

capacity of the defendant to know or appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged;

"(E) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect; and

"(F) The report of the examination shall be filed in triplicate with the clerk of the court who shall cause copies to be delivered to the prosecution and to defense counsel.

"(f) Determination of fitness to proceed; effect of finding of unfitness; proceedings if fitness is regained:

"(1) When the defendant's mental fitness to proceed is drawn in question, the issue of such fitness shall be determined by the court. If neither the prosecution nor counsel for the defendant contests the finding of the report filed pursuant to subsection (e), the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue without a jury. If the report is received in evidence upon such hearing the parties who contested the finding thereof shall have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue. If the court determines that the defendant possesses fitness to proceed to trial, that is, that the defendant has the capacity to understand the proceedings against him and to assist in his own defense, the court shall order the defendant to stand trial within a reasonable time.

"(2) If the court determines at any stage of the proceedings that the defendant lacks mental fitness to proceed, the proceeding against him shall be suspended, pending trial in the future, and the court shall commit the defendant to an appropriate hospital or institution for so long as such unfitness shall endure. Such suspension of proceedings shall not cause jeopardy to attach barring subsequent trial. Whenever the defendant who has been committed to such hospital or other institution is restored to mental fitness in the opinion of the superintendent of such hospital or institution, such superintendent shall certify such fact to the clerk of the court in which the charge against the defendant is pending and the clerk of that court shall furnish copies of said certificate to the parties to the cause.

"(3) After the court receives the certificate of such superintendent that the defendant has regained mental fitness to proceed and the court determines that the defendant has regained such fitness to proceed, the trial proceedings shall be resumed or commenced within a reasonable time. Such determination of fitness may be made by the court on the basis of such certificate that the defendant has regained fitness to proceed provided neither the Government nor counsel for the defendant contests the findings that the defendant has regained such fitness to proceed. If the finding that the defendant has regained fitness to proceed is contested, the court shall hold a hearing without a jury on the issue and shall determine such fitness to proceed.

"(4) If, however, the court is of the opinion that so much time has elapsed since the commitment of the defendant (to determine the fitness to proceed) that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant committed for examination and determination of status by the Mental Health Commission under the provisions of applicable law.

"(g) Determination of irresponsibility on basis of report; access to defendant by psychiatrists of own choice; form of expert testimony:

"(1) If the report filed pursuant to subsection (e) finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which substantially impaired his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and the court is satisfied that such impairment was sufficient to exclude responsibility, the court shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

"(2) When, notwithstanding the report filed pursuant to subsection (e), the defendant wishes to be examined by qualified psychiatrists of his own choice, such psychiatrists shall be permitted to have reasonable access to the defendant for the purposes of such examination.