



28 order the Department of Human Services to examine the person and to report to the court  
29 concerning the defendant's mental condition.

30 (b) The defendant shall be examined by at least two mental health experts not involved in  
31 the current treatment of the defendant.

32 (c) If the issue is sufficiently raised in the petition or if it becomes apparent that the  
33 defendant may be incompetent due to mental retardation, at least one expert experienced in mental  
34 retardation assessment shall evaluate the defendant. Upon appointment of the experts, the  
35 petitioner or other party as directed by the court shall provide information and materials to the  
36 examiners relevant to a determination of the defendant's competency and shall provide copies of  
37 the charging document, arrest or incident reports pertaining to the charged offense, known criminal  
38 history information, and known prior mental health evaluations and treatments.

39 (d) The prosecuting and defense attorneys shall cooperate in providing the relevant  
40 information and materials to the examiners, and the court may make the necessary orders to  
41 provide the information listed in Subsection (2)(c) to the examiners. The court may provide in its  
42 order ~~to~~ ~~appointing the examiners~~ FOR A COMPETENCY EXAMINATION OF A DEFENDANT ~~to~~ that  
42a custodians of mental health records pertaining to the defendant  
43 shall provide those records to the examiners without the need for consent of the defendant or  
44 further order of the court.

45 (3) During the examination under Subsection (2), unless the court or the executive director  
46 of the department directs otherwise, the defendant shall be retained in the same custody or status  
47 he was in at the time the examination was ordered.

48 (4) The experts shall in the conduct of their examination and in their report to the court  
49 consider and address, in addition to any other factors determined to be relevant by the experts:

50 (a) the defendant's present capacity to:

51 (i) comprehend and appreciate the charges or allegations against him;

52 (ii) disclose to counsel pertinent facts, events, and states of mind;

53 (iii) comprehend and appreciate the range and nature of possible penalties, if applicable,  
54 that may be imposed in the proceedings against him;

55 (iv) engage in reasoned choice of legal strategies and options;

56 (v) understand the adversary nature of the proceedings against him;

57 (vi) manifest appropriate courtroom behavior; and

58 (vii) testify relevantly, if applicable;

59 (b) the impact of the mental disorder, or mental retardation, if any, on the nature and  
60 quality of the defendant's relationship with counsel;

61 (c) if psychoactive medication is currently being administered:

62 (i) whether the medication is necessary to maintain the defendant's competency; and

63 (ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability  
64 to participate in the proceedings.

65 (5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall  
66 indicate in the report:

67 (a) which of the above factors contributes to the defendant's incompetency;

68 (b) the nature of the defendant's mental disorder or mental retardation and its relationship  
69 to the factors contributing to the defendant's incompetency;

70 (c) the treatment or treatments appropriate and available; and

71 (d) the defendant's capacity to give informed consent to treatment to restore competency.

72 (6) The experts examining the defendant shall provide an initial report to the court and the  
73 prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report  
74 shall inform the court of the examiner's opinion concerning the competency of the defendant to  
75 stand trial, or, in the alternative, the examiner may inform the court in writing that additional time  
76 is needed to complete the report. If the examiner informs the court that additional time is needed,  
77 the examiner shall have up to an additional 30 days to provide the report to the court and counsel.  
78 The examiner must provide the report within 60 days from the receipt of the court's order unless,  
79 for good cause shown, the court authorizes an additional period of time to complete the  
80 examination and provide the report.

81 (7) Any written report submitted by the experts shall:

82 (a) identify the specific matters referred for evaluation;

83 (b) describe the procedures, techniques, and tests used in the examination and the purpose  
84 or purposes for each;

85 (c) state the expert's clinical observations, findings, and opinions on each issue referred  
86 for examination by the court, and indicate specifically those issues, if any, on which the expert  
87 could not give an opinion; and

88 (d) identify the sources of information used by the expert and present the basis for the  
89 expert's clinical findings and opinions.

90 (8) (a) Any statement made by the defendant in the course of any competency examination,  
91 whether the examination is with or without the consent of the defendant, any testimony by the  
92 expert based upon such statement, and any other fruits of the statement may not be admitted in  
93 evidence against the defendant in any criminal proceeding except on an issue respecting mental  
94 condition on which the defendant has introduced evidence. The evidence may be admitted,  
95 however, where relevant to a determination of the defendant's competency.

96 (b) Prior to examining the defendant, examiners should specifically advise the defendant  
97 of the limits of confidentiality as provided under this Subsection (8) h ~~(b)~~ (a) h .

98 (9) When the report is received the court shall set a date for a mental hearing which shall  
99 be held in not less than five and not more than 15 days, unless the court enlarges the time for good  
100 cause. The hearing shall be conducted according to the procedures outlined in Subsections  
101 62A-12-234(9)(b) through (9)(f). Any person or organization directed by the department to  
102 conduct the examination may be subpoenaed to testify at the hearing. If the experts are in conflict  
103 as to the competency of the defendant, all experts should be called to testify at the hearing if  
104 reasonably available. The court may call any examiner to testify at the hearing who is not called  
105 by the parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

106 (10) A person shall be presumed competent unless the court, by a preponderance of the  
107 evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of  
108 incompetency at the hearing. An adjudication of incompetency to proceed shall not operate as an  
109 adjudication of incompetency to give informed consent for medical treatment or for any other  
110 purpose, unless specifically set forth in the court order.

111 (11) (a) If the court finds the defendant incompetent to stand trial, its order shall contain  
112 findings addressing each of the factors in Subsections ~~[77-15-5]~~(4)(a) and (b). The order issued  
113 pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is  
114 committed or to the person who is responsible for assessing his progress toward competency shall  
115 be provided contemporaneously with the transportation and commitment order of the defendant,  
116 unless exigent circumstances require earlier commitment in which case the court shall forward the  
117 order within five working days of the order of transportation and commitment of the defendant.

118 (b) The order finding the defendant incompetent to stand trial shall be accompanied by:

119 (i) copies of the reports of the experts filed with the court pursuant to the order of  
120 examination if not provided previously;

121 (ii) copies of any of the psychiatric, psychological, or social work reports submitted to the  
122 court relative to the mental condition of the defendant;

123 (iii) any other documents made available to the court by either the defense or the  
124 prosecution, pertaining to the defendant's current or past mental condition.

125 (12) If the court finds it necessary to order the defendant transported prior to the  
126 completion of findings and compilation of documents required under Subsection (11), the  
127 transportation and commitment order delivering the defendant to the Utah State Hospital, or other  
128 mental health facility as directed by the executive director of the Department of Human Services  
129 or his designee, shall indicate that the defendant's commitment is based upon a finding of  
130 incompetency, and the mental health facility's copy of the order shall be accompanied by the  
131 reports of any experts filed with the court pursuant to the order of examination. The executive  
132 director of the Department of Human Services or his designee may refuse to accept a defendant  
133 as a patient unless he is accompanied by a transportation and commitment order which is  
134 accompanied by the reports.

135 (13) Upon a finding of incompetency to stand trial by the court, the prosecuting and  
136 defense attorneys shall provide information and materials relevant to the defendant's competency  
137 to the facility where the defendant is committed or to the person responsible for assessing his  
138 progress towards competency. In addition to any other materials, the prosecuting attorney shall  
139 provide:

140 (a) copies of the charging document and supporting affidavits or other documents used in  
141 the determination of probable cause;

142 (b) arrest or incident reports prepared by a law enforcement agency pertaining to the  
143 charged offense;

144 (c) information concerning the defendant's known criminal history.

145 (14) The court may make any reasonable order to insure compliance with this section.

146 (15) Failure to comply with this section shall not result in the dismissal of criminal  
147 charges.

**Legislative Review Note**  
**as of 1-28-02 9:54 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**