

Article - Criminal Procedure

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§3–105.

(a) (1) For good cause and after giving the defendant an opportunity to be heard, the court may order the Health Department to examine the defendant to determine whether the defendant is incompetent to stand trial.

(2) The court shall set and may change the conditions under which the examination is to be made.

(b) On consideration of the nature of the charge, the court:

(1) may require or allow the examination to be done on an outpatient basis;
and

(2) if an outpatient examination is authorized, shall set bail for the defendant or authorize release of the defendant on recognizance.

(c) (1) If a defendant is to be held in custody for examination under this section, the defendant may be confined in a correctional facility until the Health Department can conduct the examination. If the court finds it appropriate for the health or safety of the defendant, the court may order confinement in a medical wing or other isolated and secure unit of the correctional facility.

(2) (i) If the court finds that, because of the apparent severity of the mental disorder or mental retardation, a defendant in custody would be endangered by confinement in a correctional facility, the court may order that the Health Department, in the Health Department's discretion:

1. confine the defendant, pending examination, in a medical facility that the Health Department designates as appropriate; or

2. immediately conduct a competency examination of the defendant by a community forensic screening program or other agency that the Health Department finds appropriate.

(ii) Unless the Health Department retains the defendant, the defendant shall be promptly returned to the court after the examination.

(3) A defendant who is held for examination under this section may question at any time the legality of the detention by petition for a writ of habeas corpus.

(d) (1) If a court orders an examination under this section, the Health Department shall:

- (i) examine the defendant; and
- (ii) send a complete report of its findings to:
 - 1. the court;
 - 2. the State's Attorney; and
 - 3. the defense counsel.

(2) Unless there is a plea that the defendant was not criminally responsible under § 3–109 of this title, the defendant is entitled to have the report within 7 days after the court orders the examination. However, failure of the Health Department to send the complete report within that time is not, of itself, grounds for dismissal of the charges. On good cause shown, the court may extend the time for examination.

(3) If the Health Department reports that, in its opinion, the defendant is incompetent to stand trial, the report shall state, in a complete supplementary opinion, whether, because of mental retardation or mental disorder, the defendant would be a danger to self or the person or property of another, if released.

(4) A statement made by the defendant in the course of an examination under this section is not admissible in a criminal proceeding for the purpose of proving the commission of a criminal offense or to enhance the sentence of the defendant.

(5) Except for the purpose of impeaching the testimony of the defendant, a report prepared as the result of an examination under this section is not admissible in a criminal proceeding for the purpose of proving the commission of a criminal offense or to enhance the sentence of the defendant.

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