

Commitment Amendments
2025 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Nelson T. Abbott
Senate Sponsor:

LONG TITLE

General Description:

This bill addresses the commitment of individuals in relation to civil, criminal, and juvenile proceedings.

Highlighted Provisions:

This bill:

- defines terms;
- amends provisions relating to the rights and privileges to which an individual is entitled when under commitment to the custody or to the treatment services of a local mental health authority;
- provides when there is a conflict in the opinions of forensic evaluators, if a party seeks an additional competency evaluation then that party is responsible for selecting the evaluator and paying the cost of the evaluator;
- amends provisions and clarifies the process regarding the release from a secured setting of a defendant determined to be incompetent to proceed;
- clarifies when the Department of Health and Human Services is required to provide an updated juvenile competency evaluation after an attainment period; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-5-301, as renumbered and amended by Laws of Utah 2023, Chapter 308

26B-5-310, as renumbered and amended by Laws of Utah 2023, Chapter 308

26B-5-322, as last amended by Laws of Utah 2023, Chapter 184 and renumbered and amended by Laws of Utah 2023, Chapter 308

- 31 **26B-5-362**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 32 **26B-5-371**, as last amended by Laws of Utah 2023, Chapter 184 and renumbered and
 33 amended by Laws of Utah 2023, Chapter 308
 34 **77-15-5**, as last amended by Laws of Utah 2023, Chapters 171, 417 and last amended by
 35 Coordination Clause, Laws of Utah 2023, Chapter 417
 36 **77-15-6**, as last amended by Laws of Utah 2024, Chapter 174
 37 **77-19-203**, as enacted by Laws of Utah 2004, Chapter 137
 38 **77-29-3**, as enacted by Laws of Utah 1980, Chapter 15
 39 **80-6-403**, as last amended by Laws of Utah 2023, Chapter 330

41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **26B-5-301** is amended to read:

43 **26B-5-301 . Definitions.**

44 As used in this part, Part 4, Commitment of Persons Under Age 18, and Part 5, Essential
 45 Treatment and Intervention:

- 46 (1) "Adult" means an individual 18 years old or older.
 47 (2) "Approved treatment facility or program" means a mental health or substance use
 48 treatment provider that meets the goals and measurements described in Subsection
 49 26B-5-102(2)(j).
 50 (3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment
 51 ordered under Section 26B-5-351.
 52 (4) "Attending physician" means a physician licensed to practice medicine in this state who
 53 has primary responsibility for the care and treatment of the declarant.
 54 (5) "Attorney-in-fact" means an adult properly appointed under this part to make mental
 55 health treatment decisions for a declarant under a declaration for mental health treatment.
 56 (6) "Commitment to the custody of a local mental health authority" means that an adult is
 57 committed to the custody of the local mental health authority that governs the mental
 58 health catchment area where the adult resides or is found.
 59 (7) "Community mental health center" means an entity that provides treatment and services
 60 to a resident of a designated geographical area, that operates by or under contract with a
 61 local mental health authority, and that complies with state standards for community
 62 mental health centers.
 63 (8) "Designated examiner" means:
 64 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as

- 65 specially qualified by training or experience in the diagnosis of mental or related
66 illness; or
- 67 (b) a licensed mental health professional designated by the division as specially qualified
68 by training and who has at least five years' continual experience in the treatment of
69 mental illness.
- 70 (9) "Designee" means a physician who has responsibility for medical functions including
71 admission and discharge, an employee of a local mental health authority, or an employee
72 of a person that has contracted with a local mental health authority to provide mental
73 health services under Section 17-43-304.
- 74 (10) "Essential treatment" and "essential treatment and intervention" mean court-ordered
75 treatment at a local substance abuse authority or an approved treatment facility or
76 program for the treatment of an adult's substance use disorder.
- 77 (11) "Harmful sexual conduct" means the following conduct upon an individual without the
78 individual's consent, including the nonconsensual circumstances described in
79 Subsections 76-5-406(2)(a) through (l):
- 80 (a) sexual intercourse;
- 81 (b) penetration, however slight, of the genital or anal opening of the individual;
- 82 (c) any sexual act involving the genitals or anus of the actor or the individual and the
83 mouth or anus of either individual, regardless of the gender of either participant; or
- 84 (d) any sexual act causing substantial emotional injury or bodily pain.
- 85 (12) "Informed waiver" means the patient was informed of a right and, after being informed
86 of that right and the patient's right to waive the right, expressly communicated his or her
87 intention to waive that right.
- 88 (13) "Incapable" means that, in the opinion of the court in a guardianship proceeding under
89 Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's
90 ability to receive and evaluate information effectively or communicate decisions is
91 impaired to such an extent that the person currently lacks the capacity to make mental
92 health treatment decisions.
- 93 (14) "Institution" means a hospital or a health facility licensed under Section 26B-2-206.
- 94 (15) "Lay person" means an individual identified and authorized by a patient to participate
95 in activities related to the patient's commitment, including court appearances, discharge
96 planning, and grievances, except that a patient may revoke a lay person's authorization at
97 any time.
- 98 (16) "Local substance abuse authority" means the same as that term is defined in Section

99 26B-5-101 and described in Section 17-43-201.

100 ~~[(16)]~~ (17) "Mental health facility" means the Utah State Hospital or other facility that
101 provides mental health services under contract with the division, a local mental health
102 authority, a person that contracts with a local mental health authority, or a person that
103 provides acute inpatient psychiatric services to a patient.

104 ~~[(17)]~~ (18) "Mental health officer" means an individual who is designated by a local mental
105 health authority as qualified by training and experience in the recognition and
106 identification of mental illness, to:

107 (a) apply for and provide certification for a temporary commitment; or

108 (b) assist in the arrangement of transportation to a designated mental health facility.

109 ~~[(18)]~~ (19) "Mental illness" means:

110 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
111 behavioral, or related functioning; or

112 (b) the same as that term is defined in:

113 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
114 published by the American Psychiatric Association; or

115 (ii) the current edition of the International Statistical Classification of Diseases and
116 Related Health Problems.

117 ~~[(19)]~~ (20) "Mental health treatment" means convulsive treatment, treatment with
118 psychoactive medication, or admission to and retention in a facility for a period not to
119 exceed 17 days.

120 ~~[(20)]~~ (21) "Patient" means an individual who is:

121 (a) under commitment to the custody or to the treatment services of a local mental health
122 authority; or

123 (b) undergoing essential treatment and intervention.

124 ~~[(21)]~~ (22) "Physician" means an individual who is:

125 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

126 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
127 Practice Act.

128 ~~[(22)]~~ (23) "Serious bodily injury" means bodily injury that involves a substantial risk of
129 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
130 protracted loss or impairment of the function of a bodily member, organ, or mental
131 faculty.

132 ~~[(23)]~~ (24) "State hospital" means the Utah State Hospital established in Section 26B-5-302.

133 [(24)] (25) "Substantial danger" means that due to mental illness, an individual is at serious
134 risk of:

- 135 (a) suicide;
- 136 (b) serious bodily self-injury;
- 137 (c) serious bodily injury because the individual is incapable of providing the basic
138 necessities of life, including food, clothing, or shelter;
- 139 (d) causing or attempting to cause serious bodily injury to another individual;
- 140 (e) engaging in harmful sexual conduct; or
- 141 (f) if not treated, suffering severe and abnormal mental, emotional, or physical distress
142 that:
- 143 (i) is associated with significant impairment of judgment, reason, or behavior; and
144 (ii) causes a substantial deterioration of the individual's previous ability to function
145 independently.

146 [(25)] (26) "Treatment" means psychotherapy, medication, including the administration of
147 psychotropic medication, or other medical treatments that are generally accepted
148 medical or psychosocial interventions for the purpose of restoring the patient to an
149 optimal level of functioning in the least restrictive environment.

150 Section 2. Section **26B-5-310** is amended to read:

151 **26B-5-310 . Restrictions and limitations -- Rights and privileges.**

- 152 (1) Subject to the general rules of the division, and except to the extent that the director or [
153 his] the director's designee determines that it is necessary for the welfare of the patient to
154 impose restrictions, every patient is entitled to:
- 155 (a)(i) communicate, by sealed mail or otherwise, with persons, including official
156 agencies, inside or outside the [facility] responsible mental health authority, local
157 substance abuse authority, or approved treatment facility or program;
- 158 (ii) be provided with letter-writing materials, including postage; and
- 159 (iii) have staff of the responsible mental health authority, local substance abuse
160 authority, or approved treatment facility or program assist the patient if the patient
161 is unable to write, prepare, or mail correspondence;
- 162 (b) have frequent and consistent opportunities to receive visitors at reasonable times that
163 do not interfere with clinical activities;[-and]
- 164 (c) speak or visit with the patient's attorney or clergy member within a reasonable period
165 of time;
- 166 (d) exercise all civil rights, including the right to dispose of property, execute

- 167 instruments, make purchases, enter contractual relationships, and vote, unless the
168 patient has been adjudicated to be incompetent and has not been restored to legal
169 capacity[-] :
- 170 (e) have access to adequate water and food, and to have the patient's nutritional needs
171 met in a manner that is consistent with recognized dietary practices;
- 172 (f) be treated fairly, with respect and recognition of the patient's dignity and
173 individuality;
- 174 (g) not be discriminated against on the basis of a characteristic identified in Subsection
175 57-21-5(1);
- 176 (h) within 72 business hours after the patient's request, see and receive the services of a
177 patient representative, including a peer specialist or patient advocate, who is not
178 involved in the direct clinical care of the patient;
- 179 (i) have the patient's behavioral health orders for scope of treatment, declaration for
180 mental health treatment, or other psychiatric advance directive reviewed and
181 considered as the preferred treatment option for involuntary administration of
182 medications by the responsible local mental health authority, local substance abuse
183 authority, or approved treatment facility or program, unless by clear and convincing
184 evidence the patient's directive does not qualify as effective participation in
185 behavioral health decision-making;
- 186 (j) with the patient's consent, have the patient's information or records disclosed to an
187 adult family member, the patient's lay person, or, in accordance with state and federal
188 law, to a protection and advocacy system designated pursuant to 42 U.S.C. Sec.
189 10801 et seq.;
- 190 (k)(i) access to a telephone to make and receive private calls, unless determined a
191 clinical or safety risk; and
- 192 (ii) staff assistance to be able to communicate with others, if the patient does not have
193 a contact list;
- 194 (l) wear the patient's own clothes, keep and use the patient's own possessions, and keep
195 and be allowed to spend a reasonable amount of the patient's own money, unless
196 deemed a clinical or safety risk; and
- 197 (m) be told:
- 198 (i) the reason for the patient's detainment and the limitation of the patient's
199 detainment, including a description of the patient's right to refuse medication
200 unless the patient requires emergency medications; and

201 (ii) that the patient's commitment does not mean all treatment during commitment is
 202 mandatory.

203 (2)(a) When any right of a patient is limited or denied, the nature, extent, and reason for
 204 that limitation or denial shall be entered in the patient's treatment record.

205 (b) Information pertaining to a denial of any right of a patient shall be made available,
 206 upon request, to the patient, the patient's attorney, and the patient's lay person.

207 (c) Any continuing denial or limitation of any right of a patient shall be reviewed every
 208 30 days and shall also be entered in [that] the patient's treatment record.

209 (d) Notice of [that] a continuing denial of any right of a patient in excess of 30 days shall
 210 be sent to the division, the [appropriate] responsible local mental health authority, the
 211 appropriate local substance abuse authority, or an approved treatment facility or
 212 program[, whichever is most applicable to the patient].

213 [~~3~~] ~~Notwithstanding any limitations authorized under this section on the right of~~
 214 ~~communication, each patient is entitled to communicate by sealed mail with the~~
 215 ~~appropriate local mental health authority, the appropriate local substance abuse~~
 216 ~~authority, an approved treatment facility or program, the division, the patient's attorney,~~
 217 ~~and the court, if any, that ordered the patient's commitment or essential treatment. In no~~
 218 ~~case may the patient be denied a visit with the legal counsel or clergy of the patient's~~
 219 ~~choice.]~~

220 [~~4~~] (3) Local mental health authorities, local substance abuse authorities, and approved
 221 treatment facilities or programs shall provide reasonable means and arrangements for
 222 informing involuntary patients of their right to release as provided in this chapter, and
 223 for assisting them in making and presenting requests for release.

224 [~~5~~] (4) [~~Mental~~] Local mental health facilities, local substance abuse authorities, and
 225 approved treatment facilities or programs shall post a statement, created by the division,
 226 describing a patient's rights under Utah law.

227 [~~6~~] (5) A local mental health authority, local substance abuse authority, or approved
 228 treatment facility or program may not intentionally retaliate or discriminate against a
 229 detained patient or employee for contacting or providing information to any official or to
 230 an employee of any state protection and advocacy agency or for initiating, participating
 231 in, or testifying in a grievance procedure or in an action for any remedy authorized
 232 pursuant to this section.

233 (6) Notwithstanding Section 53B-17-303, an individual committed under this chapter has
 234 the right to determine the final disposition of that individual's body after death.

235 Section 3. Section **26B-5-322** is amended to read:

236 **26B-5-322 . Criminal's escape -- Penalty.**

237 Any person committed to the state hospital under the provisions of [~~Title 77, Chapter 15,~~
238 ~~Inquiry into Sanity of Defendant~~] Title 77, Chapter 15, Defendant's Competency to Proceed, or
239 Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, who escapes
240 or leaves the state hospital without proper legal authority is guilty of a class A misdemeanor.

241 Section 4. Section **26B-5-362** is amended to read:

242 **26B-5-362 . Commitment and care of criminally insane.**

243 Nothing contained in this part may be construed to alter or change the method presently
244 employed for the commitment and care of the criminally insane as provided in [~~Title 77,~~
245 ~~Chapter 15, Inquiry into Sanity of Defendant~~] Title 77, Chapter 15, Defendant's Competency to
246 Proceed.

247 Section 5. Section **26B-5-371** is amended to read:

248 **26B-5-371 . Utah Forensic Mental Health Facility -- Design and operation --**
249 **Security.**

250 (1) The forensic mental health facility is a secure treatment facility.

251 (2)(a) The forensic mental health facility accommodates the following populations:

252 (i) prison inmates displaying mental illness necessitating treatment in a secure mental
253 health facility;

254 (ii) criminally adjudicated persons found guilty with a mental illness or guilty with a
255 mental condition at the time of the offense undergoing evaluation for a mental
256 condition under Title 77, Chapter 16a, Commitment and Treatment of Individuals
257 with a Mental Condition;

258 (iii) criminally adjudicated persons undergoing evaluation for competency or found
259 guilty with a mental condition or guilty with a mental condition at the time of the
260 offense under Title 77, Chapter 16a, Commitment and Treatment of Individuals
261 with a Mental Condition, who also have an intellectual disability;

262 (iv) persons undergoing evaluation for competency or found by a court to be
263 incompetent to proceed in accordance with [~~Title 77, Chapter 15, Inquiry into~~
264 ~~Sanity of Defendant~~] Title 77, Chapter 15, Defendant's Competency to Proceed, or
265 not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

266 (v) persons who are civilly committed to the custody of a local mental health
267 authority in accordance with this part, and who may not be properly supervised by
268 the Utah State Hospital because of a lack of necessary security, as determined by

- 269 the superintendent or the superintendent's designee; and
- 270 (vi) persons ordered to commit themselves to the custody of the division for
- 271 treatment at the Utah State Hospital as a condition of probation or stay of sentence
- 272 pursuant to Title 77, Chapter 18, The Judgment.
- 273 (b) Placement of an offender in the forensic mental health facility under any category
- 274 described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the
- 275 offender's status as established by the court at the time of adjudication.
- 276 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 277 department shall make rules providing for the allocation of beds to the categories
- 278 described in Subsection (2)(a).
- 279 (3) The department shall:
- 280 (a) own and operate the forensic mental health facility;
- 281 (b) provide and supervise administrative and clinical staff; and
- 282 (c) provide security staff who are trained as psychiatric technicians.
- 283 (4) Pursuant to Subsection 26B-5-303(3) the executive director shall designate individuals
- 284 to perform security functions for the state hospital.

285 Section 6. Section **77-15-5** is amended to read:

286 **CHAPTER 15. DEFENDANT'S COMPETENCY TO PROCEED**

287 **77-15-5 . Order for hearing -- Stay of other proceedings -- Examinations of**

288 **defendant -- Scope of examination and report.**

- 289 (1) A court in which criminal proceedings are pending shall stay all criminal proceedings, if:
- 290 (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or
- 291 (b) the court raises the issue of the defendant's competency under Section 77-15-4.
- 292 (2) The court in which the petition described in Subsection (1)(a) is filed:
- 293 (a) shall inform the court in which criminal proceedings are pending of the petition, if
- 294 the petition is not filed in the court in which criminal proceedings are pending;
- 295 (b) shall review the allegations of incompetency;
- 296 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of
- 297 the petition, if the court finds the petition is not clearly sufficient on its face;
- 298 (d) shall hold a hearing, if the petition is opposed by either party; and
- 299 (e) may not order an examination of the defendant or order a hearing on the mental
- 300 condition of the defendant unless the court finds that the allegations in the petition
- 301 raise a bona fide doubt as to the defendant's competency to stand trial.
- 302 (3)(a) If the court finds that there is a bona fide doubt as to the defendant's competency

- 303 to stand trial, the court shall order the department to have one or two forensic
304 evaluators complete a competency evaluation for the defendant in accordance with
305 Subsection (3)(b) and provide a report to the court regarding the competency of the
306 defendant to stand trial.
- 307 (b) The court shall order the department to have the defendant evaluated by one forensic
308 evaluator unless:
- 309 (i) the defendant is charged with a capital felony; or
310 (ii) the defendant is charged with a felony that is not a capital felony, and the court
311 determines, based on the allegations in the petition, that good cause exists to order
312 two competency evaluations.
- 313 (c)(i) This section does not prohibit a party from seeking an additional forensic
314 evaluator to conduct a competency evaluation of the defendant.
- 315 (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c),
316 the party shall:
- 317 (A) select the additional forensic evaluator; and
318 (B) pay the costs of the additional forensic evaluator.
- 319 (d) The stipulation by parties to a bona fide doubt as to the defendant's competency to
320 stand trial alone may not take the place of a competency evaluation ordered under
321 this Subsection (3).
- 322 (e) In accordance with state licensing laws, the court may only order the department to
323 provide an initial evaluation and progress toward competency evaluation for a
324 defendant who is located within the state.
- 325 (4)(a) If the petition or other information sufficiently raises concerns that the defendant
326 may have an intellectual disability, at least one forensic evaluator who is experienced
327 in assessments of intellectual disabilities shall conduct a competency evaluation.
- 328 (b) The petitioner or other party, as directed by the court or requested by the department,
329 shall provide to the forensic evaluator nonmedical information and materials relevant
330 to a determination of the defendant's competency, including the charging document,
331 arrest or incident reports pertaining to the charged offense, known criminal history
332 information, and known prior mental health evaluations and treatments.
- 333 (c) For purposes of a competency evaluation, a custodian of mental health records
334 pertaining to the defendant, including the defendant's prior mental health evaluations
335 or records relating to the defendant's substance use disorder, may provide the records
336 to:

- 337 (i) with the defendant's consent, a forensic evaluator or the department on the
338 department's request; or
339 (ii) a forensic evaluator by court order.
- 340 (d) A court order under Subsection (4)(c) shall include a protective order that expires
341 180 days after the day on which:
342 (i) the defendant is found guilty;
343 (ii) the defendant enters a guilty plea;
344 (iii) the court sentences the defendant; or
345 (iv) if the case is appealed, the day on which the final appeal is resolved.
- 346 (e)(i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f),
347 the court shall order the forensic evaluator to destroy all records subject to the
348 protective order within the 180 day period described in Subsection (4)(d).
349 (ii) A forensic evaluator is not required to destroy the records subject to the
350 protective order if destroying the records is a violation of ethical standards to
351 which the forensic evaluator is subject for occupational licensing.
- 352 (f) The court may extend the protective order described in Subsection (4)(d) if:
353 (i) the court finds the defendant incompetent to proceed without a substantial
354 probability that the defendant will become competent in the foreseeable future;
355 (ii) the prosecutor or another individual indicates to the court that the prosecutor or
356 other individual will seek civil commitment of the defendant under Section
357 77-15-6; and
358 (iii) the court orders the records be maintained and used only for the purposes of
359 examining the defendant in connection with the petition for civil commitment.
- 360 (g) An order for a competency evaluation may not contain an order for any other inquiry
361 into the mental state of the defendant that is not described in this Subsection (4).
- 362 (5) Pending a competency evaluation, unless the court or the department directs otherwise,
363 the defendant shall be retained in the same custody or status that the defendant was in at
364 the time the examination was ordered.
- 365 (6) In the conduct of a competency evaluation and in a report to the court, a forensic
366 evaluator shall consider and address, in addition to any other factors determined to be
367 relevant by the forensic evaluator:
368 (a)[(†)] the impact of the defendant's mental illness or intellectual disability on the
369 defendant's present ability to:
370 [(A)] (i) rationally and factually understand the criminal proceedings against the

- 371 defendant; and
- 372 [~~(B)~~] (ii) consult with the defendant's legal counsel with a reasonable degree of
- 373 rational understanding in order to assist in the defense;
- 374 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator
- 375 shall consider, as applicable[~~z~~]
- 376 [~~(+)~~] the defendant's present ability to:
- 377 [~~(A)~~] (i) understand the charges or allegations against the defendant;
- 378 [~~(B)~~] (ii) communicate facts, events, and states of mind;
- 379 [~~(C)~~] (iii) understand the range of possible penalties associated with the charges or
- 380 allegations against the defendant;
- 381 [~~(D)~~] (iv) engage in reasoned choice of legal strategies and options;
- 382 [~~(E)~~] (v) understand the adversarial nature of the proceedings against the defendant;
- 383 [~~(F)~~] (vi) manifest behavior sufficient to allow the court to proceed; and
- 384 [~~(G)~~] (vii) testify relevantly, if applicable; and
- 385 (c) whether the defendant is exhibiting false or exaggerated physical or psychological
- 386 symptoms relevant to the defendant's capacity to stand trial.
- 387 (7) Upon a determination that the defendant is incompetent to proceed, the forensic
- 388 evaluator shall indicate in the report to the court:
- 389 (a) the factors that contribute to the defendant's incompetency, including the nature of
- 390 the defendant's mental illness or intellectual disability, if any, and its relationship to
- 391 the factors contributing to the defendant's incompetency;
- 392 (b) whether there is a substantial probability that:
- 393 (i) restoration treatment may bring the defendant to competency to stand trial in the
- 394 foreseeable future; or
- 395 (ii) the defendant cannot become competent to stand trial in the foreseeable future;
- 396 (c) whether the defendant would benefit from restoration treatment; and
- 397 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c),
- 398 an explanation of the reason for the determination and a summary of the treatment
- 399 provided to the defendant in the past.
- 400 (8)(a) A forensic evaluator shall provide an initial report to the court and the prosecuting
- 401 and defense attorneys within 30 days of the receipt of the court's order. The report
- 402 shall inform the court of the examiner's opinion concerning the competency of the
- 403 defendant to stand trial.
- 404 (b)(i) If the forensic evaluator is unable to complete the report in the time specified in

- 405 Subsection (8)(a), the forensic evaluator shall give written notice to the court.
- 406 (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i)
- 407 shall receive a 15-day extension, giving the forensic evaluator a total of 45 days
- 408 after the day on which the forensic evaluator received the court's order to conduct
- 409 a competency evaluation and file a report.
- 410 (iii) The court may further extend the deadline for completion of the evaluation and
- 411 report if the court determines that there is good cause for the extension.
- 412 (iv) Upon receipt of an extension described in Subsection (8)(b)(iii), the forensic
- 413 evaluator shall file the report as soon as reasonably possible.
- 414 (9) Any written report submitted by a forensic evaluator shall:
- 415 (a) identify the case ordered for evaluation by the case number;
- 416 (b) describe the procedures, techniques, and tests used in the examination and the
- 417 purpose or purposes for each, the time spent by the forensic evaluator with the
- 418 defendant for purposes of the examination, and the compensation to be paid to the
- 419 evaluator for the report;
- 420 (c) state the forensic evaluator's clinical observations, findings, and opinions on each
- 421 factor described in Subsection (6); and
- 422 (d) identify the sources of information used by the forensic evaluator and present the
- 423 basis for the forensic evaluator's clinical findings and opinions.
- 424 (10)(a) Any statement made by the defendant in the course of any competency
- 425 examination, whether the examination is with or without the consent of the
- 426 defendant, any testimony by a forensic evaluator based upon the statement, and any
- 427 other fruits of the statement may not be admitted in evidence against the defendant in
- 428 any criminal proceeding except on an issue respecting mental condition on which the
- 429 defendant has introduced evidence, unless the evidence is relevant to a determination
- 430 of the defendant's competency.
- 431 (b) Before examining the defendant, the forensic evaluator shall specifically advise the
- 432 defendant of the limits of confidentiality as provided under Subsection (10)(a).
- 433 (11)(a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a
- 434 competency hearing. The hearing shall be held not less than five and not more than
- 435 15 days after the day on which the court received the forensic evaluators' reports,
- 436 unless for good cause the court sets a later date.
- 437 (b) Any person directed by the department to conduct the competency evaluation may be
- 438 subpoenaed to testify at the hearing.

- 439 (c) The court may call any forensic evaluator to testify at the hearing who is not called
440 by the parties. [-]If the court calls a forensic evaluator, counsel for the parties may
441 cross-examine the forensic evaluator.
- 442 (d)(i) If the forensic evaluators are in conflict as to the competency of the defendant,
443 all forensic evaluators should be called to testify at the hearing if reasonably
444 available.
- 445 (ii) A conflict in the opinions of the forensic evaluators does not require the
446 appointment of an additional forensic evaluator unless the court finds good cause
447 for the appointment.
- 448 (iii) If a party seeks an additional competency evaluation under this Subsection (11),
449 that party shall:
- 450 (A) select the additional forensic evaluator; and
451 (B) pay the costs of the additional forensic evaluator.
- 452 (12)(a)(i) A defendant shall be presumed competent to stand trial unless the court, by
453 a preponderance of the evidence, finds the defendant incompetent to proceed.
- 454 (ii) The burden of proof is upon the proponent of incompetency at the hearing.
- 455 (b) An adjudication of incompetent to proceed does not operate as an adjudication of
456 incompetency to give informed consent for medical treatment or for any other
457 purpose, unless specifically set forth in the court order.
- 458 (13) In determining the defendant's competency to stand trial, the court shall consider the
459 totality of the circumstances, including:
- 460 (a) the petition;
461 (b) the defendant's criminal and arrest history;
462 (c) prior mental health evaluations and treatments provided to the court by the defendant;
463 (d) subject to Subsection (15), whether the defendant was found incompetent to proceed
464 in a criminal action unrelated to the charged offense for which the petition is filed;
465 (e) the testimony of lay witnesses, if any;
466 (f) the forensic evaluator's testimony and report;
467 (g) the materials on which the forensic evaluator's report is based; and
468 (h) any other relevant evidence or consideration bearing on the competency of the
469 defendant.
- 470 (14) If the court finds the defendant incompetent to proceed:
- 471 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:
472 (i) include findings addressing each of the factors in Subsection (6)(a);

- 473 (ii) include a transportation order, if necessary;
- 474 (iii) be accompanied by the forensic evaluators' reports, any psychiatric,
- 475 psychological, or social work reports submitted to the court relative to the mental
- 476 condition of the defendant, and any other documents made available to the court
- 477 by either the defense or the prosecution, pertaining to the defendant's current or
- 478 past mental condition; and
- 479 (iv) be sent by the court to the department; and
- 480 (b) the prosecuting attorney shall provide to the department:
- 481 (i) the charging document and probable cause statement, if any;
- 482 (ii) arrest or incident reports prepared by law enforcement and pertaining to the
- 483 charged offense; and
- 484 (iii) additional supporting documents.
- 485 (15) The court may not find the defendant incompetent to proceed based solely on a court
- 486 having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6
- 487 in an unrelated criminal action if the court in the unrelated criminal action ordered the
- 488 release more than one year before the day on which the petition described in Subsection
- 489 (13)(a) is filed.
- 490 (16) The court may make any reasonable order to ensure compliance with this section.
- 491 (17) Failure to comply with this section does not result in the dismissal of criminal charges.
- 492 Section 7. Section **77-15-6** is amended to read:
- 493 **77-15-6 . Commitment on finding of incompetency to stand trial -- Subsequent**
- 494 **hearings -- Notice to prosecuting attorneys.**
- 495 (1)(a) Except as provided in Subsection (5), if after a hearing a court finds a defendant to
- 496 be incompetent to proceed, the court shall order the defendant committed to the
- 497 department for restoration treatment.
- 498 (b)(i) Except as provided in Subsection (1)(b)(ii), the court may recommend but may
- 499 not order placement of a defendant who is found incompetent to proceed.
- 500 (ii) The court may order that the defendant be placed in a secure setting rather than a
- 501 nonsecure setting.
- 502 (c) Following restoration screening, the department's designee shall designate and
- 503 inform the court of the specific placement and restoration treatment program for the
- 504 defendant.
- 505 (d) Restoration treatment shall be of sufficient scope and duration to:
- 506 (i) restore the defendant to competency; or

- 507 (ii) determine whether the defendant can be restored to competency in the foreseeable
508 future.
- 509 (e) A defendant who a court determines is incompetent to proceed may not be held for
510 restoration treatment longer than:
- 511 (i) the time reasonably necessary to determine that the defendant cannot become
512 competent to stand trial in the foreseeable future; and
- 513 (ii) the maximum period of incarceration that the defendant could receive if the
514 defendant were convicted of the most severe offense of the offenses charged.
- 515 (2)(a) A defendant who is receiving restoration treatment shall receive a progress toward
516 competency evaluation, by:
- 517 (i) a forensic evaluator, designated by the department; and
- 518 (ii) an additional forensic evaluator, if requested by a party and paid for by the
519 requesting party.
- 520 (b) A forensic evaluator shall complete a progress toward competency evaluation and
521 submit a report within 90 days after the day on which the forensic evaluator receives
522 the commitment order from the department.
- 523 (c) The report shall:
- 524 (i) assess whether the defendant is exhibiting false or exaggerated physical or
525 psychological symptoms;
- 526 (ii) describe any diagnostic instruments, methods, and observations used by the
527 evaluator to make the determination;
- 528 (iii) describe the defendant's current mental illness or intellectual disability, if any;
- 529 (iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated
530 symptoms on the defendant's competency to stand trial;
- 531 (v) assess the facility's or program's capacity to provide appropriate restoration
532 treatment for the defendant;
- 533 (vi) assess the nature of restoration treatment provided to the defendant;
- 534 (vii) assess what progress the defendant has made toward competency restoration,
535 with respect to the factors identified by the court in its initial order;
- 536 (viii) assess whether the defendant can reasonably be restored to competency in the
537 foreseeable future given the restoration treatment currently being provided and the
538 facility's or program's capacity to provide appropriate restoration treatment for the
539 defendant;
- 540 (ix) assess the likelihood of restoration to competency, the amount of time estimated

- 541 to achieve competency, or the amount of time estimated to determine whether
542 restoration to competency may be achieved; and
- 543 (x) include a statement by the facility's treating physician regarding:
- 544 (A) whether the defendant is taking any antipsychotic medication as prescribed;
- 545 (B) whether ongoing administration of antipsychotic medication is necessary to
546 maintain the defendant's competency to stand trial;
- 547 (C) whether antipsychotic medication is substantially likely to maintain the
548 defendant's competency to stand trial;
- 549 (D) whether antipsychotic medication is substantially unlikely to produce side
550 effects which would significantly interfere with the defendant's ability to assist
551 in the defendant's defense;
- 552 (E) that no less intrusive means are available, and whether any of those means
553 have been attempted to render the defendant competent; and
- 554 (F) whether antipsychotic medication is medically appropriate and in the
555 defendant's best medical interest in light of the defendant's medical condition.
- 556 (3)(a) The court on its own motion or upon motion by either party or the department
557 may appoint an additional forensic evaluator to conduct a progress toward
558 competency evaluation.
- 559 (b) If the court appoints an additional forensic evaluator upon motion of a party, that
560 party shall pay the costs of the additional forensic evaluator.
- 561 (4)(a) Within 15 days after the day on which the court receives the forensic evaluator's
562 report of the progress toward competency evaluation, the court shall hold a hearing to
563 review the defendant's competency.
- 564 (b) At the hearing, the burden of proving that the defendant is competent to stand trial is
565 on the proponent of competency.
- 566 (c) Following the hearing, the court shall determine by a preponderance of evidence
567 whether the defendant:
- 568 (i) is competent to stand trial;
- 569 (ii) is competent, but requires the ongoing administration of antipsychotic medication
570 in order to maintain the defendant's competency to stand trial;
- 571 (iii) is incompetent to proceed, with a substantial probability that the defendant may
572 become competent in the foreseeable future; or
- 573 (iv) is incompetent to proceed, without a substantial probability that the defendant
574 may become competent in the foreseeable future.

- 575 (5)(a) If at any time the court determines that the defendant is competent to stand trial,
576 the court shall:
- 577 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
578 charges;
 - 579 (ii) order that the defendant be returned to the placement and status that the defendant
580 was in at the time when the petition for the adjudication of competency was filed
581 or raised by the court, unless the court determines that placement of the defendant
582 in a less restrictive environment is more appropriate;
 - 583 (iii) order the ongoing administration of antipsychotic medication to the defendant for
584 the purpose of maintaining the defendant's competency to stand trial, if the court
585 finds that the administration of antipsychotic medication is necessary to maintain
586 the defendant's competency to stand trial under Subsection (4)(c)(ii); and
 - 587 (iv) require the agency, jail, or prison with custody over the defendant to report to the
588 court any noncompliance with the court's orders under this Subsection (5) within
589 48 hours of the noncompliance.
- 590 (b) If the court determines that the defendant is incompetent to proceed with a
591 substantial probability that the defendant may become competent in the foreseeable
592 future, the court may order that the defendant remain committed to the department or
593 the department's designee for the purpose of restoration treatment.
- 594 (c)(i) If the court determines that the defendant is incompetent to proceed without a
595 substantial probability that the defendant may become competent in the
596 foreseeable future, the court shall order the defendant released from commitment
597 to the department, unless the prosecutor or another individual informs the court
598 that civil commitment proceedings pursuant to Title 26B, Chapter 5, Health Care -
599 Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of
600 Services for People with Disabilities, will be initiated.
- 601 (ii) The commitment proceedings must be initiated by a petition filed within seven
602 days after the day on which the court makes the determination described in
603 Subsection (4)(c)(iv), unless the court finds that there is good cause to delay the
604 initiation of the civil commitment proceedings.
 - 605 (iii) The court may order the defendant to remain committed to the department until
606 the civil commitment proceedings conclude.
 - 607 (iv) If the defendant is civilly committed and admitted to a secure setting, the
608 department shall provide notice to the court that adjudicated the defendant

609 incompetent to proceed and to the prosecution agency that prosecuted the case at
610 least [60] 15 days before any proposed release of the committed individual from
611 the secure setting.

612 (v) If the prosecution agency that prosecuted the case intends to refile charges against
613 the committed individual:

614 (A) the prosecution agency shall provide written notice of that intent to the
615 department within 15 days after the department provides the notice described
616 in Subsection (5)(c)(iv); and

617 (B) the department shall postpone release of the committed individual for at least
618 30 days after the day on which the department receives the written notice of
619 intent from the prosecution agency.

620 (vi) If the prosecution agency that prosecuted the case refiles charges against the
621 committed individual and the individual's competency is raised, the department
622 shall postpone release of the individual until the competency proceedings
623 conclude.

624 (6)(a) At any time following the court's order under Subsection (5)(a)(iii), the defendant,
625 the prosecuting attorney, the department, the treating physician, or the agency, jail, or
626 prison with custody over the defendant, may notify the court of the need to review
627 the medication order under Subsection (5)(a)(iii) for continued appropriateness and
628 feasibility.

629 (b) The court shall set the matter for a hearing if the notification under Subsection (6)(a)
630 establishes good cause to review the matter.

631 (7) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall
632 schedule a competency review hearing for the earlier of:

633 (a) the department's best estimate of when the defendant may be restored to competency;
634 or

635 (b) three months after the day on which the court determined under Subsection (5)(b) to
636 extend the defendant's commitment.

637 (8) Unless the defendant is charged with a crime listed in Subsection (9), if a defendant is
638 incompetent to proceed by the day of the competency review hearing that follows the
639 extension of a defendant's commitment, the court shall:

640 (a) order the defendant be:

641 (i) released or temporarily detained pending civil commitment proceedings as
642 described in Subsection (5)(c); and

- 643 (ii) terminate the defendant's commitment to the department for restoration treatment;
644 or
- 645 (b) if the forensic evaluator reports to the court that there is a substantial probability that
646 restoration treatment will bring the defendant to competency to stand trial in the
647 foreseeable future, extend the defendant's commitment for restoration treatment up to
648 45 additional days.
- 649 (9) If the defendant is charged with aggravated murder, murder, attempted murder,
650 manslaughter, or a first degree felony and the court determines that the defendant is
651 making reasonable progress towards restoration of competency at the time of the hearing
652 held pursuant to Subsection (7), the court may extend the commitment for a period not
653 to exceed nine months for the purpose of restoration treatment, with a mandatory review
654 hearing at the end of the nine-month period.
- 655 (10) Unless the defendant is charged with aggravated murder or murder, if, at the
656 nine-month review hearing described in Subsection (9), the court determines that the
657 defendant is incompetent to proceed, the court shall:
- 658 (a)(i) order the defendant be released or temporarily detained pending civil
659 commitment proceedings as provided in Subsection (5)(c); and
- 660 (ii) terminate the defendant's commitment to the department for restoration treatment;
661 or
- 662 (b) if the forensic evaluator reports to the court that there is a substantial probability that
663 restoration treatment will bring the defendant to competency to stand trial in the
664 foreseeable future, extend the defendant's commitment for restoration treatment for
665 up to 135 additional days.
- 666 (11) If the defendant is charged with aggravated murder or murder and the court determines
667 that the defendant is making reasonable progress towards restoration of competency at
668 the time of the nine-month review hearing described in Subsection (9), the court may
669 extend the commitment for a period not to exceed 24 months for the purpose of
670 restoration treatment.
- 671 (12) If the court extends the defendant's commitment term under Subsection (11), the court
672 shall hold a hearing no less frequently than at 12-month intervals following the
673 extension for the purpose of determining the defendant's competency status.
- 674 (13) If, at the end of the 24-month commitment period described in Subsection (11), the
675 court determines that the defendant is incompetent to proceed, the court shall:
- 676 (a)(i) order the defendant be released or temporarily detained pending civil

- 677 commitment proceedings as provided in Subsection (5)(c); and
- 678 (ii) terminate the defendant's commitment to the department for restoration treatment;
- 679 or
- 680 (b) if the forensic evaluator reports to the court that there is a substantial probability that
- 681 restoration treatment will bring the defendant to competency to stand trial in the
- 682 foreseeable future, extend the defendant's commitment for restoration treatment for
- 683 up to 12 additional months.
- 684 (14)(a) Neither release from a pretrial incompetency commitment under the provisions
- 685 of this section nor civil commitment requires dismissal of criminal charges.
- 686 (b) The court may retain jurisdiction over the criminal case and may order periodic
- 687 reviews.
- 688 (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5, Health Care -
- 689 Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services
- 690 for People with Disabilities, may still be adjudicated competent to stand trial under this
- 691 chapter.
- 692 (16)(a) The remedy for a violation of the time periods specified in this section, other
- 693 than those specified in Subsection (5)(c), (8), (10), or (13), shall be a motion to
- 694 compel the hearing, or mandamus, but not release from detention or dismissal of the
- 695 criminal charges.
- 696 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (8), (9),
- 697 or (13), or is not dismissal of the criminal charges.
- 698 (17) In cases in which the treatment of the defendant is precluded by court order for a
- 699 period of time, that time period may not be considered in computing time limitations
- 700 under this section.
- 701 (18)(a) If, at any time, the defendant becomes competent to stand trial while the
- 702 defendant is committed to the department, the clinical director of the Utah State
- 703 Hospital, the department, or the department's designee shall certify that fact to the
- 704 court.
- 705 (b) The court shall conduct a competency review hearing:
- 706 (i) within 15 working days after the day on which the court receives the certification
- 707 described in Subsection (18)(a); or
- 708 (ii) within 30 working days after the day on which the court receives the certification
- 709 described in Subsection (18)(a), if the court determines that more than 15 working
- 710 days are necessary for good cause related to the defendant's competency.

711 (19) The court may order a hearing at any time on the court's own motion or upon
712 recommendations of the clinical director of the Utah State Hospital or other facility or
713 the department.

714 (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting
715 attorney and all counsel of record.

716 Section 8. Section **77-19-203** is amended to read:

717 **77-19-203 . Petition for inquiry as to competency to be executed -- Filing --**

718 **Contents -- Successive petitions.**

719 (1) If an inmate who has been sentenced to death is or becomes incompetent to be executed,
720 a petition under Subsection (2) may be filed in the district court of the county where the
721 inmate is confined.

722 (2) The petition shall:

723 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to
724 believe the inmate is incompetent to be executed; and

725 (b) contain a specific recital of the facts, observations, and conversations with the inmate
726 that form the basis for the petition.

727 (3) The petition may be based upon knowledge or information and belief and may be filed
728 by the inmate alleged to be incompetent, legal counsel for the inmate, or by an attorney
729 representing the state.

730 (4) Before ruling on a petition filed by an inmate or his counsel alleging that the inmate is
731 incompetent to be executed, the court shall give the state and the Department of
732 Corrections an opportunity to respond to the allegations of incompetency.

733 (5) If a petition is filed after an inmate has previously been found competent under either
734 this chapter or under [~~Title 77, Chapter 15, Inquiry into Sanity of Defendant~~] Title 77,
735 Chapter 15, Defendant's Competency to Proceed, no further hearing on competency may
736 be granted unless the successive petition:

737 (a) alleges with specificity a substantial change of circumstances subsequent to the
738 previous determination of competency; and

739 (b) is sufficient to raise a significant question about the inmate's competency to be
740 executed.

741 Section 9. Section **77-29-3** is amended to read:

742 **77-29-3 . Chapter inapplicable to incompetent persons.**

743 The provisions of this chapter shall not apply to any person while adjudged to be
744 incompetent to proceed under [~~Chapter 15, Inquiry into Sanity of Defendant~~] Chapter 15,

745 Defendant's Competency to Proceed.

746 Section 10. Section **80-6-403** is amended to read:

747 **80-6-403 . Disposition on finding of not competent to proceed -- Subsequent**
748 **hearings -- Notice to prosecuting attorneys.**

749 (1) If the juvenile court determines that the minor is not competent to proceed, and there is
750 a substantial likelihood that the minor may attain competency in the foreseeable future,
751 the juvenile court shall notify the department of the finding and allow the department 30
752 days to develop an attainment plan for the minor.

753 (2) The attainment plan shall include:

- 754 (a) any services or treatment the minor has been or is currently receiving that are
755 necessary to attain competency;
- 756 (b) any additional services or treatment the minor may require to attain competency;
- 757 (c) an assessment of the parent, custodian, or guardian's ability to access or provide any
758 recommended treatment or services;
- 759 (d) any special conditions or supervision that may be necessary for the safety of the
760 minor or others during the attainment period; and
- 761 (e) the likelihood that the minor will attain competency and the amount of time likely
762 required for the minor to attain competency.

763 (3) The department shall provide the attainment plan to the juvenile court, the prosecuting
764 attorney, the defense attorney, and the attorney guardian ad litem at least three days
765 before the competency disposition hearing.

766 (4)(a) During the attainment period, the minor shall remain in the least restrictive
767 appropriate setting.

768 (b) A finding of not competent to proceed does not grant authority for a juvenile court to
769 place a minor in the custody of a division of the department, or create eligibility for
770 services from the Division of Services for People With Disabilities.

771 (c) If the juvenile court orders the minor to be held in detention during the attainment
772 period, the juvenile court shall make the following findings on the record:

- 773 (i) the placement is the least restrictive appropriate setting;
- 774 (ii) the placement is in the best interest of the minor;
- 775 (iii) the minor will have access to the services and treatment required by the
776 attainment plan in the placement; and
- 777 (iv) the placement is necessary for the safety of the minor or others.

778 (d) A juvenile court shall terminate an order of detention related to the pending

- 779 proceeding for a minor who is not competent to proceed in that matter if:
- 780 (i) the most severe allegation against the minor if committed by an adult is a class B
781 misdemeanor;
- 782 (ii) more than 60 days have passed after the day on which the juvenile court
783 adjudicated the minor not competent to proceed; and
- 784 (iii) the minor has not attained competency.
- 785 (5)(a) At any time that the minor becomes competent to proceed during the attainment
786 period, the department shall notify the juvenile court, the prosecuting attorney, the
787 defense attorney, and the attorney guardian ad litem.
- 788 (b) The juvenile court shall hold a hearing with 15 business days of notice from the
789 department described in Subsection (5)(a).
- 790 (6)(a) If at any time during the attainment period the juvenile court finds that there is not
791 a substantial probability that the minor will attain competency in the foreseeable
792 future, the juvenile court shall terminate the competency proceeding, dismiss the
793 petition or information without prejudice, and release the minor from any custody
794 order related to the pending proceeding, unless the prosecuting attorney or any other
795 individual informs the juvenile court that commitment proceedings will be initiated in
796 accordance with:
- 797 (i) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for
798 People with an Intellectual Disability;
- 799 (ii) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State
800 Hospital and Other Mental Health Facilities; or
- 801 (iii) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons
802 Under Age 18.
- 803 (b) The prosecuting attorney shall initiate the proceedings described in Subsection (6)(a)
804 within seven days after the juvenile court's order, unless the juvenile court enlarges
805 the time for good cause shown.
- 806 (7) During the attainment period, the juvenile court may order a hearing or rehearing at
807 anytime on the juvenile court's own motion or upon recommendation of any interested
808 party or the department.
- 809 (8)(a) Within three months of the juvenile court's approval of the attainment plan, the
810 department shall provide a report on the minor's progress towards competence.
- 811 (b) The report described in Subsection (8)(a) shall address the minor's:
- 812 (i) compliance with the attainment plan;

- 813 (ii) progress towards competency based on the issues identified in the original
814 competency evaluation; and
- 815 (iii) current mental illness, intellectual disability or related condition, or
816 developmental immaturity, and need for treatment, if any, and whether there is
817 substantial likelihood of the minor attaining competency within six months.
- 818 (9)(a) Within 30 days of receipt of the report, the juvenile court shall hold a hearing to
819 determine the minor's current status.
- 820 (b) At the hearing, the burden of proving the minor is competent is on the proponent of
821 competency.
- 822 (c) The juvenile court shall determine by a preponderance of the evidence whether the
823 minor is competent to proceed.
- 824 (10) If the minor has not attained competency after the initial three month attainment period
825 but is showing reasonable progress towards attainment of competency, the juvenile court
826 may extend the attainment period up to an additional three months.
- 827 (11) The department shall provide an updated juvenile competency evaluation at the
828 conclusion of the [~~six month~~]attainment period to advise the juvenile court on the
829 minor's current competency status.
- 830 (12) If the minor does not attain competency within six months after the juvenile court
831 initially finds the minor not competent to proceed, the court shall terminate the
832 competency proceedings and dismiss the petition or information filed without prejudice,
833 unless good cause is shown that there is a substantial likelihood the minor will attain
834 competency within one year from the initial finding of not competent to proceed.
- 835 (13) In the event a minor has an unauthorized leave lasting more than 24 hours, the
836 attainment period shall toll until the minor returns.
- 837 (14)(a) Regardless of whether a minor consents to attainment, any statement made by
838 the minor in the course of attainment, any testimony by the forensic evaluator based
839 upon any statement made by the minor in the course of attainment, and any other
840 fruits of a statement made by the minor in the course of attainment:
- 841 (i) may not be admitted in evidence against the minor in a proceeding under this
842 chapter, except the statement may be admitted on an issue respecting the mental
843 condition on which the minor has introduced evidence; and
- 844 (ii) may be admitted where relevant to a determination of the minor's competency.
- 845 (b) Before evaluating the minor during the attainment period, a forensic evaluator shall
846 specifically advise the minor, and the minor's parent or guardian if reasonably

847 available, of the limits of confidentiality provided in Subsection (14)(a).

848 Section 11. **Effective Date.**

849 This bill takes effect on May 7, 2025.