

Alabama Rules of Criminal Procedure

Rule 11. Incompetency and mental examinations.

Rule 11.7. Subsequent hearings on competency.

(a) **FOUNDATIONS.** Unless the parties have stipulated to an order of release, the circuit court shall schedule a hearing to determine the defendant's competency to stand trial, giving notice as provided in Rule 11.6(g):

(1) Upon receiving a report from an authorized official of the Department of Mental Health and Mental Retardation or of the institution in which the defendant is hospitalized under Rule 11.6(c)(2)(i) or (3)(i), stating that it is the examining expert's opinion that the defendant is no longer incompetent to stand trial or remains incompetent but no longer poses a substantial threat of harm to himself or herself or others;

(2) Upon motion of the defendant accompanied by the certification of a psychiatrist or psychologist stating his or her opinion that the defendant is no longer incompetent to stand trial or remains incompetent but no longer poses a substantial threat of harm to himself or herself or to others;

(3) At the expiration of the maximum period of commitment or release, as set by the court under Rule 11.6(d)(1), which provides that a commitment pursuant to an order of original commitment shall not exceed six (6) months from the date of admission or release and any commitment or release under an order renewing an order of commitment or release shall not exceed a period of one (1) year; or

(4) Upon motion filed by the district attorney pursuant to Rule 11.6(d)(3).

(b) **COUNSEL AND EXPERTS.** During proceedings under this rule, the defendant shall have the right to counsel as provided under Rule 6. The court, in its discretion, may appoint new psychologists or psychiatrists under Rule 11.3.

(c) **FINDING OF COMPETENCY.** The defendant shall be entitled to have the question of competency submitted to a jury for determination; provided, however, that to be entitled to have a jury determine that question, the defendant must make a written demand for a jury trial within seven (7) days after the defendant's attorney receives notice. Unless the defendant makes a timely demand for a jury trial, the circuit judge shall determine whether the defendant is competent to stand trial. If the court or jury does not determine that the defendant is incompetent, the trial on the criminal charge shall commence without unnecessary delay, and may be tried by the same jury; provided, however, that on motion of the defendant, the trial court shall empanel a new jury. The defendant shall be entitled to repeat any proceeding as to which there are

reasonable grounds to believe the defendant was prejudiced by the earlier incompetency.

(d) FINDING OF CONTINUING INCOMPETENCY. If the circuit court or the jury finds that the defendant is still incompetent, it shall proceed in accordance with either Rule 11.6(c)(2) or Rule 11.6(c)(3), whichever applies.

[Amended 6-11-91; Amended 10-1-96.]

Committee Comments to Rule 11.7 as Amended Effective October 1, 1996

Rule 11.7(a) is intended to ensure that the status of all defendants adjudicated incompetent under Rule 11.6(c)(2) will be thoroughly reviewed at reasonably frequent intervals. This review process is intended to obviate the very real danger that the defendant could be incarcerated without a trial for a number of months or years on minor charges when the defendant's condition would not justify civil commitment (e.g., in any case where the defendant is incompetent but poses no danger to himself or herself or to others). See, e.g., *Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir.1974); *Lynch v. Baxley*, 386 F.Supp. 378 (M.D.Ala.1974). Competency hearings are normally considered to be a protective device for the defendant; it is a denial of due process to try a person who is unable to defend. See *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966); cf. *Tillis v. State*, 292 Ala. 521, 296 So.2d 892 (1974).

In *Jackson v. Indiana*, 406 U.S. 715, at 738, 92 S.Ct. 1845, at 1858, 32 L.Ed.2d 435, at 451 (1972), the Supreme Court held:

“[A] person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more 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.”

A six-month period of detention and treatment is sufficient “to determine whether there is a substantial probability” of a restoration to competency.

A person subject to involuntary civil commitment has the right to counsel at all significant stages of the commitment process. See, e.g., *Lessard v. Schmidt*, 349 F.Supp. 1078, 1097 (E.D.Wis.1972), judgment vacated on other grounds, 414 U.S. 473, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974); *Lynch v. Baxley*, 386 F.Supp. 378 (M.D.Ala.1974). In addition, such a person, if indigent, has the right to appointed counsel. *Id.* In *Lynch*, the court held that counsel must be appointed long enough before the final commitment hearing to assure the opportunity for adequate preparation. Counsel must also be given the names of

the examining experts and any others who may testify at the hearing in support of commitment. *Lynch* also requires a reasonable opportunity to inspect any pertinent documents and records in the case. 386 F.Supp. at 389.

Rule 11.7(b) permits the circuit court, in regard to the subsequent hearing, to appoint new or additional psychologists or psychiatrists, if it deems their appointment necessary.

Rule 11.7(c) provides that once the defendant has been determined to be competent the trial on the criminal charge shall commence. However, it also gives the defendant the right to require that the proceedings shall begin anew when there are reasonable grounds to believe that the defendant was prejudiced by the earlier incompetency. A defendant who was unable to comprehend the nature of a proceeding might well have been unable to present defenses at that proceeding. There may also be a constitutional issue of speedy trial involved. See comment to Rule 11.6.

Rule 11.7(d) directs the trial court, upon a finding that the defendant is still incompetent, to reconsider the alternatives presented in Rule 11.6(c)(2) and (c)(3). *Jackson* held that the defendant's continued commitment must be justified by an appropriate showing by the State. The initial findings of the court or jury are not relevant to the court's options at this point. The issues of the defendant's mental condition and dangerousness must be considered anew.