

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

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.

7

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

9

10 **Section 1.** W.S. 7-11-303(b), (g) and by creating new
11 subsections (k) through (o) is amended to read:

12

1 **7-11-303. Examination of accused to determine fitness**
2 **to proceed; reports; commitment; defenses and objections.**

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

1 reports, substance abuse records and known prior mental
2 health evaluations and treatments.

3
4 (g) If the court determines that the accused is
5 mentally fit to proceed, the court may order that the
6 accused be held in confinement, be committed to a
7 designated facility pending further proceedings, or be
8 released on bail or other conditions. If the court
9 determines that the accused lacks mental fitness to
10 proceed, the proceedings against him shall be suspended and
11 the court shall commit him to a designated facility ~~for~~
12 ~~such period as the court may order but not to exceed the~~
13 ~~time reasonably necessary~~ to determine whether there is
14 substantial probability that the accused will regain his
15 fitness to proceed:

16
17 (i) ~~If it is determined that there is no~~
18 ~~substantial probability that the accused will regain his~~
19 ~~fitness to proceed, the accused shall not be retained in a~~
20 ~~designated facility~~ The examiner shall provide a full
21 report to the court and prosecuting and defense attorneys
22 within ninety (90) days of arrival of the defendant at the
23 designated treating facility. If the examiner is unable to

1 complete the assessment within ninety (90) days the
2 examiner shall provide to the court and counsel a summary
3 progress report which informs the court that additional
4 time is necessary to complete the assessment, in which case
5 the examiner shall have up to an additional ninety (90)
6 days to provide the full report, as follows:

7

8 (A) The full report shall assess:

9

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

12

13 (II) The nature of treatments provided
14 to the accused;

15

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

19

20 (IV) The accused's current level of
21 mental disorder or mental deficiency and need for
22 treatment, if any; and

23

1 (V) The likelihood of restoration of
2 competency and the amount of time estimated to achieve such
3 competency.

4
5 (B) Upon receipt of the full report, the
6 court shall hold a hearing to determine the accused's
7 current status. The burden of proving that the accused is
8 fit to proceed shall be on the proponent of the assertion.
9 Following the hearing, the court shall determine by a
10 preponderance of the evidence whether the defendant is:

11
12 (I) Fit to proceed;

13
14 (II) Not fit to proceed with a
15 substantial probability that the accused may become fit to
16 proceed in the foreseeable future; or

17
18 (III) Not fit to proceed without a
19 substantial probability that the accused may become fit to
20 proceed in the foreseeable future.

21
22 (C) If the court makes a determination
23 pursuant to subdivision (B)(I) of this paragraph, the court

1 shall proceed with the trial or such other procedures as
2 may be necessary to adjudicate the charges;

3
4 (D) If the court makes a determination
5 pursuant to subdivision (B)(II) of this paragraph, the
6 court may order that the accused remain committed to the
7 custody of the designated facility for the purpose of
8 treatment intended to restore the accused to competency;

9
10 (E) If the court makes a determination
11 pursuant to subdivision (B)(III) of this paragraph, the
12 court shall order the accused released from the custody of
13 the designated facility unless proper civil commitment
14 proceedings have been instituted and held as provided in
15 title 25 of the Wyoming statutes. The continued retention,
16 hospitalization and discharge of the accused shall be the
17 same as for other patients. ~~However, if the accused is~~
18 ~~discharged, the criminal proceedings shall be resumed,~~
19 ~~unless the court determines that so much time has elapsed~~
20 ~~since the commitment of the accused that it would not be~~
21 ~~appropriate to resume the criminal proceeding;~~

22

1 (ii) If it is determined pursuant to subdivision
2 (i)(B)(II) of this subsection that there is substantial
3 probability that the accused will regain his fitness to
4 proceed, the commitment of the accused at a designated
5 facility shall continue until the head of the facility
6 reports to the court that in his opinion the accused is fit
7 to proceed. ~~as provided in paragraph (iii) of subsection~~
8 ~~(e) of this section.~~ If this opinion is not contested by
9 the state, the accused or his counsel the criminal
10 proceeding shall be resumed. If the opinion is contested,
11 the court shall hold a hearing as provided in subsection
12 (f) of this section. While the accused remains at a
13 designated facility under this subsection, the head of the
14 facility shall report at least once every three (3) months
15 on the progress the accused is making towards regaining his
16 fitness to proceed.

17

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

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20

(END)