

HOUSE BILL NO. HB0004

Criminal procedure-time limits for competency evaluations.

Sponsored by: Select Committee on Mental Health and
Substance Abuse Services

A BILL

for

1 AN ACT relating to criminal procedure; amending the time
2 period for competency evaluations of nonadjudicated
3 defendants as specified; providing procedures for
4 competency evaluations; authorizing courts to order release
5 of relevant records as specified; requiring reports and
6 hearings as specified; and providing for an effective date.

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8 *Be It Enacted by the Legislature of the State of Wyoming:*

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10 **Section 1.** W.S. 7-11-303(b) and (g) is amended to
11 read:

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13 **7-11-303. Examination of accused to determine fitness**
14 **to proceed; reports; commitment; defenses and objections.**

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1 (b) The court shall order an examination of the
2 accused by a designated examiner. The order may include,
3 but is not limited to, an examination of the accused at the
4 Wyoming state hospital on an inpatient or outpatient basis,
5 at a local mental health center on an inpatient or
6 outpatient basis, or at his place of detention. In
7 selecting the examination site, the court may consider
8 proximity to the court, availability of an examiner, and
9 the necessity for security precautions. If the order
10 provides for commitment of the accused to a designated
11 facility, the commitment shall continue no longer than a
12 thirty (30) day period for the study of the mental
13 condition of the accused. The prosecuting attorney and
14 counsel for the accused shall cooperate in providing the
15 relevant information and materials to the designated
16 examiner, and the court may order as necessary that
17 relevant information be provided to the examiner.

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19 (g) If the court determines that the accused is
20 mentally fit to proceed, the court may order that the
21 accused be held in confinement, be committed to a
22 designated facility pending further proceedings, or be
23 released on bail or other conditions. If the court
24 determines that the accused lacks mental fitness to

1 proceed, the proceedings against him shall be suspended and
2 the court shall commit him to a designated facility ~~for~~
3 ~~such period as the court may order but not to exceed the~~
4 ~~time reasonably necessary~~ to determine whether there is
5 substantial probability that the accused will regain his
6 fitness to proceed:

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8 (i) ~~If it is determined that there is no~~
9 ~~substantial probability that the accused will regain his~~
10 ~~fitness to proceed, the accused shall not be retained in a~~
11 ~~designated facility~~ The examiner shall provide a full
12 report to the court, the prosecuting attorney and the
13 accused or his counsel within ninety (90) days of arrival
14 of the accused at the designated treating facility. If the
15 examiner is unable to complete the assessment within ninety
16 (90) days the examiner shall provide to the court and
17 counsel a summary progress report which informs the court
18 that additional time is necessary to complete the
19 assessment, in which case the examiner may have up to an
20 additional ninety (90) days to provide the full report for
21 good cause shown, as follows:

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23 (A) The full report shall assess:

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1 (I) The facility's or program's
2 capacity to provide appropriate treatment for the accused;

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4 (II) The nature of treatments provided
5 to the accused;

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7 (III) What progress toward competency
8 restoration has been made with respect to the factors
9 identified by the court in its initial order;

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11 (IV) The accused's current level of
12 mental disorder or mental deficiency and need for
13 treatment, if any; and

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15 (V) The likelihood of restoration of
16 competency and the amount of time estimated to achieve such
17 competency.

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19 (B) Upon receipt of the full report, the
20 court shall hold a hearing to determine the accused's
21 current status. The burden of proving that the accused is
22 fit to proceed shall be on the proponent of the assertion.
23 Following the hearing, the court shall determine by a
24 preponderance of the evidence whether the accused is:

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(I) Fit to proceed;

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(II) Not fit to proceed with a
substantial probability that the accused may become fit to
proceed in the foreseeable future; or

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(III) Not fit to proceed without a
substantial probability that the accused may become fit to
proceed in the foreseeable future.

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(C) If the court makes a determination
pursuant to subdivision (B)(I) of this paragraph, the court
shall proceed with the trial or such other procedures as
may be necessary to adjudicate the charges;

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(D) If the court makes a determination
pursuant to subdivision (B)(II) of this paragraph, the
court may order that the accused remain committed to the
custody of the designated facility for the purpose of
treatment intended to restore the accused to competency;

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(E) If the court makes a determination
pursuant to subdivision (B)(III) of this paragraph, the

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1 court shall order the accused released from the custody of
2 the designated facility unless proper civil commitment
3 proceedings have been instituted and held as provided in
4 title 25 of the Wyoming statutes. The continued retention,
5 hospitalization and discharge of the accused shall be the
6 same as for other patients. ~~However, if the accused is~~
7 ~~discharged, the criminal proceedings shall be resumed,~~
8 ~~unless the court determines that so much time has elapsed~~
9 ~~since the commitment of the accused that it would not be~~
10 ~~appropriate to resume the criminal proceeding;~~

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12 (ii) If it is determined pursuant to subdivision
13 (i)(B)(II) of this subsection that there is substantial
14 probability that the accused will regain his fitness to
15 proceed, the commitment of the accused at a designated
16 facility shall continue until the head of the facility
17 reports to the court that in his opinion the accused is fit
18 to proceed. ~~as provided in paragraph (iii) of subsection~~
19 ~~(e) of this section.~~ If this opinion is not contested by
20 the state, the accused or his counsel, the criminal
21 proceeding shall be resumed. If the opinion is contested,
22 the court shall hold a hearing as provided in subsection
23 (f) of this section. While the accused remains at a
24 designated facility under this subsection, the head of the

1 facility shall issue a full report at least once every
2 three (3) months in accordance with the requirements of
3 subparagraph (i)(A) of this subsection on the progress the
4 accused is making towards regaining his fitness to proceed.

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6 **Section 2.** This act is effective July 1, 2010.

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(END)