



1 trial, the court of record shall make a preliminary finding on the  
2 issue of whether the defendant is competent to stand trial and if  
3 not competent whether there is a substantial likelihood that the  
4 defendant will attain competency within the next three months. If  
5 the court of record orders, or if the state or defendant or  
6 defendant's counsel within twenty days of receipt of the  
7 preliminary findings requests a hearing, then a hearing shall be  
8 held by the court of record within fifteen days of the date of the  
9 preliminary finding, absent good cause being shown for a  
10 continuance. If a hearing order or request is not filed within  
11 twenty days, the preliminary findings of the court become the final  
12 order.

13 (b) At a hearing to determine a defendant's competency to  
14 stand trial the defendant has the right to be present and he or she  
15 has the right to be represented by counsel and introduce evidence  
16 and cross-examine witnesses. The defendant shall be afforded  
17 timely and adequate notice of the issues at the hearing and shall  
18 have access to all forensic evaluator's opinions. All rights  
19 generally afforded a defendant in criminal proceedings shall be  
20 afforded to a defendant in the competency proceedings, except trial  
21 by jury.

22 (c) The court of record pursuant to a preliminary finding or  
23 hearing on the issue of a defendant's competency to stand trial and  
24 with due consideration of any forensic evaluation conducted

1 pursuant to sections two and three of this article shall make a  
2 finding of fact upon a preponderance of the evidence as to the  
3 defendant's competency to stand trial based on whether or not the  
4 defendant has sufficient present ability to consult with his or her  
5 lawyer with a reasonable degree of rational understanding and  
6 whether he or she has a rational as well as a factual understanding  
7 of the proceedings against him or her.

8       (d) If at any point in the proceedings the defendant is found  
9 competent to stand trial, the court of record shall forthwith  
10 proceed with the criminal proceedings.

11       (e) If at any point in the proceedings the defendant is found  
12 not competent to stand trial, the court of record shall at the same  
13 hearing, upon the evidence, make further findings as to whether or  
14 not there is a substantial likelihood that the defendant will  
15 attain competency within the next ensuing three months.

16       (f) If at any point in the proceedings the defendant is found  
17 not competent to stand trial and is found substantially likely to  
18 attain competency, the court of record shall in the same order,  
19 upon the evidence, make further findings as to whether the  
20 defendant requires, in order to attain competency, inpatient  
21 management in a mental health facility. If inpatient management is  
22 required, the court shall order the defendant be committed to an  
23 inpatient mental health facility designated by the department to  
24 attain competency to stand trial and for a competency evaluation.

1 The term of this commitment may not exceed three months from the  
2 time of entry into the facility. However, upon request by the  
3 chief medical officer of the mental health facility and based on  
4 the requirement for additional management to attain competency to  
5 stand trial, the court of record may, prior to the termination of  
6 the three-month period, extend the period up to nine months from  
7 entry into the facility. A forensic evaluation of competency to  
8 stand trial shall be conducted by a qualified forensic evaluator  
9 and a report rendered to the court, in like manner as subsections  
10 (a) and (c), section two of this article, every three months until  
11 the court determines the defendant is not competent to stand trial  
12 and is not substantially likely to attain competency.

13 (g) If at any point in the proceedings the defendant is found  
14 not competent to stand trial and is found not substantially likely  
15 to attain competency and if the defendant has been indicted or  
16 charged with a misdemeanor or felony which does not involve an act  
17 of violence against a person, the criminal charges shall be  
18 dismissed. The dismissal order may, however, be stayed for twenty  
19 days to allow civil commitment proceedings to be instituted by the  
20 prosecutor pursuant to article five of this chapter. The defendant  
21 shall be immediately released from any inpatient facility unless  
22 civilly committed.

23 (h) If at any point in the proceedings the defendant is found  
24 not competent to stand trial and is found not substantially likely

1 to attain competency, and if the defendant has been indicted or  
2 charged with a misdemeanor or felony in which the misdemeanor or  
3 felony does involve an act of violence against a person, then the  
4 court shall determine on the record the offense or offenses of  
5 which the person otherwise would have been convicted, and the  
6 maximum sentence he or she could have received. A defendant shall  
7 remain under the court's jurisdiction until the expiration of the  
8 maximum sentence unless the defendant attains competency to stand  
9 trial and the criminal charges reach resolution or the court  
10 dismisses the indictment or charge. The court shall order the  
11 defendant be committed to a mental health facility designated by  
12 the department that is the least restrictive environment to manage  
13 the defendant and that will allow for the protection of the public.  
14 Notice of the maximum sentence period with an end date shall be  
15 provided to the mental health facility. The court shall order a  
16 qualified forensic evaluator to conduct a dangerousness evaluation  
17 to include dangerousness risk factors to be completed within thirty  
18 days of admission to the mental health facility and a report  
19 rendered to the court within ten business days of the completion of  
20 the evaluation. The medical director of the mental health facility  
21 shall provide the court a written clinical summary report of the  
22 defendant's condition at least annually during the time of the  
23 court's jurisdiction. The court's jurisdiction shall continue an  
24 additional ten days beyond any expiration to allow civil commitment

1 proceedings to be instituted by the prosecutor pursuant to article  
2 five of this chapter. The defendant shall then be immediately  
3 released from the facility unless civilly committed.

4 (i) If the defendant has been ordered to a mental health  
5 facility pursuant to subsection (h) of this section and the court  
6 receives notice from the medical director or other responsible  
7 official of the mental health facility that the medical director or  
8 other responsible official of the mental health facility believes  
9 the defendant ~~no longer constitutes a significant danger to self or~~  
10 ~~others~~ is not mentally ill or does not have significant  
11 dangerousness risk factors associated with mental illnesss, the  
12 court shall conduct a hearing within thirty days to consider  
13 evidence, with due consideration of the qualified forensic  
14 evaluator's dangerousness report or clinical summary report to  
15 determine if the defendant shall be released to a less restrictive  
16 environment. The court may order the release of the defendant only  
17 when the court finds that the defendant is ~~no longer a significant~~  
18 ~~danger to self or others~~ not mentally ill or does not have  
19 significant dangerousness risk factors associated with mental  
20 illness. When a defendant's dangerousness risk factors associated  
21 with mental illness are reduced or eliminated as a result of any  
22 treatment, the court, in its discretion, may make the continuance  
23 of appropriate treatment, including medications, a condition of the  
24 defendant's release from inpatient hospitalization. The court

1 shall maintain jurisdiction of the defendant in accordance with  
2 said subsection. Upon notice that a defendant ordered to a mental  
3 health facility pursuant to said subsection who is released on the  
4 condition that he or she continues treatment does not continue his  
5 or her treatment, the prosecuting attorney shall, by motion, cause  
6 the court to reconsider the defendant's release. Upon a showing  
7 that defendant is in violation of the conditions of his or her  
8 release, the court shall reorder the defendant to a mental health  
9 facility under the authority of the department which is the least  
10 restrictive setting that will allow for the protection of the  
11 public.

12 (j) The prosecuting attorney may, by motion, and in due  
13 consideration of any chief medical officer's or forensic  
14 evaluator's reports, cause the competency to stand trial of a  
15 defendant subject to the court's jurisdiction pursuant to  
16 subsection (h) of this section or released pursuant to subsection  
17 (i) of this section to be determined by the court of record while  
18 the defendant remains under the jurisdiction of the court, and in  
19 which case the court may order a forensic evaluation of competency  
20 to stand trial be conducted by a qualified forensic evaluator and  
21 a report rendered to the court in like manner as subsections (a)  
22 and (c), section two of this article.

23 (k) Any defendant found not competent to stand trial may at  
24 any time petition the court of record for a hearing on his or her

1 competency.

2       (1) Notice of court findings of a defendant's competency to  
3 stand trial, of commitment for inpatient management to attain  
4 competency, of dismissal of charges, of order for inpatient  
5 management to protect the public, of release or conditional  
6 release, or any hearings to be conducted pursuant to this section  
7 shall be sent to the prosecuting attorney, the defendant and his or  
8 her counsel, and the mental health facility. Notice of court  
9 release hearing or order for release or conditional release  
10 pursuant to subsection (i) of this section shall be made available  
11 to the victim or next of kin of the victim of the offense for which  
12 the defendant was charged. The burden is on the victim or next of  
13 kin of the victim to keep the court apprised of that person's  
14 current mailing address.

15       (m) A mental health facility not operated by the state is not  
16 obligated to admit or treat a defendant under this section.

NOTE: The purpose of this bill is to update the language to  
comport with the evaluation standard used in releasing forensic  
admissions from mental health facilities to a less restrictive  
environment.

Strike-throughs indicate language that would be stricken from  
the present law, and underscoring indicates new language that would  
be added.