

## **Competency to Proceed (971.13 and 971.14)**

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971.13(1) No person who lacks substantial capacity to understand the proceedings or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

### **When competency issue arises (971.14(1)):**

- 1) If reason to doubt competency arises after a finding of guilty by judge or jury, or after a bind over at preliminary hearing, the court promptly orders a psychological examination.
- 2) If reason to doubt competency arises before a court has made a probable cause determination, one must be made before an examination can be ordered. This can be based on the complaint or, if the defendant submits an affidavit alleging that the complaint is materially false, on the complaint and evidence presented at a hearing. Court can limit issues and witnesses to those needed for probable cause. If it's not established, case is dismissed and defendant released.
- 3) It can be raised by motion, setting forth the grounds, by the evidence presented in the proceedings, by the defendant's colloquies with the court or by courtroom demeanor. Evidentiary hearing may be appropriate to assist the court in deciding whether to order an examination. Court can still order it even if not raised by either party.

### **Examination (971.14(2)):**

- 1) If defendant has bailed out, the court may not order an involuntary inpatient examination, unless the defendant fails to cooperate or the examiner informs the court that inpatient observation is needed. Exam must be complete within 30 days.
- 2) If the defendant is in custody, the court can order either an inpatient or outpatient examination.
  - a. If inpatient examination is determined to be necessary, the defendant can be committed to a suitable mental facility. Report has to be finished within 15 days unless facility shows good cause, then court can order one 15-day extension. Days in the facility are days in custody.
  - b. The department of health and family services decides where the examination will

take place, who will conduct the examination and, notwithstanding above, whether the examination will take place on inpatient or outpatient basis.

- c. If an outpatient examination is ordered, the exam will take place in the jail or locked unit of a facility. Sheriff must transport. Exam must be complete within 30 days.
  - d. Examiner must personally observe and examine defendant and have access to prior records.
- 3) The defendant at any stage in the competency proceedings may choose an expert to conduct an examination

**Report** (971.14(3)):

1) The examiner shall submit a report to the court in details which includes:

- a) Description of the examination
- b) Examiner's findings
- c) Opinion regarding the defendant's present competency
- d) Opinion that an incompetent defendant will regain competency during the time period (12 months or the maximum sentence for the most serious charge, whichever is less)
- e) Opinion on whether the defendant needs medication or treatment and whether defendant is not competent to refuse it

2) Competency to refuse medication or treatment

If because of mental illness, development disability, alcoholism, or drug dependence and after the advantages and disadvantages of treatment have been explained, one of the following is true:

- a) Defendant is incapable of expressing an understanding of the advantages and disadvantages of accepting medication, treatment and alternatives.
- b) Defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives in order to make an informed choice

**Hearing** (971.14(4)):

- a) the court shall deliver copies to defense counsel, or defendant if he has no counsel, and district attorney. If the sheriff requests it, the court shall give a copy to the sheriff to be forwarded to the person who keeps medical records/ treatment of the inmates
- b) if D.A., defense counsel and defendant waive chance to present evidence on the issue, the court shall immediately determine competency and competency

- to refuse treatment
- c) without waivers court shall hold an evidentiary hearing. Court must first ask defendant whether he or she claims to be competent
    - a. *if defendant stands mute or claims to be incompetent*, the defendant shall be found competent, unless the state proves by the greater weight of credible evidence that defendant is competent
    - b. *if defendant claims to be competent*, defendant shall be found competent unless the state proves by evidence that is clear and convincing that defendant is incompetent
  - d) if defendant is found incompetent and state proves by clear and convincing evidence that defendant is incompetent to refuse treatment, then court shall order that defendant is not competent to refuse and whoever administers treatment shall observe appropriate medical treatment
  - e) if defendant is competent, criminal proceeding shall resume
  - f) if defendant is incompetent and not likely to become incompetent within the time period, then the proceedings shall be suspended and defendant released or the proceedings operate under chapter 51. If released, the court can order the defendant to reappear at specific intervals for redetermination of competency

## **Mental Responsibility of Defendant 971.15**

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law

It is an affirmative defense which the defense must establish to a reasonable certainty by greater weight of credible evidence.

### **Examination 971.16**

1) If defendant has entered a plea of no guilty by reason of mental disease or defect, the court will appoint a physician or psychologist to examine the defendant and to testify at trial. The fact that the court appointed the examiner shall be made known to the jury and the examiner is subject to cross examination by both parties.

2) Not less than 10 days before trial the examiner shall file a report with the court, copies to both counsels.

3) Report shall contain the examiner's opinion regarding the defendant's responsibility at time of the commission of offense and if possible an opinion on whether the defendant needs treatment and whether defendant is competent to refuse.

4) If defendant wishes to be examined by expert of his choice, no testimony shall be received unless report is given to the D.A. no less than 3 days before trial and they have opportunity to examine and observe defendant.

5) State may summon expert, but no testimony shall be received unless a report is given to defense counsel no less than 3 days before trial.

6) If expert testifies, he/she shall be permitted to make a statement as to nature of the examination, the diagnosis at the time of the commission of crime, opinion as to responsibility of defendant, and if possible an opinion on whether the defendant needs treatment and whether defendant is competent to refuse. Expert shall be permitted to make an explanation and may be cross examined.

7) Testimony regarding need for treatment and competency to refuse may not be presented to jury who will determine defendant's responsibility.

### **Trials with pleas of not guilty by reason of mental disease or defect 971.165**

This is bifurcated proceeding. First is guilt phase and second is responsibility phase.

- a) Guilty phase: The plea of not guilty shall be determined first. Defendant can have a trial to judge, trial to a jury or can enter a plea to charge.
- b) If judge or jury finds the defendant not guilty, the judge shall enter an order of acquittal and discharge the defendant.
- c) If both pleas are tried to a jury, same jury will determine guilt phase and responsibility phase. They shall be informed of the two pleas and that a verdict on guilt must be taken before any evidence will be heard on responsibility. Like a regular criminal proceeding, verdict must be unanimous.
- d) Court shall inform jury that the effect of "not responsible" is that in lieu of sentencing or probation, the defendant will be committed to the custody of the department of health and family services and will be placed in an appropriate institution unless court determines that defendant would not be a danger if released. Verdict on responsibility phase is civil standard. 5/6 of jurors must agree on verdict.

- e) If defendant is **NOT** found not guilty by reason... court proceeds to impose or withhold sentencing as in any criminal proceeding.
- f) If defendant **IS** found not guilty by reason...court shall enter a judgment of not guilty by reason .... And shall proceed under 971.17.

### **Commitment of people found not responsible 971.17**

- 1) Commitment period:
  - a. Felonies before 7/30/02- commitment to the department for a specified period not to exceed 2/3 maximum term
  - b. Felonies on or after 7/30/02-commitment to the department for a maximum term of confinement in prison that could be imposed
  - c. Felonies punishable by life-commitment may be life subject to termination under 971.17(5)
  - d. Misdemeanors-commitment to department for 2/3 maximum term
  - e. If it is a serious sex offense, there are additional consequences under 971.17(1j) and (1m)
- 2) After a not responsible determination, the court shall enter an initial commitment order as soon as possible. It can proceed immediately after trial or order a hearing so the department can do a predispositional investigation.
- 3) Court can appoint an examiner to report upon the condition of the person, or commit defendant to a mental health facility. Sheriff transports.
- 4) Inpatient exam shall be completed within 15 days. Examiner can get one 15 day extension for good cause.
- 5) Outpatient shall be completed within 15 days.
- 6) Examiner shall personally observe and examine the defendant and have access to prior medical records. If examiner believes that defendant is appropriate for conditional release, he shall report on type of treatment defendant needs in community. Within 10 days of filing report, the judge shall hold a hearing to determine whether commitment shall be conditional release or institutional care.

### **Commitment Order 971.17(3)**

- 1) The order for commitment shall specify institutional care or conditional release. In determining this court may consider: nature of crime, person's mental history, present mental condition, where person will live, how person will support himself, what arrangements are available to ensure access to and will take medication and what arrangements are possible for other treatment

- 2) If court finds by clear and convincing evidence that conditional release of the person would pose a significant risk of bodily harm to himself or to others or of serious property damage, then the court shall order institutional care. Otherwise court shall order conditional release.
- 3) If state proves by clear and convincing evidence that person is not competent to refuse treatment, that shall be part of the order
- 4) If court orders institutional care, department shall place in an appropriate facility. If order does not specify that person is incompetent to refuse, the department can bring motion under 971.17(3)(c) to add it.
- 5) If court orders conditional release, the department in county of person's residence shall prepare a plan for treatment. Plan shall be presented to court within 21 days after finding that person is appropriate for conditional release, unless county asks for more time.
- 6) A conditionally released person is subject to orders of court and department. Local police and sheriff shall be notified of release. If department alleges that person has violated orders or that the safety of person or others requires revocation of the release, person may be taken into custody under rules of the department. Department must then submit a probable cause statement for detention
- 7) State has burden of proving by clear and convincing evidence order has been violated or that safety of person or others requires that release be revoked. Court may revoke and order person to institution until expiration of commitment or until again conditionally released.

#### **Petition for Conditional Release 971.17(4)**

- 1) Any person may petition the court to change the institutional order to one of conditional release if at least 6 months has elapsed since the order was entered, most recent petition was denied, or most recent conditional release was revoked. The director of the facility may file a petition at any time.
- 2) Within 20 days of receiving the petition, the court must appoint an examiner, who will file a written report within 30 days of their appointment.
- 3) The court will hear the petition within 30 days of the report being filed, unless petitioner waives time limit.
- 4) Court shall grant petition unless it finds by clear and convincing evidence that person would pose the significant risk mentioned above. Court considers same factors as mentioned in the original determination.
- 5) If court finds conditional release is appropriate, the department shall be notified in order to prepare a plan of release. Plan shall be presented to court within 60 days of finding that person is appropriate for release.
- 6) Person can also file a petition to terminate the commitment. The procedure is the same as above.

