

RULE 3.212 | COMPETENCE TO PROCEED: HEARING AND DISPOSITION

(a) Admissibility of Evidence. The experts preparing the reports may be called by either party or the court, and additional evidence may be introduced by either party. The experts appointed by the court shall be deemed court witnesses whether called by the court or either party and may be examined as such by either party.

(b) Finding of Competence. The court shall first consider the issue of the defendant's competence to proceed. If the court finds the defendant competent to proceed, the court shall enter its order so finding and shall proceed.

(c) Commitment on Finding of Incompetence. If the court finds the defendant is incompetent to proceed, or that the defendant is competent to proceed but that the defendant's competence depends on the continuation of appropriate treatment for a mental illness or intellectual disability, the court shall consider issues relating to treatment necessary to restore or maintain the defendant's competence to proceed.

(1) The court may order the defendant to undergo treatment if the court finds that the defendant is mentally ill or intellectually disabled and is in need of treatment and that treatment appropriate for the defendant's condition is available. If the court finds that the defendant may be treated in the community on bail or other release conditions, the court may make acceptance of reasonable medical treatment a condition of continuing bail or other release conditions.

(2) If the defendant is incarcerated, the court may order treatment to be administered at the custodial facility or may order the defendant transferred to another facility for treatment or may commit the defendant as provided in subdivision (3).

(3) A defendant may be committed for treatment to restore a defendant's competence to proceed if the court finds that:

(A) the defendant meets the criteria for commitment as set forth by statute;

(B) there is a substantial probability that the mental illness or intellectual disability causing



the defendant's incompetence will respond to treatment and that the defendant will regain competency to proceed in the reasonably foreseeable future;

(C) treatment appropriate for restoration of the defendant's competence to proceed is available; and

(D) no appropriate treatment alternative less restrictive than that involving commitment is available.

(4) If the court commits the defendant, the order of commitment shall contain:

(A) findings of fact relating to the issues of competency and commitment addressing the factors set forth in rule 3.211 when applicable;

(B) copies of the reports of the experts filed with the court pursuant to the order of examination;

(C) copies of any other psychiatric, psychological, or social work reports submitted to the court relative to the mental state of the defendant; and

(D) copies of the charging instrument and all supporting affidavits or other documents used in the determination of probable cause.

(5) The treatment facility shall admit the defendant for hospitalization and treatment and may retain and treat the defendant. No later than 6 months from the date of admission, the administrator of the facility shall file with the court a report that shall address the issues and consider the factors set forth in rule 3.211, with copies to all parties. If, at any time during the 6-month period or during any period of extended commitment that may be ordered pursuant to this rule, the administrator of the facility determines that the defendant no longer meets the criteria for commitment or has become competent to proceed, the administrator shall notify the court by such a report, with copies to all parties.

(A) If, during the 6-month period of commitment and treatment or during any period of extended commitment that may be ordered pursuant to this



rule, counsel for the defendant shall have reasonable grounds to believe that the defendant is competent to proceed or no longer meets the criteria for commitment, counsel may move for a hearing on the issue of the defendant's competence or commitment. The motion shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is now competent to proceed or no longer meets the criteria for commitment. To the extent that it does not invade the attorney-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant that have formed the basis for the motion.

(B) If, upon consideration of a motion filed by counsel for the defendant or the prosecuting attorney and any information offered the court in support thereof, the court has reasonable grounds to believe that the defendant may have regained competence to proceed or no longer meets the criteria for commitment, the court shall order the administrator of the facility to report to the court on such issues, with copies to all parties, and shall order a hearing to be held on those issues.

(6) The court shall hold a hearing within 30 days of the receipt of any such report from the administrator of the facility on the issues raised thereby. If, following the hearing, the court determines that the defendant continues to be incompetent to proceed and that the defendant meets the criteria for continued commitment or treatment, the court shall order continued commitment or treatment for a period not to exceed 1 year. When the defendant is retained by the facility, the same procedure shall be repeated prior to the expiration of each additional 1-year period of extended commitment.

(7) If, at any time after such commitment, the court decides, after hearing, that the defendant is competent to proceed, it shall enter its order so finding and shall proceed.

(8) If, after any such hearing, the court determines that the defendant remains incompetent to proceed but no longer meets the criteria for commitment, the court shall proceed as provided in rule 3.212(d).

(d) Release on Finding of Incompetence. If the court decides that a defendant is not mentally competent to proceed but does not meet the criteria for commitment, the defendant may be released on appropriate release conditions. The court may order that the defendant receive outpatient treatment at an appropriate local facility and that the defendant report for further evaluation at specified times during the release period as conditions of release. A report shall be filed with the court after each evaluation by the persons appointed by the court to make such evaluations, with copies to all parties. The procedure for determinations of the confidential status of reports is governed by Rule of Judicial Administration 2.420.

Committee Notes

1980 Adoption. This rule sets forth the procedure for the hearing itself. If other experts have been involved who were not appointed pursuant to this rule, provision is made that such experts may then be called by either party. Those experts appointed by the court to conduct the examination, if called by the court or by either party to testify at the hearing, will be regarded as court experts. Either party may then examine such experts by leading questions or may impeach such experts. If a party calls an expert witness other than those appointed by the court pursuant to these rules, the usual evidentiary rules of examining such witnesses shall then apply. Following the hearing, the court may come to one of 3 conclusions: (a) the defendant is competent to stand trial, rule 3.212(a); (b) the defendant is incompetent to stand trial and is in need of involuntary hospitalization, rule 3.212(b); or (c) the defendant is incompetent to stand trial but is not in need of involuntary hospitalization, rule 3.212(c).

(a) This provision has been contained in every prior rule or statute relating to the issues of competency to stand trial and provides that if the defendant is competent the trial shall commence. No change is recommended.

(b) This subdivision provides for the second possible finding of the court, namely that the defendant is found incompetent to stand trial and is in need of involuntary hospitalization. It is designed to track the provisions of chapter 394, Florida Statutes, relating to involuntary hospitalization and the provisions of chapter 393 relating to residential services insofar as they may apply to the defendant under criminal charges. In this way, the procedures to be set up by the institution to which a criminal defendant is sent should not vary greatly from procedures common to the institution in the involuntary hospitalization or residential treatment of those not subject to criminal charges.



The criteria for involuntary hospitalization are set forth in section 394.467(1), Florida Statutes (1979). As to involuntary hospitalization for mental retardation, see section 393.11, Florida Statutes (1979); definition of treatment facility, see section 394.455, Florida Statutes (1979); involuntary admission to residential services, see section 393.11, Florida Statutes (1979).

(2) The requirement that there be certain contents to the order of commitment is set forth in order to give greater assistance to the personnel of the treatment facility. The information to be included in the order should give them the benefit of all information that has been before the trial judge and has been considered by that judge in making the decision to involuntarily hospitalize the defendant. This information should then assist the personnel of the receiving institution in making their initial evaluation and in instituting appropriate treatment more quickly. The last requirement, that of supporting affidavits or other documents used in the determination of probable cause, is to give some indication of the nature of the offense to the examining doctors to enable them to determine when the defendant has reached a level of improvement that he or she can discuss the charge with “a reasonable degree of rational understanding.”

(3) This subdivision is designed to correspond with a complementary section of the Florida Statutes. It mandates, as does the statute, that the treatment facility must admit the defendant for hospitalization and treatment. The time limitations set forth in this subdivision are designed to coincide with those set forth in chapter 394, Florida Statutes. If, however, the defendant should regain competence or no longer meets hospitalization criteria prior to the expiration of any of the time periods set, the administrator of the facility may report to the court and cause a re-evaluation of the defendant’s mental status. At the end of the 6-month period, and every year thereafter, the administrator must report to the court. These time periods are set forth so as to coincide with chapter 394, Florida Statutes.

(i) Permits the defendant’s attorney, in an appropriate case, to request a hearing if the attorney believes the defendant to have regained competency. The grounds for such belief are to be contained in the motion, as is a certificate of the good faith of counsel in filing it. If the motion is sufficient to give the court reasonable grounds to believe that the defendant may be competent or no longer meets the criteria for hospitalization, the court can order a report from the administrator and hold a hearing on the issues.

(4) The rule is meant to mandate that the court hold a hearing as quickly as possible, but the hearing must be held at least within 30 days of the receipt of the report from the administrator of the facility.

(c) This rule provides for the disposition of the defendant who falls under the third of the alternatives listed above, that is, one who is incompetent to stand trial but does not meet the provisions for involuntary hospitalization. It is meant to provide as great a flexibility as possible for the trial judge in handling such defendant.

As to criteria for involuntary hospitalization, see section 394.467(1), Florida Statutes (1979).



Section 916.13, Florida Statutes complements this rule and provides for the hospitalization of defendants adjudicated incompetent to stand trial.

1988 Amendment. Title. The title has been amended to reflect changes in rules 3.210 and 3.211.

(a) This provision was formerly the introductory paragraph to this rule. It has been labeled subdivision (a) for consistency in form.

(b) This provision was former subdivision (a). It has been amended to reflect changes in rules 3.210 and 3.211. The former subdivisions (b) and (b)(1) have been deleted because similar language is now found in new subdivision (c).

(c) This new provision, including all its subdivisions, is designed to reflect the commitment criteria in section 916.13(1), Florida Statutes, and to reflect that commitment to the Department of Health and Rehabilitative Services is to be tied to specific commitment criteria when no less restrictive treatment alternative is available.

(1) This provision provides for available community treatment when appropriate.

(2) This provision provides for treatment in a custodial facility or other available community residential program.

(3) This provision, and its subdivisions, outlines when a defendant may be committed and refers to commitment criteria under the provisions of section 916.13(1), Florida Statutes.

(4) This provision, and its subdivisions, was formerly subdivision (b)(2). The language has been amended to reflect changes in chapter 916 relating to the commitment of persons found incompetent to proceed and changes in rules 3.210 and 3.211.

(5) This provision, and its subdivisions, was formerly subdivision (b)(3). The amendments are for the same reasons as (4) above.

(6) This provision was formerly subdivision (b)(4). The amendments are for the same reasons as (4) above.

(7) This provision was formerly subdivision (b)(5). The amendments are for the same reasons as (4) above.

(8) This provision was formerly subdivision (b)(6). The amendments are for the same reasons as (4) above.

(d) The amendments to the provision are for the same reasons as (4) above.

1992 Amendment. The amendments substitute “shall” in place of “may” in subdivision (c)(5)(B) to require the trial court to order the administrator of the facility where an incompetent defendant has been committed to report to the court on the issue of competency when the court has reasonable grounds to believe that the defendant may have regained competence to proceed or no longer meets the criteria for commitment. The amendments also gender neutralize the wording of the rule.



Introductory Note Relating to Amendments to Rules 3.210 to 3.219. See notes following rule 3.210 for the text of this note.

