WEST VIRGINIA CODE: §15-1E-76B

§15-1E-76b. Lack of mental capacity or mental responsibility: Commitment of accused for examination and treatment.

(a) Persons incompetent to stand trial.

(1) In the case of a person determined under this article to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Department of Human Services.

(2) The department shall take action in accordance with the state statute applicable to persons incompetent to stand trial. If at the end of the period for hospitalization provided in the state statute applicable to persons incompetent to stand trial, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with the state statute applicable to persons incompetent to stand trial.

(3)(A) When the director of a facility in which a person is hospitalized pursuant to subdivision (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the department and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this article. If the person is no longer subject to this article, the department shall take any action within its authority it considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than thirty days after transmitting the notifications required by subdivision (3), subsection (a).

(4) In the application of the state statute applicable to persons incompetent to stand trial to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this article at a time relevant to the application of such section to the person, the state trial court with felony jurisdiction in the county where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

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(b) Persons found not guilty by reason of lack of mental responsibility.

(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this article.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with the state statute applicable to persons incompetent to stand trial.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find, by the standard specified in the state statute applicable to persons incompetent to stand trial, that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect:

(A) The general court-martial convening authority may commit the person to the custody of the department; and

(B) The department shall take action in accordance with the state statute applicable to persons incompetent to stand trial.

(5) The state statute applicable to persons incompetent to stand trial, shall apply in the case of a person hospitalized pursuant to paragraph (B), subdivision (4), except that the state trial court with felony jurisdiction in the county where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) General provisions.

(1) Except as otherwise provided in this subsection and subdivision (1), subsection (d), the state statute most closely comparable to 18 U.S.C. 4247(d), apply in the administration of this section.

(2) In the application of the state statute most closely comparable to 18 U.S.C. 4247(d), to hearings conducted by a court-martial under this section or by order of a general court-martial convening authority under this article, the reference in that section to article 3006A of such title does not apply.

(d) Applicability.

(1) The state statute most closely comparable to chapter 313 of title 18, United States Code, [10 U.S.C. §4241 *et seq*.] referred to in this section apply according to the provisions of this section notwithstanding article 4247(j) of title 18.

(2) If the status of a person as described in section two of this article, terminates while the

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person is, pursuant to this section, in the custody of the department, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this article shall continue to apply to that person notwithstanding the change of status.

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