

INCOMPETENCY

1. A written motion for the examination made by counsel shall contain a certificate of good faith and on reasonable grounds to believe the defendant is incompetent to proceed and shall include a recital of specific facts that form the basis of same. R. 3.210(b) (1)-(2), Fla.R.Crim.P.
2. Division judge transfers to Mental Health division "T".
3. Court appoints two doctors and sets for a hearing in 20-30 days.
4. If doctors disagree then a third doctor is appointed.
5. The parties will either stipulate to the reports and the Court will make a finding or the parties will request an evidentiary hearing.
6. If parties stipulate to competency or the Court finds the defendant competent after a hearing, the case returns to the trial division.
7. If parties stipulate or court finds defendant incompetent to proceed after a hearing the Court next determines if:
8. The defendant is not mentally competent to proceed but does not meet the criteria for commitment; the defendant may be released on appropriate release conditions. R. 3.212(d) Fla.R.Crim.P.
Or
9. A defendant who is charged with a felony and who is adjudicated incompetent to proceed may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:
 - A. The defendant is mentally ill and because of the mental illness:
 1. The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and,
 2. Without such treatment, the defendant is likely to suffer from neglect or refuse to care for himself and such neglect poses a real and present threat of substantial harm to the defendant's well being and
 3. There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on himself or another person, as evidence by recent behavior causing, attempting or threatening such harm; and
 - B. All available, less restrictive treatment alternatives including treatment in community residential facilities or community inpatient or outpatient

- settings (which would offer an opportunity for improvement of the defendant's condition) have been judged to be inappropriate; and
- C. There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.
- §916.13, Florida Statutes (2005).

10. The Court sets the case for a status check six (6) months thereafter and then annually unless it receives a report from the administrator or the facility or a mental health provider indicating defendant's status has changed.
11. If at any time after five years after determining a person incompetent after hearing, the court determines that the defendant remains incompetent, that there is not substantial probability that the defendant will become mentally competent in the foreseeable future, and that the defendant does not meet the criteria for commitment, it shall dismiss the charges against the defendant.

INSANITY

1. If it is the intention of the defense to rely on the defense of insanity, then defense must furnish advance written notice of same. R.3.216, Fla.R.Crim.P. Upon the filing of such notice, the court on its own motion or upon motion of the State or defendant shall order the defendant to be examined by not more than three or no fewer than two experts as to the sanity or insanity of the defendant at the time of the offense (or VOP). R. 3.216(d), Fla.R.Crim.P. Court Administration does not pay for these examinations. Generally defense hires expert as confidential witness. State hires rebuttal witness.

When the defense presents an insanity defense, the State is entitled to have the defendant examined by an expert. Again, the State pays for this witness, not Court Administration.