CHAPTER 812

CONFINEMENT OF PERSONS FOUND INCOMPETENT TO STAND TRIAL

812.1 and 812.2 Repealed by 2004 Acts, ch 1084, §16.
812.3 Mental incompetency of accused.
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812.1 and 812.2 Repealed by 2004 Acts, ch 1084, §16. See §811.1A.

812.3 Mental incompetency of accused.

1. If at any stage of a criminal proceeding the defendant or the defendant's attorney, upon application to the court, alleges specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend further proceedings and determine if probable cause exists to sustain the allegations. The applicant has the burden of establishing probable cause. The court may on its own motion schedule a hearing to determine probable cause if the defendant or defendant's attorney has failed or refused to make an application under this section and the court finds that there are specific facts showing that a hearing should be held on that question. The defendant shall not be compelled to testify at the hearing and any testimony of the defendant given during the hearing shall not be admissible on the issue of guilt, except such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

2. Upon a finding of probable cause sustaining the allegations, the court shall suspend further criminal proceedings and order the defendant to undergo a psychiatric evaluation to determine whether the defendant is suffering a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense. The order shall also authorize the evaluator to provide treatment necessary and appropriate to facilitate the evaluation. If an evaluation has been conducted within thirty days of the probable cause finding, the court is not required to order a new evaluation and may use the recent evaluation during a hearing under this chapter. Any party is entitled to a separate psychiatric evaluation by a psychiatrist or licensed, doctorate-level psychologist of their own choosing.

[C51, §3260, 3261; R60, §5015, 5016; C73, §4620, 4621; C97, §5540; C24, 27, 31, 35, 39, §**13905;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §783.1; C79, 81, §812.3]

2004 Acts, ch 1084, §5

Referred to in **§812.5**, **§812.8**

812.4 Hearing.

1. A hearing shall be held within fourteen days of the arrival of the person at a psychiatric facility for the performance of the evaluation, or within five days of the court's motion or the filing of an application, if the defendant has had a psychiatric evaluation within thirty days of the probable cause finding, and upon which the court decides to rely. Pending the hearing, no further proceedings shall be taken under the complaint or indictment and the defendant's right to a speedy indictment and speedy trial shall be tolled until the court finds the defendant competent to stand trial.

2. The defendant shall be entitled to representation by counsel, including appointed counsel if indigent, and shall be entitled to the right of cross-examination and to present evidence.

3. Testimony of the defendant given during the hearing shall not be admissible on the issue

of guilt in any other judicial proceeding, except that such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

[C51, §3262, 3263; R60, §5018, 5019; C73, §4623, 4624; C97, §5542; C24, 27, 31, 35, 39, §**13907;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §783.3; C79, 81, §812.4]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1079, §1; 97 Acts, ch 64, §1; 2004 Acts, ch 1084, §6; 2005 Acts, ch 65, §1

812.5 Competency hearing — findings.

The court shall receive all relevant and material evidence offered at the hearing and shall not be bound by the formal rules of evidence. The evidence shall include the psychiatric evaluation ordered under section 812.3 or conducted within thirty days of the probable cause finding.

1. If the court finds the defendant is competent to stand trial, the court shall reinstate the criminal proceedings suspended under section 812.3.

2. If the court, by a preponderance of the evidence, finds the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend the criminal proceedings indefinitely and order the defendant to be placed in a treatment program pursuant to section 812.6 and shall make further findings of record as necessary under section 812.6.

[C51, §3264 – 3267; R60, §5020 – 5023; C73, §4625 – 4628; C97, §5543; C24, 27, 31, 35, 39, §**13908;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §783.4; C79, 81, §812.5]

83 Acts, ch 96, §157, 159; 85 Acts, ch 21, §47; 94 Acts, ch 1079, §2; 2004 Acts, ch 1084, §7

812.6 Placement and treatment — payment of costs.

1. If the court finds the defendant does not pose a danger to the public peace and safety, is otherwise qualified for pretrial release, and is willing to cooperate with treatment, the court shall order, as a condition of pretrial release, that the defendant obtain mental health treatment designed to restore the defendant to competency.

2. If the court finds by clear and convincing evidence that the defendant poses a danger to the public peace or safety, or that the defendant is otherwise not qualified for pretrial release, or the defendant refuses to cooperate with treatment, the court shall commit the defendant to an appropriate inpatient treatment facility as provided in paragraph *"a"* or *"b"*. The defendant shall receive mental health treatment designed to restore the defendant to competency.

a. A defendant who poses a danger to the public peace or safety, or who is otherwise not qualified for pretrial release, shall be committed as a safekeeper to the custody of the director of the department of corrections at the Iowa medical and classification center, or other appropriate treatment facility as designated by the director, for treatment designed to restore the defendant to competency. The costs of the treatment pursuant to this paragraph shall be borne by the department of corrections.

b. A defendant who does not pose a danger to the public peace or safety, but is otherwise being held in custody, or who refuses to cooperate with treatment, shall be committed to the custody of the director of human services at a department of human services facility for treatment designed to restore the defendant to competency. The costs of the treatment pursuant to this paragraph shall be borne by the department of human services.

3. A defendant ordered to obtain treatment or committed to a facility under this section may refuse treatment by chemotherapy or other somatic treatment. The defendant's right to refuse chemotherapy treatment or other somatic treatment shall not apply if, in the judgment of the director or the director's designee of the facility where the defendant has been committed, such treatment is necessary to preserve the life of the defendant or to appropriately control behavior of the defendant which is likely to result in physical injury to the defendant or others. If in the judgment of the director of the facility or the director's designee where the defendant has been committed, chemotherapy or other somatic treatments are necessary and appropriate to restore the defendant to competency and the defendant refuses to consent to the use of these treatment modalities, the director of the facility or the director's designee shall request from the district court which ordered

the commitment of the defendant an order authorizing treatment by chemotherapy or other somatic treatments.

2004 Acts, ch 1084, §8; 2004 Acts, ch 1175, §392; 2005 Acts, ch 3, §116, 118; 2014 Acts, ch 1066, §1

Subsection 2, paragraphs a and b amended

812.7 Mental status reports.

The psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant, or the director of the facility where the defendant is being held and treated pursuant to a court order, shall provide a written status report to the court regarding the defendant's mental disorder within thirty days of the defendant's placement pursuant to section 812.6. The report shall also state whether it appears that the defendant can be restored to competency in a reasonable amount of time. Progress reports shall be provided to the court every sixty days or less thereafter until the defendant's competency is restored or the placement of the defendant is terminated.

2004 Acts, ch 1084, §9

812.8 Restoration of mental competency.

1. At any time, upon a finding by a psychiatrist or licensed doctorate-level psychologist that there is a substantial probability that the defendant has acquired the ability to appreciate the charge, understand the proceedings, and effectively assist in the defendant's defense, the psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant or the director of the inpatient facility shall immediately notify the court. After receiving notice the court shall proceed as provided in subsection 4.

2. At any time, a treating psychiatrist or licensed doctorate-level psychologist may notify the court that the defendant receiving outpatient treatment will require inpatient services to continue benefiting from treatment or that it is appropriate for a defendant receiving inpatient treatment services to receive outpatient treatment services. Upon receiving notification, the court shall proceed as provided under subsection 4.

3. At any time upon a finding by a treating psychiatrist or licensed doctorate-level psychologist that there is no substantial probability that the defendant will be restored to competency in a reasonable amount of time, the psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant or the director of the inpatient facility shall immediately notify the court. Upon receiving notification, the court shall proceed as provided under subsection 4.

4. Upon receiving a notification under this section, the court shall schedule a hearing to be held within fourteen days. The court shall also issue an order to transport the defendant to the hearing if the defendant is in custody or is being held in an inpatient facility. The defendant shall be transported by the sheriff of the county where the court's motion or the application pursuant to section 812.3 was filed.

5. If the court finds by a preponderance of the evidence that the defendant's competency has been restored, the court shall terminate the placement pursuant to section 812.6, and reinstate the criminal proceedings against the defendant, and may order continued treatment to maintain the competency of the defendant.

6. If the court finds by a preponderance of the evidence that the defendant remains incompetent to stand trial but is making progress in regaining competency, the court shall continue the placement ordered pursuant to section 812.6.

7. The court may change the placement of a defendant and the placement may be more restrictive if necessary for the continued progress of the defendant's treatment as shown by clear and convincing evidence.

8. If the court finds by a preponderance of the evidence that there is no substantial probability the defendant's competency will be restored in a reasonable amount of time, the court shall terminate the commitment under section 812.6 in accordance with the provisions of section 812.9.

2004 Acts, ch 1084, §10

Referred to in **§812.9**

812.9 Length of placement — other commitment proceedings — criminal proceedings after termination of placement.

1. Notwithstanding section 812.8, the defendant shall not remain under placement pursuant to section 812.6 beyond the expiration of the maximum term of confinement for the criminal offense of which the defendant is accused, or eighteen months from the date of the original adjudication of incompetence to stand trial, including time in jail, or the time when the court finds by a preponderance of the evidence that there is no substantial probability that the defendant will be restored to competency in a reasonable amount of time under section 812.8, subsection 8, whichever occurs first. When the defendant's placement in an inpatient facility equals the length of the maximum term of confinement, the complaint for the criminal offense of which the defendant is accused shall be dismissed with prejudice.

2. When the defendant's commitment equals eighteen months, the court shall schedule a hearing to determine whether the defendant is competent to stand trial pursuant to section 812.8, subsection 5. If the defendant is not competent to stand trial after eighteen months, the court shall terminate the placement under section 812.6 in accordance with the provisions of subsection 1.

3. Upon the termination of the defendant's placement pursuant to subsection 1, or pursuant to section 812.8, subsection 8, the state may commence civil commitment proceedings or any other appropriate commitment proceedings.

4. If the defendant's placement is terminated pursuant to subsection 2 or pursuant to section 812.8, subsection 8, and it appears thereafter that the defendant has regained competency, the state may make application to reinstate the prosecution of the defendant and hearing shall be held on the matter in the same manner as if the court has received notice under section 812.8, subsection 4.

2004 Acts, ch 1084, §11; 2005 Acts, ch 3, §113

Referred to in **§812.8**