

**Effective: [See Text Amendments]**

PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES ANNOTATED CURRENTNESS  
TITLE 50 P.S. MENTAL HEALTH

[CHAPTER 15. MENTAL HEALTH PROCEDURES](#)

→ ARTICLE IV. DETERMINATIONS AFFECTING THOSE CHARGED WITH CRIME OR UNDER SENTENCE ([REFS & ANNOS](#))

[§ 7401. Examination and treatment of a person charged with crime or serving sentence](#)

**(a) Examination and Treatment to be Pursuant to Civil Provisions.**--Whenever a person who is charged with crime, or who is undergoing sentence, is or becomes severely mentally disabled, proceedings may be instituted for examination and treatment under the civil provisions of this act in the same manner as if he were not so charged or sentenced. Proceedings under this section shall not be initiated for examination and treatment at Veterans Administration facilities if such examination and treatment requires the preparation of competency reports and/or the facility is required to maintain custody and control over the person. Such proceedings, however, shall not affect the conditions of security required by his criminal detention or incarceration.

**(b) Status in Voluntary and Involuntary Treatment.**--Whenever a person who is detained on criminal charges or is incarcerated is made subject to inpatient examination or treatment, he shall be transferred, for this purpose, to a mental health facility. Transfer may be made to a Veterans Administration facility provided that neither custody nor control are required in addition to examination and treatment. Such individuals transferred to the Veterans Administration are not subject to return by the Federal agency to the authority entitled to have them in custody. During such period, provisions for his security shall continue to be enforced, unless in the interim a pretrial release is effected, or the term of imprisonment expires or is terminated, or it is otherwise ordered by the court having jurisdiction over his criminal status. In those instances where a person is charged with offenses listed in section 304(g)(2) [FN1] and where the court, after hearing, deems it desirable, security equivalent to the institution to which he is incarcerated must be provided. Upon discharge from treatment, a person who is or remains subject to a detainer or sentence shall be returned to the authority entitled to have him in custody. The period of involuntary treatment shall be credited as time served on account of any sentence to be imposed on pending charges or any unexpired term of imprisonment.

**(c) Persons Subject to the Juvenile Act.**--As to any person who is subject to a petition or who has been committed under the Juvenile Act [FN2], the civil provisions of this act applicable to children of his age shall apply to all proceedings for his examination and treatment. If such a person is in detention or is committed, the court having jurisdiction under the Juvenile Act shall determine whether such security conditions shall continue to be enforced during any period of involuntary treatment and to whom the person should be released thereafter.

[FN1] [50 P.S. § 7304.](#)

[FN2] [11 P.S. § 50-101](#) et seq.

**Effective: [See Text Amendments]**

**§ 7402. Incompetence to proceed on criminal charges and lack of criminal responsibility as defense**

**(a) Definition of Incompetency.**--Whenever a person who has been charged with a crime is found to be substantially unable to understand the nature or object of the proceedings against him or to participate and assist in his defense, he shall be deemed incompetent to be tried, convicted or sentenced so long as such incapacity continues.

**(b) Involuntary Treatment of Persons Found Incompetent to Stand Trial Who are Not Mentally Disabled.**--Notwithstanding the provisions of Article III of this act, [FN1] a court may order involuntary treatment of a person found incompetent to stand trial but who is not severely mentally disabled, such involuntary treatment not to exceed a specific period of 60 days. Involuntary treatment pursuant to this subsection may be ordered only if the court is reasonably certain that the involuntary treatment will provide the defendant with the capacity to stand trial. The court may order outpatient treatment, partial hospitalization or inpatient treatment.

**(c) Application for Incompetency Examination.**--Application to the court for an order directing an incompetency examination may be presented by an attorney for the Commonwealth, a person charged with a crime, his counsel, or the warden or other official in charge of the institution or place in which he is detained. A person charged with crime shall be represented either by counsel of his selection or by court-appointed counsel.

**(d) Hearing; When Required.**--The court, either on application or on its own motion, may order an incompetency examination at any stage in the proceedings and may do so without a hearing unless the examination is objected to by the person charged with a crime or by his counsel. In such event, an examination shall be ordered only after determination upon a hearing that there is a prima facie question of incompetency. Upon completion of the examination, a determination of incompetency shall be made by the court where incompetency is established by a preponderance of the evidence.

**(e) Conduct of Examination; Report.**--When ordered by the court, an incompetency examination shall take place under the following conditions:

- (1) It shall be conducted as an outpatient examination unless an inpatient examination is, or has been, authorized under another provision of this act.
- (2) It shall be conducted by at least one psychiatrist and may relate both to competency to proceed and to criminal responsibility for the crime charged.
- (3) The person shall be entitled to have counsel present with him and shall not be required to answer any questions or to perform tests unless he has moved for or agreed to the examination. Nothing said or done by such person during the examination may be used as evidence against him in any criminal proceedings on any issue other than that of his mental condition.
- (4) A report shall be submitted to the court and to counsel and shall contain a description of the examination, which shall include:
  - (i) diagnosis of the person's mental condition;
  - (ii) an opinion as to his capacity to understand the nature and object of the criminal proceedings against him and to assist in his defense;
  - (iii) when so requested, an opinion as to his mental condition in relation to the standards for criminal responsibility as then provided by law if it appears that the facts concerning his mental condition may also be relevant to the question of legal responsibility; and
  - (iv) when so requested, an opinion as to whether he had the capacity to have a particular state of mind, where such state of mind is a required element of the criminal charge.

**(f) Experts.**--The court may allow a psychiatrist retained by the defendant and a psychiatrist retained by the Commonwealth to witness and participate in the examination. Whenever a defendant who is financially unable to retain such expert has a substantial objection to the conclusions reached by the court-appointed psychiatrist, the court shall allow reasonable compensation for the employment of a psychiatrist of his selection, which amount shall be chargeable against the mental health and mental retardation program of the locality.

**(g) Time Limit on Determination.**--The determination of the competency of a person who is detained under a criminal charge shall be rendered by the court within 20 days after the receipt of the report of examination unless the hearing was continued at the person's request.

[FN1] [50 P.S. § § 7301 to 7306](#).

**Effective: [See Text Amendments]**

**§ 7403. Hearing and determination of incompetency to proceed; stay of proceedings; dismissal of charges**

**(a) Competency Determination and Burden of Proof.**--Except for an incompetency examination ordered by the court on its own motion as provided for in section 402(d), [FN1] the individual making an application to the court for an order directing an incompetency examination shall have the burden of establishing incompetency to proceed by a preponderance of the evidence. The determination shall be made by the court.

**(b) Effect as Stay--Exception.**--A determination of incompetency to proceed shall effect a stay of the prosecution for so long as such incapacity persists, excepting that any legal objections suitable for determination prior to trial and without the personal participation of the person charged may be raised and decided in the interim.

**(c) Defendant's Right to Counsel; Reexamination.**--A person who is determined to be incompetent to proceed shall have a continuing right to counsel so long as the criminal charges are pending. Following such determination, the person charged shall be reexamined not less than every 90 days by a psychiatrist appointed by the court and a report of reexamination shall be submitted to the court and to counsel.

**(d) Effect on Criminal Detention.**--Whenever a person who has been charged with a crime has been determined to be incompetent to proceed, he shall not for that reason alone be denied pretrial release. Nor shall he in any event be detained on the criminal charge longer than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If the court determines there is no such probability, it shall discharge the person. Otherwise, he may continue to be criminally detained so long as such probability exists but in no event longer than the period of time specified in subsection (f).

**(e) Resumption of Proceedings or Dismissal.**--When the court, on its own motion or upon the application of the attorney for the Commonwealth or counsel for the defendant, determines that such person has regained his competence to proceed, the proceedings shall be resumed. If the court is of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution, the court may dismiss the charge and order the person discharged.

**(f) Stay of Proceedings.**--In no instance, except in cases of first and second degree murder, shall the proceedings be stayed for a period in excess of the maximum sentence of confinement that may be imposed for the crime or crimes charged or ten years, whichever is less. In cases of a charge of first or second degree murder, there shall be no limit on the period during which proceedings may be stayed.

**(g) Procedure When Person Is Discharged.**--If the person of the defendant is discharged pursuant to subsection (d), but the charges remain open pursuant to subsection (f), the court discharging the defendant shall, on its own motion or on the motion of the Commonwealth or on the motion of the defense, order the defendant to submit to a psychiatric examination every 12 months after said discharge of the person, to determine whether the defendant has become competent to proceed to trial. If such examination reveals that the defendant has regained competency to proceed, then a hearing shall be scheduled and the court shall determine, after a full and fair hearing, whether the defendant is competent to proceed. If the defendant is adjudged competent, then trial shall commence within 90

days of said adjudication. If such examination reveals that the defendant is incompetent to proceed, the court shall order the defendant to submit to a new competency examination in 12 months.

[FN1] [50 P.S. § 7402\(d\)](#).

**Effective: [See Text Amendments]**

**§ 7404. Hearing and determination of criminal responsibility: bifurcated trial**

**(a) Criminal Responsibility Determination by Court.**--At a hearing under section 403 of this act [FN1] the court may, in its discretion, also hear evidence on whether the person was criminally responsible for the commission of the crime charged. It shall do so in accordance with the rules governing the consideration and determination of the same issue at criminal trial. If the person is found to have lacked criminal responsibility, an acquittal shall be entered. If the person is not so acquitted, he may raise the defense at such time as he may be tried.

**(b) Opinion Evidence on Mental Condition.**--At a hearing under section 403 or upon trial, a psychiatrist appointed by the court may be called as a witness by the attorney for the Commonwealth or by the defendant and each party may also summon any other psychiatrist or other expert to testify.

**(c) Bifurcation of Issues or Trial.**--Upon trial, the court, in the interest of justice, may direct that the issue of criminal responsibility be heard and determined separately from the other issues in the case and, in a trial by jury, that the issue of criminal responsibility be submitted to a separate jury. Upon a request for bifurcation, the court shall consider the substantiality of the defense of lack of responsibility and its effect upon other defenses, and the probability of a fair trial.

[FN1] [50 P.S. § 7403](#).

**Effective: [See Text Amendments]**

**§ 7405. Examination of person charged with crime as aid in sentencing**

Examination Before Imposition of Sentence. Whenever a person who has been criminally charged is to be sentenced, the court may defer sentence and order him to be examined for mental illness to aid it in the determination of disposition. This action may be taken on the court's initiative or on the application of the attorney for the Commonwealth, the person charged, his counsel, or any other person acting in his interest. If at the time of sentencing the person is not in detention, examination shall be on an outpatient basis unless inpatient examination for this purpose is ordered pursuant to the civil commitment provisions of Article III.

**Effective: [See Text Amendments]**

**§ 7406. Civil procedure for court-ordered involuntary treatment following a determination of incompetency, or acquittal by reason of lack of criminal responsibility or in conjunction with sentencing**

Upon a finding of incompetency to stand trial under section 403 [FN1] after an acquittal by reason of lack of responsibility under section 404, [FN2] or following an examination in aid of sentencing under section 405 [FN3] the attorney for the Commonwealth, on his own or acting at the direction of the court, the defendant, his counsel, the county administrator, or any other interested party may petition the same court for an order directing involuntary treatment under section 304. [FN4]

[FN1] [50 P.S. § 7403](#).

[FN2] [50 P.S. § 7404](#).

[FN3] [50 P.S. § 7405](#).

[FN4] [50 P.S. § 7304](#).

**Effective: [See Text Amendments]**

**§ 7407. Voluntary treatment of a person charged with crime or serving sentence**

(a) Whenever a person in criminal detention, whether in lieu of bail or serving a sentence, believes that he is in need of treatment and substantially understands the nature of voluntary treatment he may submit himself to examination and treatment under this act, provided that at least one physician certifies the necessity of such treatment and certifies further that such treatment cannot be adequately provided at the prison or correctional facility where the person then is detained. Such certificate shall set forth the specific grounds which make transfer to a mental health facility necessary. The correctional facility shall secure a written acceptance of the person for inpatient treatment from the mental health facility and shall forward such acceptance to the court.

(b) Before any inmate of a prison or correctional facility may be transferred to a mental health facility for the purpose of examination and treatment the district attorney shall be notified by the correctional facility and shall be given up to 14 days after receipt of notification to conduct an independent examination of the defendant. The court shall review the certification of the physician that such transfer is necessary and the recommendation of the physician for the Commonwealth and may request any other information concerning the necessity of such transfer. Upon the motion of the district attorney, a hearing shall be held on the question of the voluntary treatment of a person charged with a crime or serving a sentence. Upon such review the court shall either approve or disapprove the transfer.

(c) Where possible, the sentencing judge shall preside.

(d) A report of the person's mental condition shall be made by the mental health facility to the court within 30 days of the person's transfer to such facility. Such report shall also set forth the specific grounds which require continued treatment at a mental health facility. After the initial report the facility shall thereafter report to the court every 180 days.

(e) If at any time the person gives notice of his intent to withdraw from treatment at the mental health facility he shall be returned to the authority entitled to have him in custody, or proceedings may be initiated under section 304 of this act. [FN1] During the pendency of any petition filed section 304 is conducted within seven days of the time the person gives the mental health facility shall have authority to detain the person regardless of the provisions of section 203, [FN2] provided that the hearing under section 304 is conducted within seven days of the time the person gives notice of his intent to withdraw from treatment.

(f) The period of voluntary treatment under this section shall be credited as time served on account of any sentence to be imposed on pending charges or any unexpired term of imprisonment.

[FN1] [50 P.S. § 7304](#).

[FN2] [50 P.S. § 7203](#).

**Effective: [See Text Amendments]**

**§ 7408. Repealed. 1997, June 18, P.L. 179, No. 18, § 6, imd. effective**

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