

Supreme Court of Florida

REVISED OPINION
CORRECTED

No. 72,468

IN RE: AMENDMENTS TO FLORIDA
RULES OF CRIMINAL PROCEDURE

[November 3, 1988]

PER CURIAM.

The Florida Bar Rules of Criminal Procedure Committee has petitioned this Court to consider proposed amendments to the Florida Rules of Criminal Procedure pursuant to Florida Rule of Judicial Administration 2.130. In addition, this Court has submitted two proposed rule amendments for consideration. We have jurisdiction. Art. V, § 2(a), Fla. Const.

The rule changes proposed by the committee, and approved by the Court are intended, *inter alia*, to conform the Florida Rules of Criminal Procedure to the 1985 enactment of the "Florida Mental Health Act" amending chapters 394 and 916 of Florida Statutes. The rule changes replace the term "competence to stand trial" with "incompetence to proceed," and also amend the standards to be applied to that determination. The intended effect of the amendments is to avoid tying mentally ill or deficient defendants in the criminal justice system to civil commitment procedures.

The rule changes proposed by the Court concern the pretrial detention of defendants as well as requiring additional plea colloquy when a defendant pleads guilty or nolo contendere.

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Rule 3.133 is amended to provide for pretrial release for defendants who have not been charged in an indictment or information within thirty days of being taken into custody.

Rule 3.172(c)(vii) is added to require judges presiding at plea colloquies to inform the defendant pleading guilty or nolo contendere that, if they are not a United States citizen, their plea subjects them to deportation subject to the laws and regulations of the Immigration and Naturalization Service. However, in order to protect the defendant's due process rights, the judge shall not be required to inquire as to whether the defendant is a United States citizen.

We hereby adopt these amendments to the Florida Rules of Criminal Procedure. Appended to this opinion are the amended and new Florida Rules of Criminal Procedure. Deletions are indicated by use of struck-through type. New language is indicated by underscoring. All rules and statutes in conflict with the following rules are hereby superceded as of the effective date of these rules. The committee notes are not adopted by the Court. These amendments shall become effective January 1, 1989, at 12:01 a.m.

It is so ordered.

EHRlich, C.J., and SHAW, BARKETT and KOGAN, JJ., Concur
GRIMES, J., Concur with an opinion, in which SHAW and KOGAN, JJ.,
Concur
OVERTON, J., Concur in part and dissents in part with an opinion,
in which McDONALD, J., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL
NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

GRIMES, J., concurring.

Contrary to the view of Justice Overton, I do not construe the amendment to rule 3.172(c)(viii) as affecting our decision in State v. Ginebra, 511 So.2d 960 (Fla. 1987), or creating a new constitutional right. The amendment simply represents a policy decision that in a state where so many non-U.S. citizens reside, it is desirable henceforth to advise defendants that deportation may be one of the consequences of their guilty pleas.

SHAW and KOGAN, JJ., Concur

OVERTON, J., concurring in part, dissenting in part.

I concur with all rule amendments except the addition of section 3.172(c)(viii) mandating that the trial judge, in taking a plea, must advise a defendant who is not a United States citizen that his plea may subject him to deportation. There is no constitutional right to such notification and the rule overrules our decision in State v. Ginebra, 511 So. 2d 960 (Fla. 1987). All the effects of a plea can never be fully covered by the court, and that is one of the primary reasons we require a defendant to have counsel. This new rule establishes a new procedural due process right, and trial judges should understand that the failure to so notify noncitizens of the possibility of deportation may result in successful postconviction relief challenges to their pleas. I see no need to add this requirement to our rules.

MCDONALD, J., Concurs

Rule 3.133 Pretrial Probable Cause Determinations and Adversary Preliminary Hearings

(b) Adversary Preliminary Hearings

(6) Pretrial Detention. In the event that the defendant remains in custody and has not been charged in an information or indictment within 30 days from the date of his or her arrest or service of capias upon him or her, he or she shall be released from custody on their own recognizance on the 30th day unless the state can show good cause why the information or indictment has not been filed. If good cause is shown the state shall have 10 additional days to obtain an indictment or file an information. If the defendant has not been so charged within this time he or she shall be automatically released on his or her own recognizance. In no event shall any defendant remain in custody beyond 40 days unless he or she has been charged with a crime by information or indictment.

Rule 3.172 Acceptance of Guilty or Nolo Contendere Plea

(c)(viii) That if he or she pleads guilty or nolo contendere the trial judge must inform him or her that, if he or she is not a United States citizen, the plea may subject him or her to deportation pursuant to the laws and regulations governing the United States Naturalization and Immigration Service. It shall not be necessary for the trial judge to inquire as to whether the defendant is a United States citizen, as this admonition shall be given to all defendants in all cases.

RULE 3.040. COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these rules, ~~except Rule 3.130 and 3.131~~, by order of court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period so computed shall be counted, unless it is Saturday, Sunday or a legal holiday, in which event the period shall run until the end of ~~a~~ the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed shall be less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation, except for the periods of time of less than 7 days contained in Rules 3.130, 3.132(a) and (c), and 3.133(a).

1988 Amendment:

The 1983 amendments resulted in the reallocation of the time periods in Rule 3.131 to Rule 3.133, and also added important 5-day period in the new rule regarding pretrial detention in Rule 3.132.

Rule 3.133. PRETRIAL PROBABLE CAUSE DETERMINATIONS AND ADVERSARY PRELIMINARY HEARINGS

(b) Adversary Preliminary Hearings

(6) Pretrial Detention. In the event that the defendant remains in custody and has not been charged in an information or indictment within 30 days from the date of his or her arrest or service of capias upon him or her, he or she shall be released from custody on their own recognizance on the 30th day unless the state can show good cause why the information or indictment has not been filed. If good cause is shown the state shall have 10 additional days to obtain an indictment or file an information. If

the defendant has not been so charged within this time, he or she shall be automatically released on his or her own recognizance. In no event shall any defendant remain in custody beyond 40 days unless he or she has been charged with a crime by information or indictment.

RULE 3.172. ACCEPTANCE OF GUILTY OR NOLO CONTENDERE PLEA

(c) (viii) That if he or she pleads guilty or nolo contendere the trial judge must inform him or her that, if he or she is not a United States citizen, the plea may subject him or her to deportation pursuant to the laws and regulations governing the United States Naturalization and Immigration Service. It shall not be necessary for the trial judge to inquire as to whether the defendant is a United States citizen, as this admonition shall be given to all defendants in all cases.

INTRODUCTORY NOTE RELATING TO AMENDMENTS TO RULES 3.210 TO 3.219.

In 1985, the Florida Legislature enacted amendments to Part I of Chapter 394, the "Florida Mental Health Act," and substantial amendments to Chapter 916 entitled "Mentally Deficient and Mentally Ill Defendants." The effect of the amendments is to avoid tying mentally ill or deficient defendants in the criminal justice system to civil commitment procedures in the "Baker Act." Reference to commitment of a criminal defendant found not guilty by reason of insanity has been removed from Section 394.467, Florida Statutes. Chapter 916 now provides for specific commitment criteria of mentally ill or mentally retarded criminal defendants who are either incompetent to proceed or who have been found not guilty by reason of insanity in criminal proceedings.

In part, the following amendments to Rules 3.210 to 3.219 are designed to reflect the 1985 amendments to Chapters 394 and 916.

Florida judges on the criminal bench are committing and HRS mental health treatment facilities are admitting and treating those mentally ill and mentally retarded defendants in the criminal justice system who have been adjudged incompetent to stand trial and defendants found to be incompetent to proceed with violation of probation and community control proceedings. Judges are also finding such defendants not guilty by reason of insanity and committing them to HRS for treatment yet there were no provisions for such commitments in the rules.

Some of the amendments to Rules 3.210 to 3.219 are designed to provide for determinations of whether or not a defendant is mentally competent to proceed in any material stage of a criminal proceeding, and provide for community treatment or commitment to the Department of Health and Rehabilitative Services when a defendant meets commitment criteria under the provisions of Chapter 916 as amended in 1985.

RULE 3.210. ~~COMPETENCE~~ INCOMPETENCE TO STAND TRIAL PROCEED:
PROCEDURE FOR RAISING THE ISSUE

(a) A person accused of a ~~crime~~ an offense or a violation of probation or community control who is mentally incompetent to ~~stand trial~~ proceed at any material stage of a criminal proceeding shall not be proceeded against while he is incompetent.

(1) A "material stage of a criminal proceeding" shall include the trial of the case, pre-trial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, violation of probation or violation of community control proceedings, sentencing, hearings on issues regarding a defendant's failure to comply with court orders or

conditions, or other matters where the mental competence of the defendant is necessary for a just resolution of the issues being considered. The terms "competent", "competence", incompetent", and "incompetence", as used in rules 3.210 - 3.219, shall refer to mental competence or incompetence to proceed at a material stage of a criminal proceeding.

(2) The incompetence of the defendant shall not preclude such judicial action, hearings on motions of the parties, discovery proceedings, or other procedures which do not require the personal participation of the defendant.

(b) If, ~~before or during the trial~~ at any material stage of a criminal proceeding, the court of its own motion, or upon motion of counsel for the defendant or for the State, has reasonable ground to believe that the defendant is not mentally competent to ~~stand trial~~ proceed, the court shall immediately enter its order setting a time for a hearing to determine the defendant's mental condition, which shall be held no later than 20 days after the date of the filing of the motion, and shall order the defendant to be examined by no more than three, nor fewer than two, experts prior to the date of said hearing. Attorneys for the State and the defendant may be present at the examination.

(1) A written motion for such examination made by counsel for the defendant shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is incompetent to ~~stand trial~~ proceed. To the extent that it does not invade the lawyer-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant which have formed the basis for such motion.

(2) A written motion for such examination made by counsel for the State shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to

believe the defendant is incompetent to ~~stand trial~~ proceed, and shall include a recital of the specific facts which have formed the basis for such motion, including a recitation of the observations of and statements of the defendant which have caused the State to file such motion.

(3) If the defendant has been released ~~from custody~~ on a ~~pre-trial~~ bail or other release provision, the court may order the defendant to appear at a designated place for evaluation at a specific time as a condition of such release ~~provision~~. If the court determines that the defendant will not submit to the evaluation provided for herein, or that the defendant is not likely to appear for the scheduled evaluation, the court may order the defendant taken into custody ~~if he is not already in custody,~~ until the determination of his competency to proceed. A motion made for evaluation under this subsection shall not otherwise affect the defendant's right to ~~pre-trial~~ release.

(4) The order appointing experts shall:

(i) Identify the purpose or purposes of the evaluation, including the nature of the material proceeding, and specify the area or areas of inquiry which should be addressed by the evaluator;

(ii) Specify the legal criteria to be applied; and

(iii) Specify the date by which the report should be submitted and to whom the report should be submitted.

1988 Amendment:

Title. The title is amended to reflect change in subsection (a)(1) below which broadens the issue of competency in criminal proceedings from the narrow issue of competency to stand trial to

competency to proceed at any material stage of a criminal proceeding.

(a) This provision is broadened to prohibit proceeding against a defendant accused of a criminal offense or a violation of probation or community control and is broadened from competency to stand trial to competency to proceed at any material stage of a criminal proceeding as defined in subsection (1) below.

(1) This new provision defines a material stage of a criminal proceeding when an incompetent defendant may not be proceeded against. This provision includes competence to be sentenced which was previously addressed in Rule 3.740 and is now addressed with more specificity in the new 3.214. Under the Florida Supreme Court decision of Jackson v. State, 452 So.2d 533 (Fla. 1984), this definition would not apply to a motion under Rule 3.850.

(2) This new provision allows certain matters in a criminal case to proceed, even if a defendant is determined to be incompetent, in areas not requiring the personal participation of the defendant.

(b) This provision is amended to reflect the changes in subsection (a) above.

(1) Same as above.

(2) Same as above.

(3) Same as above. This provision also changes the phrase ". . . released from custody on a pre-trial release provision. . . ." to "released on bail or other release provision. . . ." because the term "custody" is subject to several interpretations.

(4) This new provision is designed to specify and clarify in the order appointing experts, the matters the appointed experts are to address, and to specify when and to whom their reports are to be submitted. Court-appointed experts often do not understand the specific purpose of their examination or the specifics of the legal criteria to be applied. Specifying to whom the experts' reports are to be submitted is designed to avoid confusion.

RULE 3.211. COMPETENCE TO PROCEED: SCOPE OF
EXAMINATION AND REPORT

(a) Upon appointment by the court, the experts shall ~~prior to the hearing~~ examine the defendant with respect to the issue of competency to ~~stand trial~~ proceed, as specified by the court in its order appointing the experts to evaluate the defendant, and shall evaluate the defendant as ordered. ~~and shall report to the court, in writing, at such time as shall be specified by the court, with copies to attorneys for the State and the defense, setting forth the results of such examination.~~ If the court determines that there is reason to believe that the defendant may require involuntary hospitalization the court shall also order the experts to include in their report a report on issues of involuntary hospitalization. The experts shall consider the following issues, each of which shall be specifically addressed in the report.

(1) The experts shall first consider factors related to the issue of whether the defendant meets the statutory criteria for competency to ~~stand trial~~ proceed, that is, whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him.

(2) In considering the issue of competence to stand trial proceed, the examining experts shall consider and include in their report, but are not limited to, an analysis of the mental condition of the defendant as it affects each of the following factors and any others deemed relevant by the experts:

The defendant's capacity to:

(i) Defendants Appreciate of the charges or allegations against him;

(ii) Defendant's Appreciate of the range and nature of possible penalties, if applicable, which may be imposed in the proceedings against him;

(iii) Defendant's Understanding of the adversary nature of the legal process;

(iv) Defendant's capacity to Disclose to his attorney pertinent facts pertinent to the proceedings at issue surrounding the alleged offense;

~~(v) Defendant's ability to relate to attorney;~~

~~(vi) Defendant's ability to assist attorney in planning defense;~~

~~(vii) Defendant's capacity to realistically challenge prosecution witnesses;~~

(v) Defendant's ability to Manifest appropriate courtroom behavior;

(vi) Defendant's capacity to Testify relevantly.

~~(x) Defendant's motivation to help himself in the legal process;~~

~~(xi) Defendant's capacity to cope with the stress of incarceration prior to trial.~~

(b) If ordered by the court to report on the issues of involuntary hospitalization, the experts shall then consider whether the defendant meets the criteria for involuntary hospitalization set forth by law.

(b) If the experts should find that the defendant is incompetent to proceed, the experts shall report on any recommended treatment for the defendant to attain competence to proceed.

(1) In determining considering the issues of involuntary hospitalization relating to treatment, the examining experts shall consider and include in their report an analysis of on the following factors:

(i) The nature and extent of the mental illness or mental retardation causing the incompetence suffered by the defendant;

(ii) The treatment or treatments appropriate for the mental illness or mental retardation of the defendant, and an explanation of each of the possible treatment alternatives in order of choices;

(iii) The availability of acceptable treatment. If treatment is available in the community, the expert shall so state in the report;

(iv) The likelihood of the defendant attaining competence under the treatment recommended, an assessment of the

probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

(ii) Whether the defendant, because of such mental illness or mental retardation, meets the criteria for involuntary hospitalization or placement set forth by law;

(iii) Whether there is a substantial probability that the defendant will attain competence to stand trial within the foreseeable future;

(iv) The nature of the care and treatment to be afforded the defendant and its probable duration;

(v) Alternatives other than involuntary hospitalization which might be less restrictive on the defendant's liberty.

(c) If a notice of intent to rely on the defense of insanity has been filed prior to trial or a hearing on a violation of probation or community control, and when so ordered by the court, the experts shall report on the issue of the defendant's sanity at the time of the offense.

(d) The court shall require such report to be on a standardized form if such form has been approved by the chief judge of the circuit.

(d) Any written report submitted by the experts shall contain the following:

(1) The report shall identify the specific matters referred for evaluation.

(2) The report shall describe the evaluative procedures, techniques and tests used in the examination and the purpose or purposes for each.

(3) The report shall state the expert's clinical observations, findings and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion.

(4) The report shall identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

(e) The information contained in any motion by the defendant for determination of competency to proceed or in any report of experts filed under this section insofar as such report relates solely to the issues of competency to proceed ~~stand trial~~ and involuntary hospitalization commitment and any information elicited during a hearing on competency ~~or~~ to proceed or commitment involuntary hospitalization held pursuant to this Rule, shall be used only in determining the mental competency to ~~stand trial~~ proceed or the commitment or other treatment of the defendant of the involuntary hospitalization of the defendant.

The defendant ~~may~~ waives this provision by using the report, or ~~parts~~ portions thereof, in any proceeding for any other purpose, in which case disclosure and use of the report, or any portion thereof, shall be governed by applicable rules of evidence and rules of criminal procedure. If a part of the report is used by the defendant, the State may request the production of any other portion of that report which, in fairness, ought to be considered.

~~Cf, section 90.108, Florida Statutes (1976), Rule 1.330(6)
Florida Rules Civil Procedure.~~

1988 Amendment:

Title. The title is amended to reflect changes in 3.210.

(a) This section, which was originally an introductory paragraph, is amended to reflect changes in 3.210. The deletions related to the extent of the evaluation and when and to whom the experts' reports are to be submitted have been placed in 3.210 (4) above.

(1) This provision, which was formerly subsection (a) has been amended to reflect changes in 3.210 above.

(2) This provision has been amended to reflect the changes to 3.210. In addition, the eleven factors previously numbered (i) through (xi) have been reduced to six factors. Numbers (v), (vi), (vii), (x), and (xi) have been removed. Those five factors were felt to not be directly related to the issue of a defendant having the mental capacity to communicate with his attorney or to understand the proceedings against him and may have had the effect of confusing the issues the experts are to address in assessing a defendant's competency to proceed. The terms "ability" and "capacity" which were used interchangeably in the prior version of this provision have been changed to the single term "capacity" for continuity. A provision has been added which allows the appointed expert to also include any other factors deemed relevant to take into account different techniques and points of view of the experts.

(b) This provision, including its four subsections, is amended to reflect the changes in 3.210. It also expands the determination from the limited area of whether an incompetent defendant should be voluntarily committed to treatment to recommended treatment options designed to restore or maintain competence. Subsection (v) has been deleted because consideration of less restrictive alternatives is addressed in other amendments

[See: 3.212(c)(3)(iv)]. The amendments further reflect 1985 legislative amendments to Chapters 394 and 916.

(ii) Appropriate treatment may include maintaining the defendant on psychotropic or other medication. See Rule 3.215.

(c) This provision is amended to take into account the defense of insanity both at trial and in violation of probation/community control hearings.

(d) This provision deletes the old language relating to the use of standardized forms. The new provision, with its four subsections, outlines in detail what the written report of an expert is to include, to ensure the appointed expert understands what issues are to be addressed, identify sources of information, tests or evaluation techniques used, and the findings and observations upon which the expert's opinion is based. It requires the expert to specify those issues on which the expert could not render an opinion.

(e) This provision is amended to comply with changes in Rule 3.210. In addition, the second paragraph has been expanded to clarify under what circumstances the reports of experts in a competency evaluation may be discovered by the prosecution and used as evidence in a hearing other than the hearing on the issue of a defendant's competency to proceed.

RULE 3.212. COMPETENCE TO ~~STAND TRIAL~~ PROCEED:
HEARING AND DISPOSITION

(a) The experts preparing the reports may be called by either party or the court, and additional evidence may be introduced by either party. The experts appointed by the court shall be deemed court witnesses whether called by the court or either party and may be examined as such by either party.

(a)(b) The court shall first consider the issue of the defendant's competence to ~~stand trial~~ proceed. If the court finds the defendant competent to ~~stand trial~~ proceed, the court shall enter its order so finding and shall proceed ~~to trial~~.

(b) If, at the hearing the court determines that the defendant is not mentally competent to stand trial, the court shall consider the issue of involuntary hospitalization of the defendant if examination into that issue has been previously ordered.

(1) If the court decides that a defendant is not mentally competent to stand trial and meets the criteria for involuntary hospitalization set forth by law, it shall order the defendant to be transferred to a treatment facility as defined in Florida Statutes, or may order that he receive outpatient service on an involuntary basis. Such involuntary hospitalization or treatment shall be subject to all provisions of Florida Statutes not in conflict herewith.

(c) If the court finds the defendant is incompetent to proceed, or that the defendant is competent to proceed but that the defendant's competence depends on the continuation of appropriate treatment for a mental illness or mental retardation, the court shall consider issues relating to treatment necessary to restore or maintain the defendant's competence to proceed.

(1) The court may order the defendant to undergo treatment if the court finds that the defendant is mentally ill or mentally retarded, is in need of treatment, and that treatment appropriate for the defendant's condition is available. If the court finds that the defendant may be treated in the community on bail or other release conditions, the court may make acceptance of reasonable medical treatment a condition of continuing such bail or other release conditions.

(2) If the defendant is incarcerated, the court may order treatment to be administered at the custodial facility, or may order the defendant transferred to another facility for treatment or may commit the defendant as provided in subparagraph (3) below.

(3) A defendant may be committed for treatment to restore a defendant's competence to proceed if the court finds:

(i) That the defendant meets the criteria for commitment as set forth by statute.

(ii) That there is a substantial probability that the mental illness or mental retardation causing the defendant's incompetence will respond to treatment and that the defendant will regain competency to proceed in the reasonably foreseeable future.

(iii) That treatment appropriate for restoration of the defendant's competence to proceed is available.

(iv) That no appropriate treatment alternative less restrictive than that involving commitment is available.

(2)(4) If the court commits the defendant, the order of commitment shall contain the following:

(i) Findings of fact relating to the issues of competency and ~~involuntary hospitalization~~ commitment addressing the factors set forth in Rule 3.211 above where applicable;

(ii) Copies of the reports of the experts filed with the court pursuant to the order of examination;

(iii) Copies of any other psychiatric, psychological or social work reports submitted to the court relative to the mental state of the defendant;

(iv) Copies of the charging instrument and all supporting affidavits or other documents used in the determination of probable cause.

~~(3)~~(5) The treatment facility shall admit the defendant for hospitalization and treatment and may retain and treat the defendant. No later than six months from the date of admission the administrator of the facility shall file with the court a report which shall address the issues and consider the factors set forth in Rule 3.211 above, with copies to all parties. If at any time during the six-month period or during any period of extended ~~hospitalization~~ commitment which may be ordered pursuant to this Rule, the administrator of the facility shall determine that the defendant no longer meets the criteria for ~~involuntary hospitalization~~ commitment or has become competent to ~~stand trial~~ proceed, the administrator shall notify the court by such a report, with copies to all parties.

(i) ~~In the event that~~ If during the six-month period of ~~hospitalization~~ commitment and treatment or during any period of extended ~~hospitalization~~ commitment which may be ordered pursuant to this Rule, counsel for the defendant shall have reasonable grounds to believe that the defendant is competent to ~~stand trial~~ proceed or no longer meets the criteria for ~~involuntary hospitalization~~ commitment, he may move the court for a hearing on the issues of the defendant's competence or ~~involuntary hospitalization~~ commitment. Such motion shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the defendant is now competent to ~~stand trial~~ proceed or no longer meets the criteria for ~~involuntary hospitalization~~ commitment.

To the extent that it does not invade the attorney-client privilege, the motion shall contain a recital of the specific observations of and conversations with the defendant which have formed the basis for such motion.

(ii) If, upon consideration of a motion filed by counsel for the defendant and any information offered the court in support thereof, the court has reasonable grounds to believe that the defendant may have regained competence to ~~stand trial~~ proceed or no longer meets the criteria for ~~involuntary hospitalization~~ commitment, the court may order the administrator of the facility to report to the court on such issues, with copies to all parties, and shall order a hearing to be held on those issues.

~~(4)~~(6) The court shall hold a hearing within 30 days of the receipt of any such report from the administrator of the facility on the issues raised thereby. If, following such hearing, the court determines that the defendant continues to be incompetent to ~~stand trial~~ proceed and that he meets the criteria for continued ~~involuntary hospitalization~~ commitment or treatment, the court shall order continued ~~hospitalization~~ commitment or treatment for a period not to exceed one year. When the defendant is retained by the facility, the same procedure shall be repeated prior to the expiration of each additional one-year period of extended ~~hospitalization~~ commitment.

~~(5)~~(7) If at any time after such ~~hospitalization~~ commitment, the court decides, after hearing, that the defendant is competent to ~~stand trial~~ proceed, it shall enter its order so finding and shall proceed.

~~(6)~~(8) If after any such hearing the court shall determine that the defendant remains incompetent to ~~stand trial~~ proceed but no longer meets the criteria for ~~involuntary hospitalization~~ commitment, the court shall proceed as provided in Rule 3.212(d).

~~(e)~~ (d) If the court decides that a defendant is not mentally competent to ~~stand trial~~ proceed but does not meet the criteria for ~~involuntary hospitalization set forth by law~~, or is ~~not mentally retarded under law~~ commitment, the defendant may be

released on appropriate release conditions for a period not to exceed one year. The court may order that the defendant receive outpatient treatment at an appropriate local facility and that the defendant report for further evaluation at specified times during such release period as conditions of release. A report shall be filed with the court after each such evaluation by the persons appointed by the court to make such evaluations, with copies to all parties.

1988 Amendment:

Title. The title has been amended to reflect changes in 3.210 and 3.211.

(a) This provision was formerly the introductory paragraph to this Rule. It has been labeled subsection (a) for consistency in form.

(b) This provision was former subsection (a). It has been amended to reflect changes in 3.210 and 3.211. The former section (b) and subsection (1) under (b) has been deleted because similar language is now found in the new section (c) below.

(c) This new provision, including all its subsections, is designed to reflect the commitment criteria in Section 916.13(1), Florida Statutes, and to reflect that commitment to HRS is to be tied to specific commitment criteria when no less restrictive treatment alternative is available.

(1) This provision provides for available community treatment when appropriate.

(2) This provision provides for treatment in a custodial facility or other available community residential program.

(3) This provision, and its subsections, outlines when a defendant may be committed, and refers to commitment criteria under the provisions of Section 916.13(1), Florida Statutes.

(4) This provision, and its subsections, was formerly subsection (b)(2). The language has been amended to reflect changes in Chapter 916 relating to the commitment of persons found incompetent to proceed and changes in 3.210 and 3.211.

(5) This provision, and its subsections, was formerly subsection (b)(3). The amendments are for the same reasons as (4) above.

(6) This provision was formerly subsection (b)(4). The amendments are for the same reasons as (4) above.

(7) This provision was formerly subsection (b)(5). The amendments are for the same reasons as (4) above.

(8) This provision was formerly subsection (b)(6). The amendments are for the same reasons as (4) above.

(d) The amendments to the provision are for the same reasons as (4) above.

RULE 3.213. CONTINUING INCOMPETENCY TO ~~STAND TRIAL~~ PROCEED,
EXCEPT INCOMPETENCY TO PROCEED WITH SENTENCING:
DISPOSITION

(a) If at any time after five years after determining a person incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony, or one year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing, that there is no substantial probability that

the defendant will become mentally competent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future, and that the defendant does not meet the criteria for ~~involuntary hospitalization set forth by law, or for involuntary services as set forth by law~~ commitment, it shall dismiss the charges against the defendant without prejudice to the State to refile the charges should the defendant be declared competent to proceed in the future.

(b) If at any time after five years after determining a person incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony or one year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing, that there is no substantial probability that the defendant will become mentally competent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future and that the defendant does meet the criteria for ~~involuntary hospitalization set forth by law~~ commitment, the court shall dismiss the charges against the defendant and commit the defendant to the Department of Health and Rehabilitative Services for involuntary hospitalization or residential services solely under the provisions of law, or may order that he receive outpatient treatment at any other facility or service on an outpatient basis subject to the provisions of those statutes. In the order of commitment, the judge shall order that the administrator of the facility notify the State Attorney of the committing circuit no less than 30 days prior to the anticipated date of release of the defendant. If charges are dismissed pursuant to this subsection said dismissal shall be without prejudice to the State to refile the charges should the defendant be declared competent to proceed in the future.

(c) This section shall not apply to defendants determined to be incompetent to proceed with sentencing which is provided in Rule 3.214 below.

1988 Amendment:

Title. The title has been amended to comply with change in 3.210, but specifically excludes competency to proceed with sentencing which is addressed in the new Rule 3.214.

(a) This provision was amended to reflect changes in 3.210 and 3.211. New language is added which specifies that, if charges are dismissed under this rule, it is without prejudice to the State to refile if the defendant is declared competent to proceed in the future. Similar language was previously found in 3.214(d), but is more appropriate under this rule.

(b) This provision has been amended for the same reasons as (a) above.

(c) This new provision specifically exempts this rule from being used against a defendant determined to be incompetent to be sentenced which is now provided in the new Rule 3.214. It is replaced by the new 3.214.

RULE 3.214. ~~Effect of Adjudication of Incompetency to Stand Trial, Psychotropic Medication.~~
INCOMPETENCY TO PROCEED TO SENTENCING:
DISPOSITION

If a defendant is determined to be incompetent to proceed after being found guilty of an offense or violation of probation or community control or after voluntarily entering a plea to an offense or violation of probation or community control, but prior to sentencing, the court shall postpone the pronouncement of

sentence and proceed pursuant to Rule 3.210 (et seq.) and the following rules.

1988 Amendment:

Title. This new rule replaces the former 3.740. It was felt to be more appropriately addressed in this sequence. The former 3.214 is now renumbered 3.215. The former rule 3.740 used the inappropriate phrase "(p)rocedures when insanity is alleged as cause for not pronouncing sentence." Insanity is an affirmative defense to a criminal charge. The more correct term is "incompetence to proceed to sentencing."

(a) This new provision reiterates amendments to 3.210, and provides that sentencing shall be postponed for a defendant incompetent to proceed with disposition of a criminal matter--to include a finding of guilt at trial, after entry of a voluntary plea, or after a violation of probation or community control proceeding.

RULE 3.214~~5~~5. EFFECT OF ADJUDICATION OF INCOMPETENCY
TO ~~Stand Trial~~ PROCEED:
PSYCHOTROPIC MEDICATION

(a) If the defendant is declared incompetent to stand trial during trial and afterwards declared competent to stand trial, his other uncompleted trial shall not constitute former jeopardy.

(b) An adjudication of incompetency to ~~stand trial~~ proceed shall not operate as an adjudication of incompetency to consent to medical treatment or for any other purpose unless such other adjudication is specifically set forth in the order.

(c) A defendant who, because of psychotropic medication, is able to understand the proceedings and to assist in his defense

shall not automatically be deemed incompetent to ~~stand trial~~ proceed simply because his satisfactory mental condition is dependent upon such medication, nor shall he be prohibited from ~~standing trial or entering a plea solely~~ proceeding solely because he is being administered medication under medical supervision for a mental or emotional condition.

(1) Psychotropic medication is any drug or compound affecting the mind, behavior, intellectual functions, perception, moods, or emotion, and includes anti-psychotic, anti-depressant, anti-manic and anti-anxiety drugs.

(2) If the defendant proceeds to trial with the aid of medication for a mental or emotional condition, upon the motion of defense counsel, the jury shall, at the beginning of the trial and in the charge to the jury, be given explanatory instructions regarding such medication.

~~(d) The provisions of Rule 3.191 shall no longer apply to any defendant adjudged incompetent to stand trial until, in the case of a defendant whose charges have not been dismissed pursuant to these rules, the date the defendant is again adjudicated competent to stand trial or, in the case of a defendant whose charges have been dismissed without prejudice, the date the charges are again filed.~~

1988 Amendment:

Title. This rule was formerly 3.214.

The amendments to this rule, including the title, are designed to reflect amendments to 3.210 and 3.211.

(d) Matters contained in former subsection(d) are covered by the provisions of Rule 3.191. That subsection has therefore been deleted.

RULE 3.216. INSANITY AT TIME OF OFFENSE OR PROBATION OR
COMMUNITY CONTROL VIOLATION: NOTICE AND
APPOINTMENT OF EXPERTS

(a) When in any criminal case counsel for a defendant adjudged to be indigent or partially indigent, whether public defender or court appointed, shall have reason to believe that the defendant may be incompetent to ~~stand trial~~ proceed or that he may have been insane at the time of the offense or probation or community control violation, he may so inform the court who shall appoint one expert to examine the defendant in order to assist his attorney in the preparation of his defense. Such expert shall report only to the attorney for the defendant and matters related to the expert shall be deemed to fall under the lawyer-client privilege.

(b) When in any criminal case it shall be the intention of the defendant to rely on the defense of insanity either at trial or probation or community control violation hearing, no evidence offered by the defendant for the purpose of establishing such defense shall be admitted in such case unless advance notice in writing of the defense shall have been given by the defendant as hereinafter provided.

(c) The defendant shall give notice of intent to rely on the defense of insanity no later than 15 days after the arraignment or the filing of a written plea of not guilty in the case when the defense of insanity is to be relied upon at trial, or no later than 15 days after being brought before the appropriate court to answer to the allegations in a violation of probation or community control proceeding. If counsel for the defendant shall have reasonable grounds to believe that the defendant may be incompetent to ~~stand trial~~ proceed, the notice shall be given at the same time that the motion for examination into the defendant's competence is filed. Such notice shall contain a statement of particulars showing the nature of the insanity the defendant

expects to prove and the names and addresses of the witnesses by whom he expects to show such insanity, insofar as is possible.

(d) Upon the filing of such notice the court may, on its own motion, and shall upon motion of the State or the defendant, order that the defendant be examined by no more than three nor fewer than two disinterested, qualified experts as to the sanity or insanity of the defendant at the time of the commission of the alleged offense or probation or community control violation. Attorneys for the State and defendant may be present at the examination. Such examination should take place at the same time as the examination into the competence of the defendant to ~~stand~~ trial proceed, if the issue of competence has been raised.

(e) The experts shall examine the defendant and shall file with the court in writing at such time as shall be specified by the court with copies to attorneys for the State and the defense, a report which shall contain the following:

(1) A description of the evaluative techniques which were used in their examination;

(2) A description of the mental and emotional condition and mental processes of the defendant at the time of the alleged offense or probation or community control violation, including the nature of any mental impairment and its relationship to the actions and state of mind of the defendant at the time of the offense or probation or community control violation;

(3) A statement of all relevant factual information regarding the defendant's behavior on which the conclusions or opinions regarding his mental condition were based;

(4) An explanation of how the conditions and opinions regarding the defendant's mental condition at the time of the

alleged offense or probation or community control violation were reached.

(f) Upon good cause shown for the omission of the notice of intent to rely on the defense of insanity, the court may in its discretion grant the defendant 10 days to comply with such notice requirement. If leave is granted and the defendant files said notice, he is deemed unavailable ~~for trial~~ to proceed. If the trial has already commenced, the court, only upon motion of the defendant, may declare a mistrial in order to permit the defendant to raise the defense of insanity pursuant to this Rule. Any motion for mistrial shall constitute a waiver of the defendant's right to any claim of former jeopardy arising from the uncompleted trial.

(g) If the defendant has been released ~~from custody~~ on ~~pre-trial~~ bail or other release provisions conditions, the court may order the defendant to appear at a designated place for evaluation at a specific time as a condition of such release provision. If the court determines that the defendant will not submit to the evaluation provided for herein or that the defendant is not likely to appear for the scheduled evaluation, the court may order the defendant taken into custody, ~~if he is not already in custody~~, until the ~~determination of his competency~~ evaluation is completed. A motion made for evaluation under this subsection shall not otherwise affect the defendant's right to pre-trial release.

(h) The appointment of experts by the court shall not preclude the State or the defendant from calling additional expert witnesses to testify at the trial. The experts appointed by the court may be summoned to testify at the trial, and shall be deemed court witnesses whether called by the court or either party. Other evidence regarding the defendant's sanity may be introduced by either party. At trial, in its instructions to the jury, the court shall include an instruction on the consequences of a verdict of not guilty by reason of insanity.

1988 Amendment:

The amendments to this rule, including the title, provide for the affirmative defense of insanity in violation of probation or community control proceedings as well as at trial.

RULE 3.217. JUDGMENT OF NOT GUILTY BY REASON OF INSANITY:
DISPOSITION OF DEFENDANT

(a) When a person ~~tried for an offense shall be acquitted~~ is found not guilty of the offense or found not in violation of probation or community control for the cause of insanity by the jury or the court, the jury or judge in giving the verdict or finding of not guilty judgment shall state that it was given for such cause.

(b) When a person ~~tried for an offense shall be acquitted~~ is found not guilty of the offense or is found not to be in violation of probation or community control for the cause of insanity, if the court shall then determine that the defendant presently meets the criteria set forth by law, the court shall commit the defendant to the Department of Health and Rehabilitative Services ~~for involuntary hospitalization or placement,~~ or shall order that he receive outpatient treatment at any other appropriate facility or service on an outpatient basis, or shall discharge the defendant.

(1) Any order committing the defendant ~~for involuntary hospitalization or requiring~~ outpatient treatment or other outpatient service shall contain the following:

(i) Findings of fact relating to the issue of ~~involuntary hospitalization or placement~~ commitment or other court ordered treatment;

(ii) Copies of any reports of experts filed with the court;

(iii) Any other psychiatric, psychological or social work report submitted to the court relative to the mental state of the defendant.

1988 Amendment:

The amendments to this rule provide for evaluation of a defendant found not guilty by reason of insanity in violation of probation or community control proceedings as well as at trial. The amendments further reflect 1985 amendments to Chapter 916, Florida Statutes.

RULE 3.218. ~~HOSPITALIZATION~~ COMMITMENT OF A
DEFENDANT FOUND NOT GUILTY BY REASON
OF INSANITY

The Department of Health and Rehabilitative Services shall admit to an appropriate facility a defendant found not guilty by reason of insanity pursuant to Rule 3.217 and found to meet the criteria for ~~involuntary hospitalization or placement~~ commitment for hospitalization and treatment and may retain and treat the defendant. No later than six months from the date of admission, the administrator of the facility shall file with the court a report, with copies to all parties, which shall address the issues of further ~~involuntary hospitalization~~ commitment of the defendant. If at any time during the six-month period or during any period of extended hospitalization which may be ordered pursuant to this Rule, the administrator of the facility shall determine that the defendant no longer meets the criteria for ~~involuntary hospitalization~~ commitment, the administrator shall notify the court by such a report with copies to all parties.

(a) The court shall hold a hearing within 30 days of the receipt of any such report from the administrator of the facility on the issues raised thereby, and the defendant shall have a right to be present at such hearing. If, following such hearing, the court determines that the defendant continues to meet the criteria for continued ~~hospitalization~~ commitment or treatment, the court shall order further ~~hospitalization~~ commitment or treatment for a period not to exceed one year. The same procedure shall be repeated prior to the expiration of each additional one-year period the defendant is retained by the facility.

(b) Prior to any hearing held pursuant to this Rule, the court may on its own motion, and shall upon motion of counsel for State or defendant, appoint no fewer than two nor more than three experts to examine the defendant relative to the criteria for continued ~~involuntary hospitalization or placement~~ commitment or placement of the defendant, and shall specify the date by which such experts shall report to the court on these issues with copies to all parties.

1988 Amendment:

The amendments to this rule including the title, provide for commitment of defendants found not guilty by reason of insanity in violation of probation or community control proceedings, as well as those so found at trial. The amendments further reflect 1985 amendments to Chapter 916, Florida Statutes.

RULE 3.219. CONDITIONAL RELEASE

(a) The committing court may order a conditional release of any defendant who has been committed according to a finding of incompetency to ~~stand trial~~ proceed or an adjudication of not guilty by reason of insanity based on an approved plan for providing appropriate outpatient care and treatment. At such time

as the administrator shall determine outpatient treatment of the defendant to be appropriate, he may file with the court, with copies to all parties, a written plan for outpatient treatment, including recommendations from qualified professionals. Such a plan may be submitted by the defendant. The plan shall include:

- (1) Special provisions for residential care and/or adequate supervision of the defendant;
- (2) Provisions for outpatient mental health services;
- (3) If appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release, and progress in treatment, with copies to all parties.

(b) If at any time it appears that the defendant has failed to comply with the conditions of release, or that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court may, after hearing, modify the release conditions or, if the court finds the defendant meets the statutory criteria for commitment, may order that the defendant be ~~returned~~ recommitted to the Department of Health and Rehabilitative Services for further treatment.

(c) If at any time it is determined after hearing that the defendant no longer requires court supervised follow-up care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

1988 Amendment:

The amendments to this rule are designed to reflect amendments to 3.210, 3.211, and 3.218 as well as 1985 amendments to Chapter 916, Florida Statutes.

(b) This provision has been amended to require that the court may recommit a conditionally released defendant to HRS under the provisions of Chapter 916 only if the court makes a finding that the defendant currently meets the statutory commitment criteria found in Section 916.13(1), Florida Statutes.

RULE 3.390. JURY INSTRUCTIONS

(b) Every charge to a jury shall be orally delivered, and charges in capital cases shall, and in the discretion of the court in non-capital cases, may also be in writing. All written charges shall be filed in the cause. Charges in other than capital cases shall be taken by the court reporter, and, if the jury returns a verdict of guilty, transcribed by ~~him~~ the court reporter and filed in the cause.

1988 Committee Note:

To assist the jury in understanding the jury instructions.

RULE 3.710. PRESENTENCE REPORT

In all cases in which the court has discretion as to what sentence may be imposed, the court may refer the case to the ~~probation and parole commission~~ Department of Corrections for investigation and recommendation. No sentence or sentences other than probation shall be imposed on any defendant found guilty of a first felony offense or found guilty of a felony while under the

age of 18 years, until after such investigation has first been made and the recommendations of the ~~commission~~ Department of Corrections received and considered by the sentencing judge.

1988 Amendment:

This amendment changes wording to conform with current responsibility of the Department of Corrections to prepare the presentence investigation and report.

RULE 3.740. PROCEDURE WHEN INSANITY IS ALLEGED AS CAUSE
FOR NOT PRONOUNCING SENTENCE

Repealed.

1988 Amendment:

New Rule 3.214 replaces this Rule. Its repeal is therefore necessitated by adoption of the new rule.

RULE 3.790. PROBATION AND COMMUNITY CONTROL

(a) Suspension of the Pronouncement and Imposition of Sentence; Probation or Community Control.

Pronouncement and imposition of sentence of imprisonment shall not be made upon a defendant who is to be placed on probation regardless of whether such defendant has or has not been adjudicated guilty. An order of the court placing a person on probation or community control shall place the probationer under the authority of the ~~state probation and parole commission~~ Department of Corrections to be supervised as provided by law. The court shall specify the length of time during which the defendant is to be supervised.

(b) Revocation of Probation and Community Control; Judgment; Sentence. When a probationer or a community controllee is brought before a court charged with a violation of probation or community control, the court shall advise him of such charge and if the charge is admitted to be true may forthwith enter an order revoking, modifying or continuing the probation or community control. If such violation of probation or community control is not admitted by the probationer or community controllee, the court may commit him or release him with or without bail to await further hearing, or it may dismiss the charge of violation of probation or community control. If the charge is not admitted by the probationer or community controllee and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer or community controllee an opportunity to be fully heard in person, by counsel, or both. After such hearing, the court may enter an order revoking, modifying or continuing the probation or community control. Following a revocation of probation or community control, the trial court shall adjudicate the defendant guilty of the crime forming the basis of his probation or community control, if no such adjudication has been made previously. Pronouncement and imposition of sentence then shall be made upon such defendant.

1988 Amendment:

This amendment changes wording to conform with current responsibilities of the Department of Corrections to supervise a person placed either on probation or community control and brings community control within the scope of the rule.

Original Proceeding - Florida Rules of Criminal Procedure

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