defendant may be incompetent to stand trial, the court shall order the defendant to undergo an examination by personnel of either the center for forensic psychiatry or other facility officially certified by the department of mental health to perform examinations relating to the issue of incompetence to stand trial. The defendant shall make himself available for the examination at the places and times established by the center or other certified facility. If the defendant, after being notified, fails to make himself available for the examination, the court may order his commitment to the center or other facility without a hearing.

(2) When the defendant is to be held in a jail or similar place of detention pending trial, the center or other facility may perform the examination in the jail or may notify the sheriff to transport the defendant to the center or other facility for the examination, and the sheriff shall return the defendant to the jail upon completion of the examination.

(3) Except as provided in subsection (1), when the defendant is not to be held in a jail or similar place of detention pending trial, the court shall commit him to the center or other facility only when the commitment is necessary for the performance of the examination.

(4) The defendant shall be released by the center or other facility upon completion of the examination.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2028 Consultations; report; admissibility of evidence.

Sec. 1028. (1) When the defendant is ordered to undergo an examination pursuant to section 1026, the

center or other facility shall, for the purpose of gathering psychiatric and other information pertinent to the issue of the incompetence of the defendant to stand trial, examine the defendant and consult with defense counsel, and may consult with the prosecutor or other persons. Defense counsel shall make himself available for consultation with the center or other facility. The examination shall be performed, defense counsel consulted, and a written report submitted to the court, prosecuting attorney, and defense counsel within 60 days of the date of the order.

(2) The report shall contain:

(a) The clinical findings of the center or other facility.

(b) The facts, in reasonable detail, upon which the findings are based, and upon request of the court, defense, or prosecution additional facts germane to the findings.

(c) The opinion of the center or other facility on the issue of the incompetence of the defendant to stand trial.

(d) If the opinion is that the defendant is incompetent to stand trial, the opinion of the center or other facility on the likelihood of the defendant attaining competence to stand trial, if provided a course of treatment, within the time limit established by section 1034.

(3) The opinion concerning competency to stand trial derived from the examination may not be admitted as evidence for any purpose in the pending criminal proceedings, except on the issues to be determined in the hearings required or permitted by sections 1030 and 1040. The foregoing bar of testimony shall not be construed to prohibit the examining qualified clinician from presenting at other stages in the criminal proceedings opinions concerning criminal responsibility, disposition, or other issues if they were originally requested by the court and are available. Information gathered in the course of a prior examination that is of historical value to the examining qualified clinician may be utilized in the formulation of an opinion in any subsequent court ordered evaluation.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1975, Act 179, Eff. Aug. 6, 1975.

330.2030 Hearing; determination; admissibility of report; order for continued administration of medication.

Sec. 1030. (1) Upon receipt of the written report, the court shall cause the defendant to appear in court and shall hold a hearing within 5 days or upon the conclusion of the case, proceeding, or other matter then before it, whichever is sooner, unless the defense or prosecution for good cause requests a delay for a reasonable time.

(2) On the basis of the evidence admitted at the hearing, the court shall determine the issue of the incompetence of the defendant to stand trial. If the defendant is determined incompetent to stand trial, the court shall also determine whether there is a substantial probability that the defendant, if provided a course of treatment, will attain competence to stand trial within the time limit established by section 1034.

(3) The written report shall be admissible as competent evidence in the hearing, unless the defense or prosecution objects, but not for any other purpose in the pending criminal proceeding. The defense, prosecution, and the court on its own motion may present additional evidence relevant to the issues to be determined at the hearing.

(4) If the defendant is receiving medication and is not determined incompetent to stand trial, the court may, in order to maintain the competence of the defendant to stand trial, make such orders as it deems appropriate for the continued administration of such medication pending and during trial.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2031 Filing of petition by prosecuting attorney.

Sec. 1031. If the defendant is determined incompetent to stand trial, and if the court determines that there is not a substantial probability that, if provided a course of treatment, he will attain competence to stand trial within the time limit established by section 1034, the court may direct a prosecuting attorney to file a petition asserting that the defendant is a person requiring treatment as defined by section 401 or meets the criteria for judicial admission as defined by section 515 with the probate court of the defendant's county of residence.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2032 Ordering treatment; medical supervisor; commitment; restriction of movements.

Sec. 1032. (1) If the defendant is determined incompetent to stand trial, and if the court determines that there is a substantial probability that, if provided a course of treatment, he will attain competence to stand trial within the time limit established by section 1034, the court shall order him to undergo treatment to render him competent to stand trial.

(2) The court shall appoint a medical supervisor of the course of treatment. The supervisor may be any

person or agency willing to supervise the course of treatment, or the department of mental health.

(3) The court may commit the defendant to the custody of the department of mental health, or to the custody of any other inpatient mental health facility if it agrees, only if commitment is necessary for the effective administration of the course of treatment. If the defendant, absent commitment to the department of mental health or other inpatient facility, would otherwise be held in a jail or similar place of detention pending trial, the court may enter an order restricting the defendant in his movements to the buildings and grounds of the facility at which he is to be treated.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2034 Effective duration of order; notice of dismissed charge or voided orders; filing petition prior to discharge or release.

Sec. 1034. (1) No order or combination of orders issued under section 1032 or 1040, or both, shall have force and effect for a total period in excess of 15 months or 1/3 of the maximum sentence the defendant could receive if convicted of the charges against him, whichever is lesser; nor after the charges against the defendant are dismissed.

(2) The court shall provide for notification of defense counsel, the prosecution, and the medical supervisor of treatment whenever the charges against the defendant are dismissed and whenever an order whose stated time period has not elapsed is voided by the court.

(3) If the defendant is to be discharged or released because of the expiration of an order or orders under section 1032 or 1040, the supervisor of treatment prior to the discharge or release may file a petition asserting that the defendant is a person requiring treatment as defined by section 401 or meets the criteria for judicial admission as defined by section 515 with the probate court of the defendant's county of residence.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2036 Right to liberty pending trial.

Sec. 1036. The right of the defendant to be at liberty pending trial, on bail or otherwise, shall not be impaired because the issue of incompetence to stand trial has been raised, because the defendant has been determined incompetent to stand trial, or because the defendant has been ordered to undergo treatment to render him competent to stand trial, except to the extent authorized by section 1026 for the purpose of an examination or by section 1032 for the purpose of administering a course of treatment.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2038 Reports; admissibility.

Sec. 1038. (1) The medical supervisor of treatment shall transmit a written report to the court, prosecuting attorney, defense counsel, and the center for forensic psychiatry:

(a) At least once every 90 days from the date of an order issued pursuant to section 1032.

(b) Whenever he is of the opinion that the defendant is no longer incompetent to stand trial.

(c) Whenever he is of the opinion that there is not a substantial probability that the defendant, with treatment, will attain competence to stand trial within the time limit established by section 1034.

(2) The reports shall be admissible pursuant to section 1030(3) and shall contain:

(a) The clinical findings of the supervisor of treatment.

(b) The facts, in reasonable detail, upon which the findings are based, and upon request of the court, defense, or prosecution additional facts germane to the findings.

(c) The opinion of the supervisor of treatment on the issue of the incompetence of the defendant to stand trial.

(d) If the opinion is that the defendant is incompetent to stand trial, the opinion of the supervisor of treatment on whether the defendant has made progress toward attaining competence to stand trial during the course of treatment.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2040 Redetermining issue of incompetence to stand trial; hearing; commencement of trial; modification or continuance of orders.

Sec. 1040. (1) The court shall forthwith hear and redetermine the issue of the incompetence of the defendant to stand trial and, if the defendant is redetermined incompetent to stand trial, shall hear and determine whether the defendant has made progress toward attaining competence to stand trial during his course of treatment, whenever the court receives a report from the supervisor of treatment, unless the defense waives the hearing, or whenever deemed appropriate by the court.

(2) Section 1030 shall govern hearings held pursuant to this section.

(3) If the defendant is not redetermined incompetent to stand trial at a hearing held pursuant to this section, trial shall commence as soon as practicable. If the defendant is redetermined incompetent to stand trial, and if the court determines that the defendant has made progress toward attaining competence to stand trial, the court may modify or continue any orders it previously issued under section 1032.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2042 Crediting time spent in custody.

Sec. 1042. Time spent in custody because of orders issued pursuant to sections 1026, 1032, and 1040 shall be credited against any sentence imposed on the defendant in the pending criminal case or in any other case arising from the same transaction.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.2044 Dismissal of charge; filing same or other charges; examination of defendant as outpatient.

Sec. 1044. (1) The charges against a defendant determined incompetent to stand trial shall be dismissed:

(a) When the prosecutor notifies the court of his intention not to prosecute the case; or
(b) Fifteen months after the date on which the defendant was originally determined incompetent to stand trial.

(2) When charges are dismissed pursuant to subsection (1), the same charges, or other charges arising from the transaction which gave rise to the dismissed charges, shall not subsequently be filed against the defendant, except as provided in this section.

(3) If the charges were dismissed pursuant to subsection (1) (b) and if the crime charged was punishable by a sentence of life imprisonment, the prosecutor may at any time petition the court for permission to again file charges. In the case of other charges dismissed pursuant to subsection (1) (b), the prosecutor may, within that period of time after the charges were dismissed equal to 1/3 of the maximum sentence that the defendant could receive on the charges, petition the court for permission to again file charges.

(4) The court shall grant permission to again file charges if after a hearing it determines that the defendant is competent to stand trial. Prior to the hearing, the court may order the defendant to be examined by personnel of the center for forensic psychiatry or other qualified person as an outpatient, but may not commit the defendant to the center or any other facility for the examination.

History: 1974, Act 258, Eff. Aug. 6, 1975.