

Rule 4B. Commitment of Respondents Found Incompetent to Participate in Criminal Proceedings

(a) Petition for commitment. A petition for commitment to a facility may be filed by the District of Columbia pursuant to D.C. Code § 7-1303.04(b-1) (2003 Supp.) for an individual charged with a crime of violence or sex offense, as these terms are defined in D.C. Code § 7-1301.03 (2003 Supp.), and found incompetent based on mental retardation and not likely to regain competence to stand trial or participate in sentencing or transfer proceedings. The petition shall be filed within 30 days of said finding. The 30 day time period may be extended by the Court upon a showing of extraordinary cause.

The District of Columbia shall file the petition and serve a copy upon the respondent, respondent's counsel in his or her criminal case, respondent's counsel in his or her mental retardation case, respondent's advocate, if appointed, respondent's guardian ad litem, if appointed, respondent's parent or guardian, the Office of the United States Attorney, and the assigned judicial officer in the criminal case. The petition shall contain the following information:

- (1) The name, date of birth, and home address of the respondent;
- (2) The criminal charges on which the respondent has been found to be mentally incompetent;
- (3) A statement that the respondent is or is believed to be mentally retarded and in need of commitment, including facts demonstrating why respondent is likely to cause injury to others by reason of mental retardation;
- (4) The date respondent was found incompetent and not likely to regain competence in the criminal case; and
- (5) The current placement and legal status of the respondent, including prior or current commitments or admissions involving the respondent.

(b) Commencement of commitment proceedings. Upon the filing of the petition, the Court shall:

- (1) Prepare a case jacket for the action, marked with a mental retardation case number;
- (2) Assign counsel to represent respondent, appoint an advocate, and, upon consulting with counsel for the parties, schedule a prompt initial status hearing pursuant to D.C. Code § 7-1304.05 (2003 Supp.). The Court shall also inform the respondent and his or her counsel in the mental retardation case of the right to request a trial by jury or by the Court and that such request must be made no later than the initial status hearing;
- (3) Send a copy of the petition, any material accompanying the petition, an order containing notice of the status hearing date, and notice of the assignment of counsel to: the respondent; respondent's counsel in his or her criminal case; respondent's counsel in his or her mental retardation case; respondent's advocate, if appointed; respondent's parent or guardian; respondent's guardian ad litem, if appointed; the director of the facility in which the respondent resides; the Office of the Attorney General; the Office of the United States Attorney; and the assigned judicial officer in the criminal case. The Court shall also send, when they are filed, copies of the comprehensive evaluation report and the respondent's habilitation plan to the respondent's counsel in the mental retardation case, his or her advocate, the Office of the Attorney General; and
- (4) Inform the respondent and his or her counsel in the mental retardation case of the option to request an independent comprehensive evaluation or individual habilitation

plan developed pursuant to D.C. Code § 7-1304.04 (2003 Supp.).

(c) Time limits for preparation and filing of comprehensive evaluation report and individual habilitation plan.

(1) The comprehensive evaluation report and the individual habilitation plan shall be provided to respondent and his or her counsel in the mental retardation case at least 10 days prior to the commitment hearing. If the petition was accompanied by a comprehensive evaluation and individual habilitation plan, copies of the report and plan shall be provided to respondent and his or her counsel within 3 days of the filing of the petition.

(2) Unless the petition is accompanied by a comprehensive evaluation report based on an evaluation performed within 6 months prior to the hearing, and an individual habilitation plan that was prepared within 30 days of the filing of the petition, the Court shall order the Department of Human Services Mental Retardation and Developmental Disabilities Administration to prepare and file the plan no later than 10 days before the commitment hearing and to provide a copy of the plan to respondent and his or her counsel in the mental retardation case and to the Office of the Attorney General no later than 10 days prior to the commitment hearing.

(d) Initial status hearing. At the initial status hearing, the Court shall set a date for a commitment hearing. If the respondent requests a judge or jury trial the Court shall set a commitment hearing date that conforms to the requirements of D.C. Code § 7-1303.12a (2003 Supp.). The Court may also set pre-trial hearings as necessary to resolve any pre-trial issues, including those arising under § 7-1303.12a. (2003 Supp.)

(e) Commitment hearing procedures when trial is requested. In any trial conducted pursuant to D.C. Code § 7-1304.06a (2003 Supp.):

(1) All testimony shall be under oath;

(2) The District of Columbia shall have the burden of proving by clear and convincing evidence that the respondent is mentally retarded and because of such retardation is likely to injure others if allowed to remain at liberty;

(3) The respondent has the right to be present during the trial and to testify, but shall not be compelled to testify, and shall be so advised by the Court;

(4) The parties shall have the right to call witnesses, present evidence and cross-examine opposing witnesses;

(5) Jury verdict. The jury, or the Court in a bench trial, shall deliver a separate verdict on:

(a) Whether the respondent is mentally retarded; and, if so,

(b) Whether, because of such mental retardation, respondent is likely to cause injury to others if allowed to remain at liberty.

(6) Disposition Following Verdict.

A. If the Court or jury finds that the respondent is likely to cause injury to others as a result of mental retardation if allowed to remain at liberty, the Court shall order commitment to the Department of Human Services Mental Retardation and Developmental Disabilities Administration for placement in a facility that would be the least restrictive means of providing the habilitation indicated by the respondent's habilitation plan and of preventing the respondent from causing injury to others as a result of the respondent's mental retardation.

B. In the event that the Court or jury finds that the respondent should not be committed, the Court shall dismiss the petition.

(f) Commitment hearing procedures upon waiver of trial.

(1) If the respondent waives trial rights, the Court shall make findings as to whether the respondent meets the statutory standard for commitment.

(2) Upon a finding by the Court that the respondent should be committed, the Court shall order commitment to the Department of Human Services Mental Retardation and Developmental Disabilities Administration for placement in a facility that will provide appropriate habilitation in accordance with D.C. Code § 7-1304.06c (2003 Supp.). In the event that the Court finds that the respondent should not be committed, the Court shall dismiss the petition.

(g) Placement following commitment by judge or jury. Upon a finding that the respondent should be committed to the Department of Human Services Mental Retardation and Developmental Disabilities Administration, the Court shall order placement in a facility that would be the least restrictive means of providing the habilitation indicated by the respondent's individual habilitation plan and of preventing the individual from causing injury to others as a result of the individual's mental retardation.

COMMENT

Subsection 4B(f)(1) of this rule does not specify the means by which the Court should ascertain the appropriateness of any waiver of trial rights. The Court will make that determination upon consideration of the totality of circumstances presented by the particular case.