

PROPOSED NCNR LEGISLATION

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13-4501. Definitions

In this chapter, unless the context otherwise requires:

1. “Clinical liaison” means a mental health expert or any other individual who has experience and training in mental health or developmental disabilities and who is qualified and appointed by the court to aid in coordinating the treatment or training of individuals who are found incompetent to stand trial. If intellectual disability is an issue, the clinical liaison shall be expert in intellectual disabilities.
2. **“DANGEROUS” MEANS A PERSON WHO IS ALLEGED TO HAVE COMMITTED A SERIOUS OR VIOLENT OFFENSE AS DEFINED IN SECTION 13-706 (F) (1) AND (2) AND WHO IS LIKELY TO COMMIT ANOTHER SERIOUS OR VIOLENT OFFENSE OR CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.**
3. “Incompetent to stand trial” means that as a result of a mental illness, defect, or disability a defendant is unable to understand the nature and object of the proceeding or to assist in the defendant’s defense. In the case of a person under eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person’s lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.
4. “Mental health expert” means a physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is:
 - (a) Familiar with this state’s competency standards for the evaluation process.
 - (b) Familiar with the treatment, training and restoration programs that are available in this state.
 - (c) Certified by the court as meeting court developed guidelines using recognized programs or standards.
5. “Mental Illness, defect, disability” means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in section 36-551
6. “Threat to public safety” means charged with the commission of any of the following:
 - (a) A crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the infliction of serious physical injury on another person.
 - (b) A dangerous crime against children pursuant to section 13-705.
 - (c) Two or more nondangerous felonies within a period of 24 months.

13-4507. Examination of competency to stand trial

- A. The court shall set and may change the conditions under which the examination is conducted.

- 1 B. The defense attorney shall be available to the mental health expert conducting the examination.
- 2 C. A proceeding to determine if a defendant is competent to stand trial shall not delay a judicial
- 3 determination of the defendant's eligibility for pretrial release. A defendant who is otherwise
- 4 entitled to pretrial release shall not be involuntarily confined or taken into custody solely
- 5 because the issue of the defendant's competence to stand trial is raised and an examination is
- 6 ordered unless the court determines that the defendant's confinement is necessary for the
- 7 evaluation process.
- 8 D. If a defendant is released from custody under any pretrial release provision, the court may order
- 9 the defendant to appear at a designated time and place for an outpatient examination. The
- 10 court may make the appearance a condition of the defendant's pretrial release.
- 11 E. The court may order that the defendant be involuntary confined until the examination in
- 12 completed if the court determines that any of the following applies:
- 13 1. The defendant will not submit to an outpatient examination as a condition of pretrial
- 14 release.
- 15 2. The defendant refuses to appear for an examination.
- 16 3. An adequate examination is impossible without the confinement of the defendant.
- 17 4. The defendant is a threat to public safety **OR IS ALLEGED TO HAVE COMMITTED A SERIOUS**
- 18 **OR VIOLENT OFFENSE AS DEFINED IN SECTION 13-706 (F)(1) AND (2).**
- 19 F. If a defendant is committed for an inpatient examination, the length of the commitment shall
- 20 not exceed thirty days, except that the commitment may be extended by fifteen days if the
- 21 court finds that extraordinary circumstances exist. The county shall pay the costs of any
- 22 inpatient examination ordered by the court, except that the city shall pay the costs of an
- 23 inpatient examination that is ordered by a municipal court judge.

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25 13-4509. Expert's report

- 26 A. An expert who is appointed pursuant to section 13-4505 shall submit a written report of the
- 27 examination to the court within ten working days after the examination is completed the report
- 28 shall include at least the following information:
- 29 1. The name of each mental health expert who examines the defendant.
- 30 2. A description of the nature, content, extent and results of the examination and any test
- 31 conducted.
- 32 3. The facts on which the findings are based.
- 33 4. An opinion as to the competency of the defendant.
- 34 B. If the mental health expert determines that the defendant is incompetent to stand trial, the
- 35 report shall also include the following information:
- 36 1. The nature of the mental health disease, defect, or disability that is the cause of the
- 37 incompetency.
- 38 2. The defendant's prognosis.
- 39 3. The most appropriate form and place of treatment in this state, based on the defendant's
- 40 therapeutic needs and potential threat to public safety.

- 1 4. Whether the defendant is incompetent to refuse treatment and should be subject to
- 2 involuntary treatment.
- 3 5. **IF THE PROGNOSIS IS THAT THE DEFENDANT IS NOT LIKELY TO BE RESTORED TO**
- 4 **COMPETENCY WITHIN TWENTY-ONE MONTHS, WHETHER THE DEFENDANT SHOULD BE**
- 5 **CONSIDERED DANGEROUS.**
- 6 C. If the mental health examiner determines that the defendant is currently competent by virtue
- 7 of ongoing treatment with psychotropic medication, the report shall address the necessity of
- 8 continuing that treatment and shall include a description of any limitations that the medication
- 9 may have on competency.

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11 13-4515. Duration of order; excluded time calculation; notice of dismissed charge or voided order;
12 petitions

- 13 A. An order or combination of orders that is issued pursuant to section 13-4512 or 13-4514 shall
- 14 not be in effect for more than twenty-one months or the maximum possible sentence the
- 15 defendant could have received pursuant to section 13-702, section 13-703, section 13-704,
- 16 subsection A, B, C, D or E, section 13-705, section 13-706, subsection A, section 13-708,
- 17 subsection D or section 13-751 or any section for which a specific sentence is authorized,
- 18 whichever is less. In making this determination the court shall not consider the sentence
- 19 enhancements under section 13-703 or 13-704 for prior convictions.
- 20 B. The court shall only consider the time a defendant actually spends in a restoration to
- 21 competency program when calculating the time requirements pursuant to subsection A of this
- 22 section.
- 23 C. The court shall notify the prosecutor, the defense attorney, the medical supervisor and the
- 24 treating facility if the charges against the defendant are dismissed or if an order is voided by the
- 25 court. No charges shall be dismissed without a hearing prior to the dismissal.
- 26 D. If a defendant is discharged or released on the expiration of an order or orders issued pursuant
- 27 to section 13-4512 or 13-4514, the medical supervisor may file a petition stating that the
- 28 defendant requires further treatment pursuant to title 36, chapter 5, appointment of a guardian
- 29 pursuant to title 14 **OR COMMITMENT AS DANGEROUS.**

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31 13-4517. Incompetent defendants; disposition

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

- 35 1. Remand the defendant to the custody of the department of health services for the institution
- 36 of civil commitment proceedings pursuant to title 36, chapter 5.
- 37 2. Appoint a guardian pursuant to title 14, chapter 5.

- 1 3. Release the defendant from custody and dismiss the charges against the defendant without
2 prejudice.
- 3 4. HOLD A HEARING TO DETERMINE IF THE DEFENDANT IS SUBJECT TO INVOLUNTARY
4 COMMITMENT PURSUANT TO SECTION 13-4518.

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6 13-4518. DANGEROUS AND INCOMPETENT DEFENDANTS; HEARING; DISPOSITION

- 7 A. IF AN INCOMPETENT DEFENDANT IS FOUND TO NOT BE RESTORABLE TO COMPETENCY, THE
8 STATE MAY REQUEST THAT THE COURT DETERMINE IF THE DEFENDANT IS DANGEROUS AND
9 SHOULD BE INVOLUNTARILY COMMITTED.
- 10 B. IF A FINDING THAT THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS HAS NOT BEEN MADE
11 DURING A PREVIOUS EVALUATION, THE DEFENDANT SHALL BE EXAMINED BY MENTAL HEALTH
12 EXPERTS PURSUANT TO SECTION 13-4505.
- 13 C. THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE DEFENDANT IS DANGEROUS,
14 WHICH THE STATE MUST ESTABLISH BE CLEAR AND CONVINCING EVIDENCE. THE STATE MUST
15 ALSO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT COMMITTED THE
16 CRIME(S) CHARGED. THE COURT MAY ADMIT HEARSAY OR AFFIDAVIT EVIDENCE OF SECONDARY
17 MATTERS SUCH AS CHAIN OF CUSTODY, LABORATORY REPORTS, AUTHENTICATION O RECORDS,
18 COURT DOCUMENTS OR OTHER PUBLIC OR BUSINESS RECORDS.
- 19 D. IF THE COURT DOES NOT FIND THAT THE DEFENDANT IS DANGEROUS, THE COURT SHALL
20 PROCEED IN ACCORDANCE WITH SECTION 13-4517, PARAGRAPHS 1, 2 OR 3.
- 21 E. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS THE COURT SHALL ORDER THAT THE
22 PERSON BE COMMITTED TO A SECURE FACILITY LICENSED BY THE DEPARTMENT OF HEALTH
23 SERVICES OR THE JOINT COMMISSION OF ACCREDITATION OF HEALTHCARE ORGANIZATIONS.
24 THE DEFENDANT SHALL RECEIVED EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER
25 THE PERSON COMPETENT OR NONDANGEROUS.
- 26 F. WITHIN 180 DAYS AFTER THE DEFENDANT'S COMMITMENT AND EVERY THREE HUNDRED SIXTY-
27 FIVE DAYS THEREAFTER, THE DEFENDANT'S TREATMENT SUPERVISOR SHALL SUBMIT TO THE
28 COURT A REPORT THAT STATES THE TREATMENT THE DEFENDANT HAS RECEIVED, A PROGNOSIS
29 FOR THE DEFENDANT'S RESTORATION TO COMPETENCY AND WHETHER THE DEFENDANT
30 REMAINS DANGEROUS.
- 31 G. IF THE TREATMENT SUPERVISOR SUBMITS A REPORT TO THE COURT PURSUANT TO SUBSECTION F
32 OF THIS SECTION THAT INDICATES THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL OR IS
33 NO LONGER DANGEROUS, THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE
34 DEFENDANT IS COMPETENT TO STAND TRIAL OR IS NO LONGER DANGEROUS. IF THE REPORT
35 STATES THAT THE DEFENDANT IS NO LONGER DANGEROUS, THE REPORT SHALL INCLUDE ALL OF
36 THE INFORMATION:
 - 37 1. AN OPINION OF A T LEAST ONE OTHER MENTAL HEALTH EXPERT THAT THE DEFENDANT IS NO
38 LONGER DANGEROUS.

- 1 2. IF THE DEFENDANT IS NO LONGER DANGEROUS IN WHOLE OR IN PART BECAUSE OF
2 MEDICATION THAT THE DEFENDANT IS TAKING, THE LIKELIHOOD THAT THE DEFENDANT WILL
3 CONTINUE TO TAKE THAT MEDICATION AND COMPLY WITH OUTPATIENT TREATMENT.
- 4 H. AFTER A HEARING PURSUANT TO SUBSECTION F OF THIS SECTION, IF THE COURT FINDS THAT:
- 5 1. THE DEFENDANT'S COMPETENCY IS RESTORED, THE DEFENDANT SHALL BE TRANSFERRED TO
6 THE APPROPRIATE JURISDICTION FOR THE CRIMINAL CHARGES AGAINST THE DEFENDANT TO
7 PROCEED.
- 8 2. THE DEFENDANT'S COMPETENCY HAS NOT BEEN RESTORED AND:
- 9 (a) IF THE DEFENDANT IS NOT DANGEROUS, THE COURT SHALL RELEASE THE DEFENDANT
10 FROM CUSTODY AND PROCEED IN ACCORDANCE WITH SECTION 13-4517, PARAGRAPHS 1,
11 2, OR 3.
- 12 (b) IF THE DEFENDANT IS NOT DANGEROUS IN WHOLE OR PART BECAUSE THE DEFENDANT IS
13 TAKING MEDICATION, THE COURT MAY RELEASE THE DEFENDANT ON THE CONDITION
14 THAT THE DEFENDANT CONTINUE TO TAKE THE MEDICATION AND SUBMIT TO
15 MONITORING AND TESTING. A COUNTY MAY ESTABLISH A BEHAVIORA HEALTH REVIEW
16 BOARD TO RECOMMEND AND SUPERVISE A CONTINUUM OF CARE FOR SUCH A
17 DEFENDANT.
- 18 (c) IF THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL REMAIN COMMITTED TO THE
19 CUSTODY OF THE SECURE FACILITY UNTIL EITHER:
- 20 (i) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL;
21 (ii) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS; OR
22 (iii) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO THE SENTENCE THE DEFENDANT
23 WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN CONVICTED IN A
24 CRIMINAL PROCEEDING OF SECTION 13-751 OR THE PRESUMPTIVE SENTENCE ,
25 FOR ANY AND ALL OTHER OFFENSES.
- 26 I. WHEN A DEFENDANT IS ORDERED INTO TREATMENT THE DIRECTOR SHALL DETERMINE THE
27 EXTENT TO WHICH THE DEFENDANT IS ELIGIBLE TO RECEIVE, OR IS RECEIVING, PRIVATE OR
28 PUBLIC BENEFITS WHICH CAN BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S MAINTENANCE
29 AND TREATMENT, INCLUDING FEDERAL AND STATE MEDICAID, AHCCCS AND REGIONAL
30 BEHAVIORAL HEALTH FUNDS. THESE FUNDS MAY BE ACCEPTED BY THE DEPARTMENT WITHOUT A
31 COURT ORDER.

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