

RULE 3.213 | CONTINUING INCOMPETENCY TO PROCEED, EXCEPT INCOMPETENCY TO PROCEED WITH SENTENCING: DISPOSITION**(a) Dismissal without Prejudice during Continuing Incompetency.**

(1) If at any time after 5 years following a determination that a person is incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony, or 1 year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing, that there is no substantial probability that the defendant will become mentally competent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future, and that the defendant does not meet the criteria for commitment, it shall dismiss the charges against the defendant without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

(2) If the incompetency to stand trial or to proceed is due to intellectual disability or autism, the court shall dismiss the charges within a reasonable time after such determination, not to exceed 2 years for felony charges and 1 year for misdemeanor charges, unless the court specifies in its order the reasons for believing that the defendant will become competent within the foreseeable future and specifies the time within which the defendant is expected to become competent. The dismissal shall be without prejudice to the state to refile should the defendant be declared competent to proceed in the future.

(b) Commitment or Treatment during Continuing Incompetency.

(1) If at any time after 5 years following a determination that a person is incompetent to stand trial or proceed with a probation or community control violation hearing when charged with a felony, or 1 year when charged with a misdemeanor, the court, after hearing, determines that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing, that there is no



substantial probability that the defendant will become mentally competent to stand trial or proceed with a probation or community control violation hearing in the foreseeable future, and that the defendant does meet the criteria for commitment, the court shall dismiss the charges against the defendant and commit the defendant to the Department of Children and Family Services for involuntary hospitalization or residential services solely under the provisions of law or may order that the defendant receive outpatient treatment at any other facility or service on an outpatient basis subject to the provisions of those statutes. In the order of commitment, the judge shall order that the administrator of the facility notify the state attorney of the committing circuit no less than 30 days prior to the anticipated date of release of the defendant. If charges are dismissed pursuant to this subdivision, the dismissal shall be without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

(2) If the continuing incompetency is due to intellectual disability or autism, and the defendant either lacks the ability to provide for his or her well-being or is likely to physically injure himself or herself, or others, the defendant may be involuntarily admitted to residential services as provided by law.

(c) Applicability. This rule shall not apply to defendants determined to be incompetent to proceed with sentencing, which is addressed in rule 3.214.

Committee Notes

1980 Adoption. As to involuntary hospitalization, see section 394.467(1), Florida Statutes (1979); as to involuntary admission to residential services, see chapter 393, Florida Statutes (1979).

(b) This provision is meant to deal with the defendant who remains incompetent after 5 years, and who does meet the criteria for involuntary hospitalization. It provides that the criminal charges will be dismissed and the defendant will be involuntarily hospitalized. It further provides that the administrator of the facility must notify the state attorney prior to any release of a defendant committed pursuant to this subdivision.



As to criteria for involuntary hospitalization, see section 394.467(1), Florida Statutes (1979); in case of retardation, see chapter 393, Florida Statutes (1979).

(c) Since commitment criteria for a defendant determined to be incompetent to stand trial are the same as for civil hospitalization, there is no need to continue the difference between felony and misdemeanor procedure.

Section 916.14, Florida Statutes, makes the statute of limitations and defense of former jeopardy inapplicable to criminal charges dismissed because of incompetence of defendant to stand trial.

1988 Amendment. Title. The title has been amended to comply with changes in rule 3.210, but specifically excludes competency to proceed with sentencing, which is addressed in the new rule 3.214.

(a) This provision was amended to reflect changes in rules 3.210 and 3.211. New language is added which specifies that, if charges are dismissed under this rule, it is without prejudice to the state to refile if the defendant is declared competent to proceed in the future. Similar language was previously found in rule 3.214(d), but is more appropriate under this rule.

(b) This provision has been amended for the same reasons as (a) above.

(c) This new provision specifically exempts this rule from being used against a defendant determined to be incompetent to be sentenced, which is now provided in the new rule 3.214. It is replaced by the new rule 3.214.

1992 Amendment. The purpose of the amendment is to gender neutralize the wording of the rule.

Introductory Note Relating to Amendments to Rules 3.210 to 3.219. See notes following rule 3.210 for the text of this note.