

77-15-6.5 Petition for involuntary medication of incompetent defendant.

- (1) As used in this section:
 - (a) "Executive director" means the executive director of the Department of Human Services or the executive director's designee.
 - (b) "Final order" means a court order that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.
- (2)
 - (a) At any time after a defendant has been found incompetent to proceed and has been committed to the Department of Human Services under Section 77-15-6 for treatment to restore competency, the executive director shall notify the court, prosecuting attorney, and attorney for the defendant if the executive director has determined that the defendant is not responding to treatment and is unlikely to be restored to competency without the involuntary administration of antipsychotic medication.
 - (b) The executive director shall provide the notification under Subsection (2)(a) only if there is no basis for involuntarily medicating the defendant for reasons other than to restore the defendant's competency.
- (3) In the notice under Subsection (2)(a), the executive director shall state whether the executive director believes:
 - (a) medication is necessary to render the defendant competent;
 - (b) medication is substantially likely to render the defendant competent;
 - (c) medication is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in his defense;
 - (d) no less intrusive means are available, and whether any of those means have been attempted to render the defendant competent; and
 - (e) medication is medically appropriate and is in the defendant's best medical interest in light of his medical condition.
- (4)
 - (a) Upon receipt of the notice under Subsection (2)(a), the court shall conduct a hearing within 30 days, unless the court extends the time for good cause, to determine whether the court should convene a hearing regarding the involuntary medication of the defendant.
 - (b) The prosecuting attorney shall represent the state at any hearing under this section.
 - (c) The court shall consider whether the following factors apply in determining whether the defendant should be involuntarily medicated:
 - (i) important state interests are at stake in restoring the defendant's competency;
 - (ii) involuntary medication will significantly further the important state interests, in that the medication proposed:
 - (A) is substantially likely to render the defendant competent to stand trial; and
 - (B) is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist the defense counsel in conducting his defense;
 - (iii) involuntary medication is necessary to further important state interests, because any alternate less intrusive treatments are unlikely to achieve substantially the same results; and
 - (iv) the administration of the proposed medication is medically appropriate, as it is in the defendant's best medical interest in light of his medical condition.
- (5) In determining whether the proposed treatment is medically appropriate and is in the defendant's best medical interest, the potential penalty the defendant may be subject to, if the defendant is convicted of any charged offense, is not a relevant consideration.
- (6)

- (a) If the court finds by clear and convincing evidence that the involuntary administration of antipsychotic medication is appropriate, it shall make findings addressing each of the factors in Subsection (4)(c) and shall issue an order authorizing the Department of Human Services to involuntarily administer antipsychotic medication to the defendant in order to restore his competency, subject to the periodic reviews and other procedures provided in Section 77-15-6.
 - (b) When issuing an order under Subsection (6)(a), the court shall consider ordering less intrusive means for administering the drugs, such as a court order to the defendant enforceable by the contempt power, before ordering more intrusive methods of involuntary medication.
- (7) The provisions in Section 77-15-6 establishing time limitations for treatment of incompetent defendants before they must be either released or civilly committed are tolled from the time the executive director gives notice to the court and the parties under Subsection (2) until:
- (a) the court has issued a final order for the involuntary medication of the defendant, and the defendant has been medicated under that order; or
 - (b) the court has issued a final order that the defendant will not be involuntarily medicated.
- (8) This section applies only when the prosecution seeks an order of involuntary medication solely for the purpose of rendering a defendant competent to proceed.

Amended by Chapter 212, 2008 General Session