

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 6: CRIMINAL PROCEDURE

§ 6607. Incompetency to Stand Trial or be Sentenced; Procedure.

(a) If at least one psychiatrist concludes that the defendant may be incompetent to be proceeded against or to be sentenced, the court shall order the issue of defendant's competency to be determined within 10 days after notice to the court verified by the psychiatrist, unless the court, for good cause, orders the issue tried at a later date.

(b) Any hearing under this section shall be by the court without a jury. The burden of proving incompetency is on the party asserting it and shall be proved by a preponderance of the evidence.

(c) If the court finds that the defendant is competent to be proceeded against or to be sentenced, the proceedings shall be resumed, or judgment be pronounced.

(d) If the court finds that a defendant who has not yet been found guilty on the pending charge is incompetent to be proceeded against but that there is a substantial likelihood that he will regain his competency within 90 days, the court shall order him committed to an evaluation facility or a treatment facility for custody, care and treatment up to 30 days consistent with the patient's rights. The evaluation or treatment facility administrator shall furnish the court with a report on the defendant's competency by the end of the 30 day period. The court may extend the commitment pursuant to this section for any number of periods, or may order conditional release if the defendant is not a danger to self or others, for a total under this section not to exceed 180 days or one-third the number of days of the maximum period of jail time that could be imposed on sentencing if the defendant were found guilty, whichever is less.

(e) If the court finds that the defendant is incompetent to be sentenced after conviction but that there is a substantial likelihood that he will regain his competency within one year, the court shall order him committed to an evaluation facility or a treatment facility for custody, care and treatment up to 30 days consistent with the patient's rights. The evaluation or treatment facility administrator shall furnish the court with a report on the defendant's competency by the end of the 30 day period. The court may extend the commitment pursuant to this section for up to one-third the number of days of the maximum period of jail time that could be imposed on sentencing. Periodic review by the court shall automatically occur every 60 days after the initial 30 day report.

(f) Whenever, in the opinion of the administrator or any designee, the defendant regains his competency, the administrator or such designee shall, in writing, certify that fact to the clerk of the court in which the proceedings are pending. Such certification, unless contested by the defendant or the people, shall be sufficient to authorize the court to find the defendant competent and to order the criminal prosecution to continue. If the certification is contested, a hearing before the court shall be held after notice to the parties, and the party so contesting shall have the burden of proving by a preponderance of the evidence that the defendant remains incompetent.

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Upon a finding of competency, the defendant may apply for his release pending trial in the manner provided by law.

Upon written request by the court or either party, filed with the clerk of the court and served upon the administrator of the facility or institution in which the defendant is or was confined, the administrator shall file with the clerk of the court the defendant's complete medical records or such portion thereof as is designated in the request, or a certified copy thereof, while at said facility or institution.

(g) If at any time the court determines that the defendant is incompetent to stand trial or be sentenced and that there is no substantial likelihood that he will regain his competency in the times set forth in subsections (d) and (e) of this section, as applicable, the court, upon its own motion or upon motion of either party, and after reasonable notice to the other party and an opportunity to be heard, shall order the unconditional release of defendant and shall, if before conviction, dismiss the pending indictment, information or other criminal charges or, if after conviction, discharge the person from custody. An order of unconditional release pursuant to this section does not bar commencement of any available civil commitment proceedings.

(h) A finding or certificate that the defendant is mentally competent shall in no way prejudice the defendant in his defense. Such finding or certificate shall not be introduced in evidence or otherwise brought to the notice of the jury.

(i) The proceedings under this section shall be part of the criminal proceedings and included in the file of that case.

(j) Any period for which the defendant is committed pursuant to this section shall be credited against any sentence which may later be imposed on him for the offense with which he is charged.

(k) The commitment of the defendant pursuant to this section exonerates any depositor or surety who has provided security and entitles such person to the return of any money or property he may have deposited.

Source: PL 8-37, § 5 (§ 6606).