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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Thomas L. Tyler.

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## DIGEST

Present law requires resumption of a criminal prosecution unless a court determines, by preponderance of evidence, that the defendant lacks the mental capacity to proceed. Provides for various dispositions of the case if it is determined that a defendant lacks mental capacity to proceed to trial.

Present law provides that if a court determines that a defendant's mental capacity is likely to be restored within 90 days by outpatient care or treatment in an institution while in custody, and if he is not charged with a felony or misdemeanor classified as an offense against the person and the court considers it unlikely that he will commit a crime of violence, then the court may order outpatient care and treatment at any institution for mental health treatment. Proposed law retains these provisions but clarifies that outpatient care and treatment be at a treatment facility as defined in the mental health law.

Present law provides that one charged with a felony or misdemeanor classified as an offense against the person and is considered to be likely to commit crimes of violence, then the court may order immediate jail-based treatment by DHH not to exceed 90 days if it determines that his mental capacity is likely to be restored within 90 days as a result of treatment. Provides that if mental capacity cannot be restored within 90 days and inpatient treatment is recommended, then the court is required to commit the defendant to the Feliciana Forensic Facility. Proposed law retains these provisions except that the person must be charged with a crime of violence as defined by law for present law to apply.

Present law provides that if one is committed to the Feliciana Forensic Facility and held in a parish jail for 180 days after a court determination of lack of mental capacity, then requires the court to order a status conference with the defense and DA present, and for good cause shown on motion of the defendant or the DA or on motion of the court, the court is to order a contradictory hearing to determine if the defendant's condition or circumstances are sufficient to warrant a modification of its previous order.

Proposed law provides that a defendant committed to the Feliciana Forensic Facility and held in a parish jail for 180 after a court determination that he lacks the mental capacity to proceed, and if his mental capacity has not been restored, then requires the court to conduct a contradictory hearing to determine whether the defendant is, or will in the foreseeable future be, capable of standing trial in accordance with proposed law.

Present law provides that if a defendant is committed to the Feliciana Forensic Facility and held in a parish jail for 180 days after the initial status conference on his mental capacity, then requires the court to order a contradictory hearing to determine whether to release the defendant or to order appropriate authorities to institute civil commitment proceedings. Requires that the

defendant remain in custody pending the civil commitment proceedings. Provides that if civilly committed to a treatment facility, then requires director of the institution designated for treatment to notify, in writing, the court and DA when the patient is to be discharged or conditionally discharged, as long as the charges are pending. Proposed law removes this provision.

Proposed law provides that a defendant charged with a crime of violence or if he has a history of arrests for crimes of violence and a court determines that he is, or will in the foreseeable future be, incapable of standing trial, then the court is to additionally determine whether the defendant poses a danger to others or to himself. Provides that a defendant not charged with a crime of violence and who has no history of arrests for crimes of violence, then he shall be deemed not to pose a danger to others or to himself.

Proposed law provides that if the court determines, after a contradictory hearing, that a defendant is and will in the foreseeable future be incapable of standing trial and if he has been charged with a crime of violence or has a history of arrests for crimes of violence and he is a danger to others or to himself, then requires that he be referred to a special risk assessment in the trial court prior to release from inpatient treatment or jail.

Proposed law requires that the special risk assessment be conducted by a sanity commission within 30 days of his referral. Requires that the commission evaluate whether the defendant can be discharged from inpatient treatment or jail, conditionally or unconditionally, without posing a risk of danger to others or to himself. Requires the trial court, within 30 days of receiving the commission's evaluation, to hold a contradictory hearing to determine if the defendant poses a substantial risk of danger to others or to himself if unconditionally discharged.

Proposed law provides that if after the hearing and upon filing written findings of fact and conclusions of law, the court finds by a preponderance of the evidence that the defendant poses a substantial risk of danger to others or to himself if unconditionally discharged, the court is to either continue the commitment or order the defendant released conditionally. Provides that any time after the court order continuing the defendant in custody or conditionally releasing the defendant, the defendant may move for a contradictory hearing to determine whether there has been a change in his condition or other circumstances sufficient to warrant a modification of the previous order.

Effective August 15, 2010.

(Amends C.Cr.P. Art. 648(A), (B)(1), (B)(3)(intro para); adds C.Cr.P. Art. 648(B)(2))