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22-3301. **Definitions.** (1) For the purpose of this article, a person is "incompetent to stand trial" when he is charged with a crime and, because of mental illness or defect is unable:

- (a) To understand the nature and purpose of the proceedings against him; or
- (b) to make or assist in making his defense.

(2) Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this article, they shall refer to the defendant's competency or incompetency to stand trial, as defined in subsection (1) of this section.

22-3302. Proceedings to determine competency. (1) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

(2) If the defendant is charged with a felony, the hearing to determine the competency of the defendant shall be conducted by a district judge.

(3) The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may: (a) If the defendant is charged with a felony, commit the defendant to the state security hospital or any county or private institution for examination and report to the court, or, if the defendant is charged with a misdemeanor, commit the defendant to any appropriate state, county or private institution for examination and report to the court, except that the court shall not commit the defendant to the state security hospital or any other state institution unless, prior to such commitment, the director of a local county or private institution recommends to the court and to the secretary of social and rehabilitation services that examination of the defendant should be performed at a state institution; (b) designate any appropriate psychiatric or psychological clinic, mental health center or other psychiatric or psychological facility to conduct the examination while the defendant is in jail or on pretrial release; or (c) appoint two qualified licensed physicians or licensed psychologists, or one of each, to examine the defendant and report to the court. If the court commits the defendant to an institution for the examination, the commitment shall be for not more than 60 days or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding. Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned not later than seven days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county in which the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the seven-day period.

(4) If the defendant is found to be competent, the proceedings which have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

(5) If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303, and amendments thereto.

(6) If proceedings are suspended and a hearing to determine the defendant's competency is ordered after the defendant is in jeopardy, the court may either order a recess or declare a mistrial.

(7) The defendant shall be present personally at all proceedings under this section.

22-3303. Commitment of incompetent; limitation; civil commitment proceedings; regained competency; credit for time committed; victim notification. (1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution. At the time of such commitment the institution of commitment shall notify the secretary of corrections for the purpose of providing victim notification. Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5505, subsection (b) of 21-5506, subsection (b) of 21-5508, subsection (b) of 21-5604 or subsection (b) of 21-5812, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or subsection (b) of K.S.A. 2011 Supp. 21-5505, subsection (b) of 21-5506, subsection (b) of 21-5508, subsection (b) of 21-5604 or subsection (b) of 21-5812, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(3) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302, and amendments thereto, to determine the person's present mental condition. Such court shall give reasonable notice of such hearings to the prosecuting attorney, the defendant, the defendant's attorney of record, if any, and the secretary of corrections for the purpose of providing victim notification. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such public institution.

22-3305. Procedure when defendant not civilly committed or to be discharged; order of discharge; request for hearing on competency; charges dismissed; statute of limitations not to run; victim notification. (1) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303, and amendments thereto, and the defendant is not committed to a treatment facility as a patient, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303, and amendments thereto. The secretary of social and rehabilitation services shall promptly notify the court, the county or district attorney of the county in which the criminal proceedings are pending and the secretary of corrections for the purpose of providing victim notification, of the result of the involuntary commitment proceeding.

(2) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303, and amendments thereto, and the defendant is committed to a treatment facility as a patient but thereafter is to be discharged pursuant to the care and treatment act for mentally ill persons, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303, and amendments thereto, and the head of the treatment facility shall promptly notify the court, the county or district attorney of the county in which the criminal proceedings are pending and the secretary of corrections for the purpose of providing victim notification, that the defendant is to be discharged.

When giving notification to the court, the county or district attorney and the secretary of corrections pursuant to subsection (1) or (2), the treatment facility shall include in such notification an opinion from the head of the treatment facility as to whether or not the defendant is now competent to stand trial. Upon request of the county or district attorney, the court may set a hearing on the issue of whether or not the defendant has been restored to competency. If such hearing request is granted, the court shall notify the secretary of corrections of the hearing date for the purpose of victim notification. If no such request is made within 14 days after receipt of notice pursuant to subsection (1) or (2), the court shall order the defendant to be discharged from commitment and shall dismiss without prejudice the charges against the defendant, and the period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency in accordance with K.S.A. 22-3302, and amendments thereto. The court shall notify the secretary of corrections of the discharge order for the purpose of providing victim notification.