

## Competency to Stand Trial

By: Katherine Dwyer, Associate Attorney  
October 30, 2017 | 2017-R-0164

### Issue

Describe the laws pertaining to competency to stand trial.

### Summary

By law, a defendant in a criminal trial may not be tried, convicted or sentenced while he or she is not competent (i.e., if he or she is unable to understand the proceedings against him or her or assist in his or her own defense).

A defendant is presumed competent but if at any time during a criminal proceeding it appears that he or she is not, his or her attorney or the state's attorney may request a competency examination. The court must order such an examination if it finds the request is justified and there is probable cause to believe that the defendant committed the alleged crime. (The court may also order an exam on its own motion.) The court may either appoint a psychiatrist to examine the defendant or order the Department of Mental Health and Addiction Services (DMHAS) commissioner to have a psychiatrist or clinical team conduct the examination. The examiner must report the findings to the court, which must in turn hold a competency hearing.

Following the hearing, the court must determine if the defendant is competent. If it finds that he or she is not competent, the court may order treatment for the individual if there is a substantial probability that, through such treatment, his or her competency will be restored. (Under certain circumstances, the court may subsequently order the individual to be involuntarily medicated in order to restore competency.) If the court determines that there is not a substantial probability that the defendant will attain competency it may, among other things, consider the appropriateness of a civil commitment to a psychiatric hospital.

Throughout the treatment or commitment period, the individual must be periodically re-evaluated and the court must hold additional competency hearings to determine if the defendant is competent. If the defendant is not restored to competency within the time period that he or she may be prosecuted for the alleged crime, the court must dismiss, with or without prejudice, any charges that were not nolle. A defendant who is not civilly committed must be released and a civilly committed defendant must be treated in the same manner as any other civilly committed person.

## **Examination**

The court must order a competency examination if it finds that (1) a request for one is justified and (2) there is probable cause to believe that the defendant has committed the crime for which he or she is charged.

The court may appoint one or more psychiatrists to examine the defendant. Alternatively, it may order the DMHAS commissioner to conduct an examination either by (1) a clinical team selected by the commissioner that includes a psychiatrist, a clinical psychologist, and either a licensed clinical social worker or a psychiatric nurse clinical specialist with a master's degree in nursing or (2) one or more psychiatrists selected by the commissioner.

If the examiners determine that:

1. the defendant is not competent, they must then determine if there is a substantial probability that he or she, if provided a course of treatment, will regain competency within a maximum placement order period (i.e., the maximum sentence for the pending criminal charges or eighteen months, whichever is shorter);
2. there is a substantial probability that, with treatment, the defendant will regain competency within that time frame, they must then determine if he or she appears to be eligible for civil commitment to a psychiatric hospital with Court Support Services Division (CSSD) monitoring; or
3. there is not a substantial probability that the defendant will regain competency within that timeframe, they must then (a) determine whether the defendant appears to be eligible for civil commitment and (b) make a recommendation to the court regarding the appropriateness of such a commitment.

The court may authorize a psychiatrist, clinical psychologist, licensed clinical social worker, or psychiatric nurse clinical specialist selected by the defendant to observe the examination. The defendant's counsel may also observe the examination.

The examination must be completed within 15 business days from the date the court orders it and the examiners must submit a written report to the court within 21 days of the order ([CGS § 54-56d\(d\)](#)).

## **Hearing**

The court must hold a competency hearing within 10 days of receiving the written report from the examiners. The defendant and the state may introduce certain evidence regarding the defendant's competency at the hearing, including the report. But if the report is introduced, at least one of the examiners must be present to testify on it, unless both parties waive this requirement. A defendant may waive the court hearing only if the examiners, in the report, determine without qualification that the defendant is competent ([CGS § 54-56d\(e\)](#)).

If the court, after the hearing, finds that the defendant is competent, it must continue with the criminal proceedings. But if it finds that the defendant is not competent, it must also determine whether there is a substantial probability that the defendant, with a course of treatment, will regain competency within the maximum placement order period. If it determines that there is not a substantial probability that the defendant will regain competency, the court must either release the defendant from custody or order him or her placed in agency custody pending civil commitment ([CGS § 54-56d\(f\),\(g\)](#)).

## **Placement**

If the court finds that there is a substantial probability that the defendant will regain competency if provided with a course of treatment, it must either (1) order the defendant to be placed for treatment to render him or her competent or (2) on its own motion or a motion by the state or defendant, order the defendant to be placed in DMHAS custody at a treatment facility determined by the commissioner pending civil commitment proceedings ([CGS § 54-56d\(h\)](#)).

### ***Placement for Treatment to Render Defendant Competent***

Treatment placement to render the defendant competent must comply with the following conditions:

1. the placement period must not exceed the maximum sentence for the pending criminal charges or 18 months, whichever is shorter;
2. the placement must be in (a) Department of Children and Families (DCF), Department of Developmental Services (DDS), or DMHAS custody, except that a defendant placed with DMHAS for treatment may remain in Department of Correction (DOC) custody or (b) if the defendant or appropriate commissioner agrees to pay, in the custody of any appropriate

mental health facility or treatment program that agrees to treat the defendant and meets the law's requirements; and

3. the court must order the least restrictive inpatient or outpatient placement appropriate and available to restore competency ([CGS § 54-56d\(i\)](#)).

If outpatient treatment is the least restrictive alternative for an incarcerated defendant, the court must consider whether the availability of treatment is a sufficient basis to release the defendant on a promise to appear, conditions of release, cash bail, or bond. If it determines that the defendant should not be released, it must order treatment on an inpatient basis ([CGS § 54-56d\(i\)](#)).

### ***Placement in DMHAS Custody Pending Civil Commitment Proceedings***

If the court orders the defendant to be placed in DMHAS custody at a treatment facility pending civil commitment to a psychiatric hospital, the order must:

1. include an authorization for the DMHAS commissioner to apply to probate court for civil commitment of the defendant;
2. permit the defendant to agree to request voluntary admission to such a hospital and participate in a treatment plan prepared by the DMHAS commissioner; and
3. provide that if the civil commitment application is denied or not pursued by the DMHAS commissioner, or if the defendant is unable or unwilling to comply with the treatment plan despite the facility's reasonable effort to encourage compliance, the facility must submit a written progress report with specified information to the court and the defendant must be returned to court for a hearing.

This option is not available to defendants charged with certain serious crimes, such as class A felonies, certain class B felonies, and, unless good cause is shown, a class C felony ([CGS § 54-56d\(h\)](#)).

### ***Progress Reports***

The person in charge of the treatment facility, or, if the defendant is in DOC custody because he or she presents a significant security, safety, or medical risk, the DMHAS commissioner, must submit a written progress report to the court:

1. at least seven days before any competency hearing;
2. whenever he or she believes that (a) the defendant has attained competency, (b) there is not a substantial probability that the defendant will attain competency within the period covered by the placement order, or (c) the defendant is still not competent but has improved sufficiently that continued inpatient commitment is no longer the least restrictive placement appropriate and available to restore competency; and
3. when, within the first 120 days of the placement order, he or she believes that the defendant would be eligible for civil commitment ([CGS § 54-56d\(j\)](#)).

Whenever the court renders or continues a placement order for treatment, it must set a date for a hearing within 90 days to reconsider the defendant's competency ([CGS § 54-56d\(k\)](#)).

As noted above, placement and monitoring under the court's order cannot exceed the maximum sentence for the pending criminal charges or eighteen months, whichever is shorter. If the defendant complies with the treatment plan and the provisions of the court order, at the end of the placement and monitoring, the court must approve a nolle or dismiss all the pending charges ([CGS § 54-56d\(h\)](#)).

## **Reconsideration of Competency**

The court must set a hearing within 10 days when it receives a report from a treatment facility that indicates:

1. the defendant (a) has attained competency; (b) will not attain competency within the remainder of the placement order period, or will not do so without psychiatric medication to which he or she is unwilling or unable to consent; (c) would be eligible for civil commitment; or (d) is still not competent but has improved sufficiently that inpatient commitment is no longer the least restrictive placement appropriate and available to restore competency;
2. the civil commitment application was denied or not pursued by the DMHAS commissioner; or
3. the defendant is unwilling or unable to comply with a treatment plan despite the treatment facility's reasonable efforts to encourage compliance.

The defendant may only waive the hearing if the report indicates that he or she is competent. If the defendant is in DOC custody, the DMHAS commissioner is responsible for providing testimony for the hearing. The court must determine at the hearing if the defendant is competent or making progress towards attaining competency within the placement order period.

If the court finds that the defendant is:

1. competent, it must return the defendant to DOC custody or release him or her if he or she has met the conditions for release, and the court must continue with the criminal proceedings;
2. still not competent but is making progress, it may continue or modify the placement order;
3. still not competent but is making progress and inpatient placement is no longer the least restrictive placement appropriate and available to restore competency, it must consider whether the availability of a less restrictive placement is a sufficient basis to conditionally release him or her and may order continued outpatient treatment; or
4. eligible for civil commitment, it may order the defendant placed at a treatment facility pending civil commitment proceedings ([CGS § 54-56d\(k\)](#)).

## **Involuntary Medication**

In certain circumstances, the court may, after a hearing, order involuntary medication of a defendant to restore competency.

### ***Health Care Guardian***

If the court finds that the defendant will not attain competency within the remaining placement order period without administration of psychiatric medication to which he or she is unwilling or unable to consent, it must appoint a health care guardian to represent the defendant's health care interests before the court. The guardian must be a licensed health care provider with specialized training in treating people with psychiatric disabilities. The guardian must have access to the defendant's psychiatric records and file a report with the court within 30 days of his or her appointment. The report must include the guardian's findings and recommendations regarding administering psychiatric medication to the defendant, including the (1) risks and benefits of the medication, (2) likelihood and seriousness of any adverse side effects, and (3) prognosis with and without the medication ([CGS § 54-56d\(k\)](#)).

### ***Hearing***

The court must hold a hearing on the matter within 10 days of receiving the report from the health care guardian. When deciding whether to involuntarily medicate the defendant, it must take into account the guardian's opinion on the defendant's health care interests.

If, following the hearing, the court finds that the defendant will not attain competency without involuntary medication, it may order such medication if it finds by clear and convincing evidence that:

1. to a reasonable degree of medical certainty, involuntary medication will render the defendant competent to stand trial;
2. guilt or innocence cannot be adjudicated using less intrusive means;
3. the proposed treatment plan is narrowly tailored to minimize intrusion on the defendant's liberty and privacy interests;
4. the proposed drug regimen will not unnecessarily risk the defendant's health; and
5. due to the seriousness of the crime, the state's law enforcement interest in fairly and accurately determining the defendant's guilt or innocence overrides the defendant's interest in self-determination ([CGS § 54-56d\(k\)](#)).

### ***Continued Involuntary Medication***

If the defendant attains competency through involuntary medication, the court may order continued involuntary medication if it finds all of the above by clear and convincing evidence and also finds by such evidence that the defendant will not remain competent unless the involuntary medication continues. Before considering continued involuntary medication, the court must order the health care guardian to file a supplemental report with updated findings and recommendations. It must consider the report when issuing its decision.

Continued involuntary medication may be administered to the defendant while the criminal charges are pending and he or she is in DOC or DMHAS custody. The order must be reviewed every 180 days and the court must order a new supplemental report for each review ([CGS § 54-56d\(k\)](#)).

### **Civil Commitment**

If at any time the court determines that there is not a substantial probability that the defendant will attain competency within the treatment period or if at the end of the period the court finds that the defendant is still not competent, it must consider any of the examiners' recommendations and any opinion the treatment facility submitted regarding eligibility for, and appropriateness of, civil commitment to a psychiatric hospital. It must hear arguments and then either order (1) the defendant's release or (2) him or her placed in the custody of DMHAS, DCF, or DDS. The agency commissioner must then apply for civil commitment, or if the defendant is placed in DMHAS custody, the court may order the department to provide services in a less restrictive setting, provided the examiners determined that such services are available and appropriate ([CGS § 54-56d\(m\)](#)).

### ***Notice of Release from Custody***

If the court orders the defendant placed in DMHAS or DDS custody, it may order the respective commissioner to notify the court when the defendant is released from custody if the release is before the expiration of the time that the defendant could be prosecuted for the alleged crime, provided the order indicates when that time expires ([CGS § 54-56d\(m\)](#)).

### ***Periodic Examinations***

The court may order, on its own motion or that of a prosecuting attorney, periodic competency examinations at least every six months as a condition of release or placement if the defendant was charged with a crime that resulted in death or serious physical injury or certain other serious crimes such as first degree sexual assault. Such periodic examinations must continue until the court finds that the defendant attained competency or until the expiration of time within which the defendant could be prosecuted for the alleged crime.

The examiners must submit a written report to the court following a periodic examination. The court must, upon the request of either party filed within 30 days of the court receiving the report, conduct a competency hearing. If the court finds that the defendant is competent, he or she must be returned to DOC custody or released if he or she has met the conditions for release, and the court must continue with the criminal proceedings ([CGS § 54-56d\(m\)](#)).

### ***Dismissal of Charges***

If the defendant is not restored to competency within the time period that he or she may be prosecuted for the alleged crime, the court must dismiss, with or without prejudice, any charges that were not nolle. A defendant who is not civilly committed must be released and a civilly committed defendant must be treated in the same manner as any other civilly committed person ([CGS § 54-56d\(m\)](#)).

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