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MEMORANDUM

To: The Honorable Marvin L. Abney, Chairman, House Finance Committee
The Honorable Ryan W. Pearson, Chairman, Senate Finance Committee

From: Joseph Codega Jr., Budget Officer *JMCJ*

Date: April 29, 2022

Subject: New Article – Relating to the Rhode Island State Psychiatric Hospital (22-H-7123)

The Governor requests that a new article, entitled “Relating to the Rhode Island State Psychiatric Hospital” be included in the FY 2023 Appropriations Act.

This article establishes the Rhode Island State Psychiatric Hospital to furnish care to adult patients in Rhode Island requiring inpatient psychiatric care. The operations of the Rhode Island State Psychiatric Hospital shall fall under the purview of the Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH). In addition, this article allows the Director of BHDDH to establish rules for the government of the Rhode Island State Psychiatric Hospital, regulations for the admission of patients, and shall generally be vested with all the powers necessary for the proper carrying on of the work entrusted to him or her.

Summary of Legislative Changes Contained in this Article:

SECTION 1. § 9-5-9. This section is amended to the law to reflect the commitment of persons to Eleanor Slater Hospital or the Rhode Island State Psychiatric Hospital rather than the institute of mental health and adds the Superior Court to authorities that can commit persons to a state-operated facility. This provision also shifts the authority to receive individuals from any Superior Court or District Court from the Department of Human Services (DHS) to BHDDH.

SECTION 2. § 40.1.-3-7.1. Chapter 40.1-3 is amended by adding a new section which provides authority to the Director of BHDDH to establish the governing rules for the Rhode Island State Psychiatric hospital, regulations for the admission of its patients, and generally vests the director with all the powers necessary for the proper carrying on of the work entrusted to him or her.

SECTION 3. § 40.1.-3-7. This section is amended by removing “hospital” and replacing with “Eleanor Slater Hospital” to specify the state facility for which the Director shall establish rules and regulations. Section 40.1-3-9 is amended by replacing the title of the “Rhode Island medical center” with “Eleanor Slater Hospital” and the “Rhode Island State Psychiatric Hospital” with respect to staff and employees. This provision also expands the authority of the Director of BHDDH to delegate another employee of the department to appoint employees as he or she may deem necessary; this authority presides over either or both Eleanor Slater Hospital and the Rhode Island State Psychiatric Hospital.

SECTION 4. § 40.1-3-8. This amendment repeals in its entirety this section which refers to the names of the designated State hospital for mental disease and the state infirmary. This section had renamed the state mental disease institution and state infirmary of Cranston to a combined “Eleanor Slater Hospital”.

SECTION 5. § 40.1-5-2. This amendment makes changes to various definitions under the Mental Health Law. The definitions of “facility” are amended to reflect the establishment of the new the Rhode Island State Psychiatric Hospital and its capacity under the Mental Health Law. The amendment authorizes both the Eleanor Slater Hospital and the Rhode Island State Psychiatric Hospital to operate without applying for approval from the Director of BHDDH. The definition of “mental disability” is revised to include psychiatric disability. The definition of “patient” is revised to also mean a person admitted voluntarily or re-certified to a facility according to the chapter. The definitions of physician, psychiatric nurse clinician, psychiatrist, psychologist, and social worker are amended to specify persons licensed by the Rhode Island Department of Health (RIDOH). This section also strikes the practice of osteopathy in this state adding pursuant to chapter 37 of title 5 under the definition of physician and psychiatrist. The definition of psychiatric nurse clinician is also amended to specify someone who is and/or a licensed as an advanced practice registered nurse with a population focus of psychiatric/mental health population focus. This section also adds the Rhode Island State Psychiatric Hospital as a facility to receive applicants via emergency certification. The amendment also includes additional provisions for applications to the hospitals and the role of the examining physician and custody process.

SECTION 6. § 40.1-5.3-1. This amendment adds the Rhode Island State Psychiatric Hospital as a facility to receive incompetent persons and others. § 40.1-5.3-2- adds the Rhode Island State Psychiatric Hospital as a facility from which a committed person can be transferred to and from general wards. This provisions also changes the authority to request such transfers from the superintendent to the chief executive officer or the chief medical officer of Eleanor Slater Hospital or the Rhode Island State Psychiatric Hospital. § 40.1-5.3-3 adds an attorney of BHDDH as an allowable “attorney for the state” under this definition. Furthermore, this section allows defendants deemed incompetent to stand trial to be transferred to the Rhode Island State Psychiatric Hospital or Eleanor Slater Hospital for admission and provides the Director of BHDDH pending hearing with the ability to discharge and admit from one state facility to another if clinically necessary or appropriate. It allows any defendant who is incompetent to stand trial to be ordered to either Eleanor Slater Hospital or the Rhode Island State Psychiatric Hospital.

SECTION 7. § 42-12.1-10. This amendment establishes the Rhode Island State Psychiatric Hospital at the John O. Pastore Center in Cranston to furnish care to adult patients in Rhode Island requiring inpatient psychiatric care who meet the following criteria:

- The person has been determined to require specialized mental health care and psychiatric inpatient services that cannot be provided in a correctional facility;
- The person has been ordered to inpatient care by a court of competent jurisdiction for the purpose of competency evaluation, competency restoration and treatment if necessary;
- The person has been ordered to the forensic unit after a finding of not guilty by reason of insanity until such time, subject to a determination of the director or his/her designee, the individual may be safely managed in a civil unit of Eleanor Slater Hospital;

- The person has been transferred to the Rhode Island State Psychiatric Hospital under agreement with the Department of Corrections (DOC).

The amendment also specifies that the new hospital shall comply with RIDOH regulations governing hospitals, be separately licensed from Eleanor Slater Hospital and be subject to RIDOH inspections. The operations of this hospital shall also fall under BHDDH, and the Director of BHDDH is authorized to take actions as necessary to establish the hospital consistent with this statute.

SECTION 8. § 42-12.1-4. This amendment establishes BHDDH to manage, supervise, and control the Rhode Island State Psychiatric Hospital. In addition, this provision adds that the Director of BHDDH may delegate to another employee of the department any functions related to such management, supervision, and control of the state-operated hospitals. § 42-12.1-9 adds the Rhode Island State Psychiatric Hospital as a hospital to replace former facility names previously detailed in the statute.

SECTION 9. This section establishes that the article shall be effective upon passage.

If you have any questions regarding these amendments, please feel free to call me or my staff at 222-6300.

JC:22-Amend-10
Attachments

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
James E. Thorsen, Director of Administration
Brian Daniels, Director, Office of Management and Budget

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SECTION 1. Section 9-5-9 of the General Laws in Chapter 9-5 entitled "Writs, Summons and Process" is hereby amended to read as follows:

Any warrant or mittimus issued from any superior or district court committing any person to the ~~institute of mental health~~ Eleanor Slater Hospital or Rhode Island State Psychiatric Hospital shall be directed to and executed by duly authorized agents of the department of ~~human services~~ behavioral healthcare, developmental disabilities and hospitals, who shall make return thereon, the provisions of any other law to the contrary notwithstanding.

40.1-3-7.1. Rules and regulations for the Rhode Island State Psychiatric Hospital.

SECTION 3. Sections 40.1-3-7 and 40.1-3-9 of the General Laws in Chapter 40.1-3 entitled "Curative Services" are hereby amended to read as follows:

The director of the department shall establish, in his or her discretion, rules for the government of the ~~hospital~~ Eleanor Slater Hospital, regulations for the admission of patients, and shall generally be vested with all the powers necessary for the proper carrying on of the work entrusted to him or her.

The director of behavioral healthcare, developmental disabilities and hospitals shall appoint, or

1 delegate to another employee of the department the authority to appoint, employees, as he or she may
2 deem necessary for the proper management of the ~~institutions~~ facilities of either or both the Eleanor
3 Slater Hospital or the Rhode Island State Psychiatric Hospital.

4 SECTION 4. Section 40.1-3-8 of the General Laws in Chapter 40.1-3 entitled "Curative
5 Services" is hereby repealed:

6 **40.1-3-8. Change of names of hospital for mental diseases and state infirmary.**

7 ~~The name of the state institution at Cranston formerly known as the state asylum for the insane~~
8 ~~or the state hospital for the insane or the state hospital for mental diseases, and the name of the state~~
9 ~~institution at Cranston formerly known as the state almshouse or the state infirmary, or the general~~
10 ~~hospital, shall hereafter be known as the "Eleanor Slater Hospital." In any general law, other public law,~~
11 ~~or resolution of the general assembly, and in any document, record, instrument, or proceeding authorized~~
12 ~~by any such law or resolution, unless the context or subject matter otherwise requires, the words "state~~
13 ~~asylum for the insane" and the words "state hospital for the insane" or "state hospital for mental disease"~~
14 ~~shall be construed to mean the "Eleanor Slater Hospital."~~

15 SECTION 5. Sections 40.1-5-2 and 40.1-5-7 of the General Laws in Chapter 40.1-5 entitled
16 "Mental Health Law" are hereby amended to read as follows:

17 **40.1-5-2. Definitions.**

18 Whenever used in this chapter, or in any order, rule, or regulation made or promulgated pursuant
19 to this chapter, or in any printed forms prepared by the department or the director, unless otherwise
20 expressly stated, or unless the context or subject matter otherwise requires:

21 (1) "Alternatives to admission or certification" means alternatives to a particular facility or
22 treatment program, and shall include, but not be limited to, voluntary or court-ordered outpatient
23 treatment, day treatment in a hospital, night treatment in a hospital, placement in the custody of a friend
24 or relative, placement in a nursing home, referral to a community mental health clinic and home health
25 aide services, or any other services that may be deemed appropriate.

26 (2) "Care and treatment" means psychiatric care, together with such medical, nursing,

1 psychological, social, rehabilitative, and maintenance services as may be required by a patient in
2 association with the psychiatric care provided pursuant to an individualized treatment plan recorded in
3 the patient's medical record.

4 (3) "Department" means the state department of behavioral healthcare, developmental
5 disabilities and hospitals.

6 (4) "Director" means the director of the state department of behavioral healthcare,
7 developmental disabilities and hospitals.

8 (5)(i) "Facility" means ~~a state hospital or psychiatric inpatient facility in the department~~ any
9 public or private hospital licensed by the Rhode Island department of health that maintains staff and
10 facilities, including inpatient units, for the care and treatment of persons with psychiatric illness,
11 psychiatric disorders, and/or psychiatric disabilities; and in order to operate pursuant to Mental Health
12 Act as codified in this chapter, such facility and/or inpatient unit must be approved by the director of the
13 department of behavioral healthcare, developmental disabilities and hospitals upon application of such
14 facility and/or inpatient unit; a psychiatric inpatient facility maintained by a political subdivision of the
15 state for the care and/or treatment of the mentally disabled; a general or specialized hospital maintaining
16 staff and facilities for this purpose; and any of the several community mental health services established
17 pursuant to chapter 8.5 of this title; and any other facility within the state providing inpatient psychiatric
18 care and/or treatment and approved by the director upon application of this facility. Included within this
19 definition shall be all hospitals, institutions, facilities, and services under the control and direction of the
20 director and the department, as provided in this chapter. Nothing contained herein shall be construed to
21 amend or repeal any of the provisions of chapter 16 of title 23.

22 (ii) The Eleanor Slater Hospital is a facility authorized to operate pursuant to this chapter
23 without applying for approval from the director as referenced in paragraph (i).

24 (iii) The Rhode Island State Psychiatric Hospital is a facility authorized to operate pursuant to
25 this chapter without applying for approval from the director as referenced in paragraph (i).

26 (6) "Indigent person" means a person who has not sufficient property or income to support

1 himself or herself, and to support the members of his or her family dependent upon him or her for
2 support, and/or is unable to pay the fees and costs incurred pursuant to any legal proceedings conducted
3 under the provisions of this chapter.

4 (7) "Likelihood of serious harm" means:

5 (i) A substantial risk of physical harm to the person himself or herself as manifested by behavior
6 evidencing serious threats of, or attempts at, suicide;

7 (ii) A substantial risk of physical harm to other persons as manifested by behavior or threats
8 evidencing homicidal or other violent behavior; or

9 (iii) A substantial risk of physical harm to the mentally disabled person as manifested by
10 behavior that has created a grave, clear, and present risk to his or her physical health and safety.

11 (iv) In determining whether there exists a likelihood of serious harm, the physician and the court
12 may consider previous acts, diagnosis, words, or thoughts of the patient. If a patient has been
13 incarcerated, or institutionalized, or in a controlled environment of any kind, the court may give great
14 weight to such prior acts, diagnosis, words, or thoughts.

15 (8) "Mental disability" and/or "psychiatric disability" each mean a mental disorder in which the
16 capacity of a person to exercise self-control or judgment in the conduct of his or her affairs and social
17 relations, or to care for his or her own personal needs, is significantly impaired.

18 (9) "Mental health professional" means a psychiatrist, psychologist, or social worker and such
19 other persons, including psychiatric nurse clinicians, as may be defined by rules and regulations
20 promulgated by the director.

21 (10) "NICS database" means the National Instant Criminal Background Check System as
22 created pursuant to section 103(b) of the Brady Handgun Violence Prevention Act (Brady Act), Pub. L.
23 No. 103-159, 107 Stat. 1536 as established by 28 C.F.R. 25.1.

24 (11) "Patient" means a person admitted voluntarily, certified or re-certified to a facility
25 according to the provisions of this chapter.

26 (12) "Physician" means a person ~~duly~~ licensed by the Rhode Island department of health to

1 practice medicine ~~or osteopathy in this state~~ pursuant to chapter 37 of title 5.

2 (13) "Psychiatric nurse clinician" means a ~~licensed~~, professional registered nurse with a master's
3 degree in psychiatric nursing or related field who is licensed by the Rhode Island department of health
4 pursuant to chapter 34 of title 5 and who is currently working in the mental health field as defined by
5 the American Nurses Association, and/or a licensed advanced practice registered nurse with a population
6 focus of psychiatric/mental health population focus as defined in paragraphs (2) and (12)(vi) of section
7 § 5-34-3.

8 (14) "Psychiatrist" means a person ~~duly~~ licensed by the Rhode Island department of health to
9 practice medicine ~~or osteopathy in this state~~ pursuant to chapter 37 of title 5 who has, in addition,
10 completed three (3) years of graduate psychiatric training in a program approved by the American
11 Medical Association or the American Osteopathic Association.

12 (15) "Psychologist" means a person ~~certified~~ licensed by the Rhode Island department of health
13 pursuant to chapter 44 of title 5.

14 (16) "Social worker" means a person ~~with~~ who has a master's or further advanced degree from
15 a school of social work, that is accredited by the council of social work education and who is licensed
16 by the Rhode Island department of health pursuant to chapter 39.1 of title 5.

17 **40.1-5-7. Emergency Certification.**

18 (a) Applicants.

19 (1) Any physician who, after examining a person, has reason to believe that the person is in need
20 of immediate care and treatment, and is one whose continued unsupervised presence in the community
21 would create an imminent likelihood of serious harm by reason of mental disability, may apply at a
22 facility for the emergency certification of the person thereto. The medical director, or any other
23 physician employed by the proposed facility for certification, may apply under this subsection if no
24 other physician is available and he or she certifies this fact. If an examination is not possible because of
25 the emergency nature of the case and/or because of the refusal of the person to consent to the
26 examination, the applicant on the basis of his or her observation may determine, in accordance with the

1 above, that emergency certification is necessary and may apply therefor. In the event that no physician
2 is available, a qualified mental health professional who believes the person to be in need of immediate
3 care and treatment, and one whose continued unsupervised presence in the community would create an
4 imminent likelihood of serious harm by reason of mental disability, may make the application for
5 emergency certification to a facility. Application shall in all cases be made to the facility that, in the
6 judgment of the applicant at the time of application, would impose the least restraint on the liberty of
7 the person consistent with affording him or her the care and treatment necessary and appropriate to his
8 or her condition.

9 (2) Whenever an applicant ~~who is~~ not employed by a community mental health center
10 established pursuant to chapter 8.5 of this title has reason to believe that ~~either the institute of mental~~
11 ~~health~~ Rhode Island State Psychiatric Hospital or the Eleanor Slater Hospital is the appropriate facility
12 for the person, the application shall be directed to the community mental health center that serves the
13 area in which the person resides, if the person is a Rhode Island resident, or the area in which the person
14 is physically present, if a nonresident, and the qualified mental health professional(s) at the center shall
15 make the final decision on the application to ~~either the institute of mental health~~ Rhode Island State
16 Psychiatric Hospital or the Eleanor Slater Hospital or may determine whether some other disposition
17 should be made.

18 (b) Applications. An application for certification hereunder shall be in writing and filed with
19 the facility to which admission is sought. The application shall be executed within five (5) days prior to
20 the date of filing and shall state that it is based upon a personal observation of the prospective patient
21 by the applicant within the five-day (5) period. It shall include a description of the applicant's credentials
22 and the behavior that constitutes the basis for his or her judgment that the prospective patient is in need
23 of immediate care and treatment and that a likelihood of serious harm by reason of mental disability
24 exists, and shall include, as well, any other relevant information that may assist the admitting physician
25 at the facility to which application is made. ~~Whenever practicable, prior to transporting or arranging for~~
26 ~~the transporting of a prospective patient to a facility, the applicant shall telephone or otherwise~~

1 ~~communicate with the facility to describe the circumstances and known clinical history to determine~~
2 ~~whether it is the proper facility to receive the person, and to give notice of any restraint to be used or to~~
3 ~~determine whether restraint is necessary. The application shall state whether the facility, in the judgment~~
4 ~~of the applicant at the time of application, would impose the least restraint on the liberty of the person~~
5 ~~consistent with affording him or her the care and treatment necessary and appropriate to his or her~~
6 ~~condition. Whenever practicable, prior to transporting or arranging for the transporting of a prospective~~
7 ~~patient to a facility, the applicant shall telephone or otherwise communicate with the facility to describe~~
8 ~~the circumstances and known clinical history to determine whether it is the proper facility to receive the~~
9 ~~person, and to give notice of any restraint to be used or to determine whether restraint is necessary.~~

10 (c) Confirmation; discharge; transfer. Within one hour after reception at a facility, the person
11 regarding whom an application has been filed under this section shall be seen by a physician. As soon
12 as possible, but in no event later than twenty-four (24) hours after reception, a preliminary examination
13 and evaluation of the person by a psychiatrist or a physician under his or her supervision shall begin.
14 The examining psychiatrist shall not be an applicant hereunder. The preliminary examination and
15 evaluation shall be completed within seventy-two (72) hours from its inception by the examining
16 psychiatrist. If the psychiatrist determines that the patient is not a candidate for emergency certification,
17 he or she shall be discharged. If the psychiatrist(s) determines that the person who is the subject of the
18 application is in need of immediate care and treatment and is one whose continued unsupervised
19 presence in the community would create an imminent likelihood of serious harm by reason of mental
20 disability, he or she shall confirm the admission for care and treatment under this section of the person
21 to the facility, provided the facility is one that would impose the least restraint on the liberty of the
22 person consistent with affording him or her the care and treatment necessary and appropriate to his or
23 her condition and that no suitable alternatives to certification are available. If at any time the official in
24 charge of a facility, or his or her designee, determines that the person is not in need of immediate care
25 and treatment, or is not one whose continued unsupervised presence in the community would create an
26 imminent likelihood of serious harm by reason of mental disability, or suitable alternatives to

1 certification are available, he or she shall immediately discharge the person. In addition, the official may
2 arrange to transfer the person to an appropriate facility if the facility to which he or she has been certified
3 is not one that imposes the least restraint on the liberty of the person consistent with affording him or
4 her the care and treatment necessary and appropriate to his or her condition.

5 (d) Custody. Upon the request of an applicant under this section, to be confirmed in writing, it
6 shall be the duty of any peace officer of this state or of any governmental subdivision thereof to whom
7 request has been made, ~~to take into custody and transport the person to the facility designated, the person~~
8 ~~to be expeditiously presented for admission thereto.~~ to take into custody and immediately transport the
9 person to the designated facility for admission thereto.

10 (e) Ex parte court order. An applicant under this section may present a petition to any judge of
11 the district court or any justice of the family court, in the case of a person who is the subject of an
12 application who has not yet attained his or her eighteenth birthday, for a warrant directed to any peace
13 officer of the state or any governmental subdivision thereof to take into custody the person who is the
14 subject of the application and immediately transport the person to a designated facility. The application
15 shall set forth that the person who is to be certified is in need of immediate care and treatment and his
16 or her continued unsupervised presence in the community would create an imminent likelihood of
17 serious harm by reason of mental disability, and the reasons why an order directing a peace officer to
18 transport the person to a designated facility is necessary.

19 (f) Notification of rights. No person shall be certified to a facility under the provisions of this
20 section unless appropriate opportunity is given to apply for voluntary admission under the provisions of
21 § 40.1-5-6 and unless he or she, or a parent, guardian, or next of kin, has been informed, in writing, on
22 a form provided by the department, by the official in charge of the facility: (1) That he or she has a right
23 to the voluntary admission; (2) That a person cannot be certified until all available alternatives to
24 certification have been investigated and determined to be unsuitable; and (3) That the period of
25 hospitalization or treatment in a facility cannot exceed ten (10) days under this section, except as
26 provided in subsection (g) of this section.

(g) Period of treatment. A person shall be discharged no later than ten (10) days measured from the date of his or her admission under this section, unless an application for a civil court certification has been filed and set down for a hearing under the provisions of § 40.1-5-8, or the person remains as a voluntary patient pursuant to § 40.1-5-6.

SECTION 6. Sections 40.1-5.3-1, 40.1-5.3-2 and 40.1-5.3-3 of the General Laws in Chapter 40.1-5.3 entitled "Incompetency to Stand Trial and Persons Adjudged Not Guilty by Reason of Insanity" are hereby amended to read as follows:

40.1-5.3-1. Facility for incompetent persons and others.

(a) The state director of behavioral healthcare, developmental disabilities and hospitals shall maintain, ~~at the state institution of Cranston, an appropriate facility~~ appropriate facilities, including the Rhode Island State Psychiatric Hospital and the Eleanor Slater Hospital, for the confinement of persons committed to his or her custody pursuant to this chapter and shall provide for the proper care, treatment, and restraint of all such persons. All persons now or hereafter committed, pursuant to the provisions of §§ 40.1-5.3-3, 40.1-5.3-4, 40.1-5.3-7, or the provisions of prior law, shall be removed or committed, as the case may be, ~~to the facility~~ into the custody of the director, or his or her designee, who in turn shall ensure the admission of the person to either the Rhode Island State Psychiatric Hospital or the Eleanor Slater Hospital in the discretion of the director or his or her designee.

(b) The cost of care, maintenance, and treatment of persons committed to the custody of the director of behavioral healthcare, developmental disabilities and hospitals, as provided in §§ 40.1-5.3-3 and 40.1-5.3-4, unless otherwise provided for, shall be paid by the person, if he or she has any estate, or by the person liable for his or her support, if such there be; otherwise, the director may maintain without charge or defray the expense of care and treatment of the poor or indigent persons incompetent to stand trial or acquitted on the grounds of insanity.

40.1-5.3-2. ~~Transfers to and from general wards~~ Transfers between state-operated hospitals.

Whenever any person committed, transferred, or removed to either the Rhode Island State

1 Psychiatric Hospital or the Eleanor Slater Hospital as provided for in § 40.1-5.3-1 shall have recovered
2 his or her mental health sufficiently, or if any such person requires more intensive treatment or
3 supervision to be cared for in the general wards of the institute of mental health, the director may, upon
4 request of the ~~superintendent~~ chief executive officer or the chief medical officer of ~~the~~ either state-
5 operated hospital, ~~transfer-discharge~~ the person ~~to the general wards of the state hospital from the first~~
6 hospital and then admit the person to the general units of either the Rhode Island State Psychiatric
7 Hospital or Eleanor Slater Hospital, as the case may be ~~and retransfer him or her to the facility provided~~
8 ~~for in § 40.1-5.3-1 upon a like request.~~

9 **40.1-5.3-3. Competency to stand trial.**

10 (a) Definitions. As used in this section:

11 (1) "Attorney for the state" means the attorney general, an authorized assistant attorney general,
12 an attorney for the department, or other person as may be authorized by law to act as a representative of
13 the state in a criminal proceeding;

14 (2) "Competent" or "competency" means mental ability to stand trial. A person is mentally
15 competent to stand trial if he or she is able to understand the character and consequences of the
16 proceedings against him or her and is able properly to assist in his or her defense;

17 (3) "Department" means the state department of behavioral healthcare, developmental
18 disabilities and hospitals.

19 (4) "Director" means the director of the state department of behavioral healthcare,
20 developmental disabilities and hospitals;

21 (5) "Incompetent" or "incompetency" means mentally incompetent to stand trial. A person is
22 mentally incompetent to stand trial if he or she is unable to understand the character and consequences
23 of the proceedings against him or her or is unable properly to assist in his or her defense.

24 (b) Presumption of competency. A defendant is presumed competent. The burden of proving
25 that the defendant is not competent shall be by a preponderance of the evidence, and the burden of going
26 forward with the evidence shall be on the party raising the issue. The burden of going forward shall be

1 on the state if the court raises the issue.

2 (c) Request for examination. If at any time during a criminal proceeding, prior to the imposition
3 of sentence, it appears that the defendant is not competent, counsel for the defendant or the state, or the
4 court, on its own motion, may request an examination to determine the defendant's competency.

5 (d) Examination of defendant.

6 (1) If the court finds that the request for examination is justified, the court shall order an
7 examination of the defendant. The scope of the examination shall be limited to the question of whether
8 the defendant is competent.

9 (2) The examination shall take place on an outpatient basis if the defendant is to be released on
10 bail or recognizance. If the defendant is ordered confined at the adult correctional institutions, the
11 examination shall take place at that facility. The department shall appoint or designate the physician(s)
12 who will conduct the examinations.

13 (3) If the defendant is ordered confined to the adult correctional institutions, the physician shall
14 complete the examination within five (5) days. If the physician determines that the defendant is
15 incompetent to stand trial, the defendant shall be immediately transferred for admission to the ~~institute~~
16 ~~of mental health's forensic unit~~ Rhode Island State Psychiatric Hospital or the Eleanor Slater Hospital,
17 pending the hearing provided for in subsection (g). At the discretion of the director, pending the hearing
18 provided for in subsection (g), the defendant may be discharged from one state-operated hospital for the
19 purpose of contemporaneously admitting the defendant to the other state-operated hospital pursuant to
20 the procedures enumerated in § 40.1-5.3-2.

21 (e) Bail or recognizance during examination.

22 (1) A defendant for whom a competency examination has been ordered shall be entitled to
23 release on bail or recognizance to the same extent and on the same terms and conditions as if the issue
24 of competency had not been raised.

25 (2) The court may order the defendant to appear at a designated time and place for outpatient
26 examination, and such an appearance may be made a condition of pretrial release.

1 (f) Reports of examining physicians. Each examining physician shall prepare a report, in
2 writing, in which he or she shall state his or her findings concerning the defendant's competency,
3 together with the medical and other data upon which his or her findings are based. The report shall be
4 filed with the court within ten (10) business days if the defendant was ordered confined at the adult
5 correctional institutions, and as soon as practicable if the defendant was released on bail or recognizance,
6 and copies given to the attorney for the state and to the defendant or his or her counsel.

7 (g) Hearing. Upon receipt of the report and appropriate notice to the parties, the court shall hold
8 a hearing unless the report concludes that the defendant is competent and the defendant and the attorney
9 for the state in open court state their assent to the findings on the record. At the hearing, the report shall
10 be introduced, other evidence bearing on the defendant's competence may be introduced by the parties,
11 and the defendant may testify, confront witnesses, and present evidence on the issue of his or her
12 competency. On the basis of the evidence introduced at the hearing, the court shall decide if the
13 defendant is competent.

14 (h) Commitment of the defendant.

15 (1) If the court finds, after the hearing, that a defendant is competent, it shall proceed with the
16 criminal case.

17 (2) If the court finds that a defendant is incompetent, it shall commit him or her to the custody
18 of the director for the purpose of determining whether or not the defendant is likely to imperil the peace
19 and safety of the people of the state or the safety of himself or herself and whether the defendant will
20 regain competency within the maximum period of any placement under this chapter.

21 (3) Not later than fifteen (15) days from the date of the order of commitment, the director shall
22 prepare and file with the court a written report in which he or she shall state his or her opinion regarding
23 the defendant's dangerousness; the likelihood of the defendant becoming competent to stand trial within
24 the maximum period of any placement order; and the recommendations of the department regarding
25 appropriate care and treatment of the defendant.

26 (4) In the event the director is unable to complete the examination of the person in time to render

1 his or her report within the fifteen-day (15) period, he or she shall report that fact, in writing, to the court
2 with a statement of the reasons why the examination and report could not be completed within the
3 prescribed period. A copy of the director's statement shall be given to the attorney general and to the
4 defendant, or his or her counsel, any of whom may respond in writing, or if the court deems it
5 appropriate, orally, to the director's statement. The court may thereupon enter an order extending for an
6 additional twenty (20) days the time in which the director is to file his or her report.

7 (i) Hearing.

8 (1) Upon receipt of the report and appropriate notice to the director, the attorney general, and
9 the defendant, or his or her counsel, the court shall hold a hearing at which the report shall be introduced,
10 other evidence bearing on the question of the mental condition of the person may be introduced by the
11 parties, and the person may testify, confront witnesses, and present evidence.

12 (2) If the court finds that a defendant who is incompetent may be placed on outpatient status
13 without imperiling the peace or safety of the public or the safety of himself or herself, it may commit
14 the defendant to an appropriate outpatient facility that agrees to provide treatment to the defendant and
15 to adhere to the requirements of this section, in order that the defendant may receive treatment to restore
16 or establish his or her competency.

17 (3) If the court finds that a defendant who is incompetent is likely to imperil the peace or safety
18 of the people of the state or the peace and safety of himself or herself, it may order the defendant to the
19 ~~facility established~~ Rhode Island State Psychiatric Hospital or the Eleanor Slater Hospital, pursuant to
20 ~~§ 40.1-5.3-1 or to the general wards of the institute of mental health, if the director agrees that the~~
21 ~~defendant should be placed on the general wards.~~ A person who is ordered to be treated on inpatient
22 status shall not be paroled, furloughed, placed on outpatient status or removed from a locked facility, or
23 otherwise released from the institution where he or she is being treated except upon petition to the court
24 by the director, on notice to the attorney general and the defendant, or his or her counsel, and after
25 hearing thereon and entry of an order by a judge of the court authorizing release. The commitment
26 ordered pursuant to this section shall terminate upon the occurrence of any of the following:

1 (i) The defendant is determined by the court to be competent; or

2 (ii) The charges against the defendant are dismissed pursuant to subsection (j); or

3 (iii) The charges against the defendant are dismissed or a nolle prosequi is entered; or

4 (iv) The defendant is civilly committed pursuant to § 40.1-5-8; or

5 (v) The court finds there is no reasonable likelihood that in the foreseeable future the defendant
6 will become competent and his or her condition is such that he or she cannot properly be committed
7 under § 40.1-5-8.

8 (j) Period of commitment. When a court commits a defendant pursuant to subsection (i)(2) or
9 (i)(3), it shall compute, counting from the date of entry to the order of commitment, the date of the
10 expiration of the period of time equal to two thirds ($\frac{2}{3}$) of the maximum term of imprisonment for the
11 most serious offense with which the defendant is charged. If the maximum term for the most serious
12 offense charged is life imprisonment or death, the court shall, for the purpose of computation, deem the
13 offense to be punishable by a maximum term of thirty (30) years. In the order of commitment, the court
14 shall provide that if, on the date so computed, the defendant is still committed under the order, the
15 charges against him or her shall be dismissed.

16 (k) Periodic review. The director shall petition the court to review the state of competency of a
17 defendant committed pursuant to subsection (i)(2) or (i)(3) not later than six (6) months from the date
18 of the order of commitment and every six (6) months thereafter, or when the director believes the
19 defendant is no longer incompetent, whichever occurs first. Outpatient facilities that are providing
20 treatment to defendants in accordance with subsection (i)(2) shall prepare reports to be submitted to the
21 director in accordance with the requirements of this section. The director shall attach to the petition a
22 report on the condition of the defendant. If the report indicates that the defendant remains incompetent,
23 it shall include a prognosis regarding the likelihood that he or she will become competent prior to the
24 dismissal of the charges pursuant to subsection (j). Copies of the report shall be given to the attorney for
25 the state and to the defendant or his or her counsel.

26 (l) Defendant's right to petition. A defendant committed pursuant to subsection (i)(2) or (i)(3)

1 may at any time petition the court to review the state of his or her competency.

2 (m) Hearing on petition. Upon receipt of a petition pursuant to subsection (k) or (l) and
3 appropriate notice to the defendant, the state, and the director, the court shall hold a hearing at which
4 the parties may introduce evidence as to the defendant's competency, including any reports of the
5 director, and the defendant may testify, confront witnesses, and present evidence as to his or her
6 competency and prognosis. On the basis of the evidence, the court shall make a finding as to the
7 defendant's competency and, if he or she is found to be incompetent, whether a reasonable likelihood
8 exists that he or she will become competent prior to the dismissal of the charges pursuant to subsection
9 (j). If the court finds that the defendant is competent, it shall enter an order to that effect. If the court
10 finds that the defendant is incompetent and that a reasonable likelihood exists that he or she will become
11 competent prior to the dismissal of the charges pursuant to subsection (j), it shall order continuation of
12 the commitment of the defendant. If the court finds that the defendant is incompetent and that a
13 reasonable likelihood does not exist that he or she will become competent prior to the dismissal of the
14 charges pursuant to subsection (j), it shall order that thirty (30) days thereafter the defendant be
15 discharged from detention under the order of commitment. Upon entry of the order, the state may
16 commence proceedings seeking to commit the defendant pursuant to § 40.1-5-8.

17 (n) Statements inadmissible. No statements made by a defendant in the course of an
18 examination conducted pursuant to subsection (d) or during a hearing conducted pursuant to subsection
19 (i) or (m) shall be admissible in evidence against the defendant in any criminal action on any issue other
20 than his or her mental condition. The statements shall be admissible on the issue of his or her mental
21 condition even though they might otherwise be deemed to be privileged communications.

22 (o) Disposition of charges. The court may, at any time, proceed to a disposition of the charges
23 pending against a defendant who has been committed pursuant to subsection (i)(2) or (i)(3) if the factual
24 and legal issues involved can be resolved without regard to the competency of the defendant.

25 SECTION 7. Chapter 42-12.1 of the General Laws entitled "Department of Behavioral
26 Healthcare, Developmental Disabilities and Hospitals" is hereby amended by adding thereto the

1 following section:

2 **42-12.1-10. The Rhode Island State Psychiatric Hospital.**

3 (1) A new hospital is hereby established to furnish care to any adult patient in Rhode Island
4 requiring inpatient psychiatric care, and who meets at least one of the following criteria:

5 (i) The individual has been determined to require specialized mental health care and psychiatric
6 inpatient services that cannot be provided in a correctional facility as defined in § 40.1-5.3-7;

7 (ii) The individual has been ordered to inpatient care by a court of competent jurisdiction for
8 the purpose of competency evaluation, competency restoration, if indicated, and treatment;

9 (iii) The individual has been ordered to the forensic unit after a finding of not guilty by reason
10 of insanity until such time, subject to a determination of the director or his/her designee, the individual
11 may be safely managed in a civil unit of Eleanor Slater Hospital;

12 (iv) The individual has been transferred to the Rhode Island State Psychiatric Hospital under
13 agreement with the department of corrections when specialized services are required that are better
14 provided in a hospital setting and are provided until such time, in the discretion of the director, the
15 patient's condition has improved to the point at which the patient may be returned to the adult
16 correctional institutions and to receive sufficient treatment.

17 (2) The new hospital shall be named the Rhode Island State Psychiatric Hospital and shall
18 consist of facilities, or any units of such facilities, on the grounds of the John O. Pastore Center in
19 Cranston, Rhode Island, as licensed by the department of health.

20 (3) The Rhode Island State Psychiatric Hospital shall be operated by the department of
21 behavioral healthcare, developmental disabilities and hospitals and shall be licensed by the department
22 of health pursuant to chapter 17 of title 23; however, the Rhode Island State Psychiatric Hospital shall
23 be a separate licensed entity from the Eleanor Slater Hospital; and

24 (4) The director of the department of behavioral healthcare, developmental disabilities and
25 hospitals is authorized to take such actions as may be necessary or prudent to establish the Rhode Island
26 State Psychiatric Hospital consistent with this chapter.

1 SECTION 8. Sections 42-12.1-4 and 42-12.1-9 of the General Laws in Chapter 42-12.1 entitled
2 "Department of Behavioral Healthcare, Developmental Disabilities and Hospitals" are hereby amended
3 to read as follows:

4 **42-12.1-4. Management of institutions.**

5 The department of behavioral healthcare, developmental disabilities and hospitals shall have the
6 management, supervision, and control of both the Eleanor Slater Hospital and the Rhode Island State
7 Psychiatric Hospital, and such other functions as have been or may be assigned. The director of the
8 department may delegate to another employee of the department any functions related to the separate
9 management, supervision and control of the state-operated hospitals. The department also shall operate,
10 maintain, and repair the buildings, grounds, and other physical property at those institutions, other than
11 the roads and driveways, which shall be under the care and supervision of the department of
12 transportation.

13 **42-12.1-9. The Eleanor Slater Hospital.**

14 ~~The facilities known as the general hospital, the institution of mental health and the Dr. U. E.~~
15 ~~Zambarano within the state of Rhode Island shall hereafter be named the "Eleanor Slater Hospital."~~ The
16 hospital known as the Eleanor Slater Hospital shall consist of facilities in Cranston and/or Burrillville,
17 or any units of such facilities, as licensed by the department of health.

18 SECTION 9. This article shall take effect upon passage.