

1 **COMPETENCY TO STAND TRIAL AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill amends provisions related to a defendant's competency to stand trial.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ defines terms;
- 11 ▶ establishes procedures for determining the competency of a defendant charged with
- 12 a misdemeanor;
- 13 ▶ amends procedures for conducting competency evaluations;
- 14 ▶ adds and modifies time frames for evaluations, reports, and court hearings relating
- 15 to misdemeanors and felonies;
- 16 ▶ clarifies standards for restoration treatment and competency review; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **62A-1-104**, as last amended by Laws of Utah 2017, Chapter 331

25 **62A-1-108.5**, as last amended by Laws of Utah 2012, Chapters 316 and 347

26 **77-15-1**, as last amended by Laws of Utah 2000, Chapter 256

27 **77-15-2**, as last amended by Laws of Utah 1994, Chapter 162

28 **77-15-3**, as last amended by Laws of Utah 1994, Chapter 162

29 **77-15-4**, as last amended by Laws of Utah 1994, Chapter 162

30 **77-15-5**, as last amended by Laws of Utah 2016, Chapter 115

31 **77-15-6**, as last amended by Laws of Utah 2012, Chapter 109

32 **77-15-6.5**, as last amended by Laws of Utah 2008, Chapter 212

33 77-15-7, as repealed and reenacted by Laws of Utah 1994, Chapter 162

34 77-15-9, as last amended by Laws of Utah 1994, Chapter 162

35 ENACTS:

36 77-15-3.5, Utah Code Annotated 1953

37

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

39 Section 1. Section **62A-1-104** is amended to read:

40 **62A-1-104. Definitions.**

41 (1) As used in this title:

42 (a) "Competency evaluation" means the same as that term is defined in Section

43 77-15-2.

44 ~~(a)~~ (b) "Concurrence of the board" means agreement by a majority of the members of
45 a board.

46 ~~(b)~~ (c) "Department" means the Department of Human Services established in
47 Section 62A-1-102.

48 ~~(c)~~ (d) "Executive director" means the executive director of the department,
49 appointed under Section 62A-1-108.

50 (e) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

51 ~~(d)~~ (f) "System of care" means a broad, flexible array of services and supports that:

52 (i) serves a child with or who is at risk for complex emotional and behavioral needs;

53 (ii) is community based;

54 (iii) is informed about trauma;

55 (iv) builds meaningful partnerships with families and children;

56 (v) integrates service planning, service coordination, and management across state and
57 local entities;

58 (vi) includes individualized case planning;

59 (vii) provides management and policy infrastructure that supports a coordinated

60 network of interdepartmental service providers, contractors, and service providers who are
61 outside of the department; and

62 (viii) is guided by the type and variety of services needed by a child with or who is at
63 risk for complex emotional and behavioral needs and by the child's family.

64 (2) The definitions provided in Subsection (1) are to be applied in addition to
65 definitions contained throughout this title that are applicable to specified chapters or parts.

66 Section 2. Section **62A-1-108.5** is amended to read:

67 **62A-1-108.5. Mental illness and intellectual disability examinations --**
68 **Responsibilities of the department.**

69 (1) In accomplishing [~~its duties to conduct mental illness and intellectual disability~~
70 ~~examinations~~] the department's duties to conduct a competency evaluation under Title 77, Utah
71 Code of Criminal Procedure, and a juvenile competency [evaluations pursuant to] evaluation
72 under Title 78A, Chapter 6, Juvenile Court Act, the department shall proceed as outlined in this
73 section and within appropriations authorized by the Legislature. [~~The executive director may~~
74 ~~delegate the executive director's responsibilities under this section to one or more divisions~~
75 ~~within the department.~~]

76 (2) When the department is ordered by [~~the district]~~ a court to conduct a [~~mental illness~~
77 ~~or intellectual disability examination the executive director]~~ competency evaluation, the
78 department shall[:(a) ~~direct that the examination be performed at the Utah State Hospital; or(b)~~
79 ~~designate at least one examiner,]~~ designate a forensic evaluator, selected under Subsection (4),
80 to [examine] evaluate the defendant in the defendant's current custody or status.

81 (3) When the department is ordered by the juvenile court to conduct a juvenile
82 competency evaluation [~~pursuant to]~~ under Title 78A, Chapter 6, Juvenile Court Act, the
83 [~~executive director]~~ department shall:

84 (a) designate an examiner selected pursuant to Subsection (4) to evaluate the minor;
85 and

86 (b) upon a finding of good cause and order of the court, designate a second examiner to
87 evaluate the minor.

88 (4) The department shall establish criteria, in consultation with the Commission on
89 Criminal and Juvenile Justice, and shall contract with persons [~~or organizations]~~ to conduct
90 [~~mental illness and intellectual disability or related condition,]~~ competency evaluations and
91 juvenile competency evaluations under Subsections (2)[~~(b)~~] and (3)(b). In making this
92 selection, the department shall follow the provisions of Title 63G, Chapter 6a, Utah
93 Procurement Code.

94 (5) Nothing in this section prohibits the [~~executive director]~~ department, at the request

95 of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah
96 Code of Criminal Procedure, and for good cause shown, from proposing a person who has not
97 been previously selected under Subsection (4) to contract with the department to conduct the
98 evaluation. In selecting that person, the criteria of the department established under Subsection
99 (4) and the provisions of Title 63G, Chapter 6a, Utah Procurement Code, shall be met.

100 Section 3. Section **77-15-1** is amended to read:

101 **77-15-1. Incompetent individual not to be tried for public offense.**

102 [~~No person~~] An individual who is incompetent to proceed [~~shall~~] may not be tried for a
103 public offense.

104 Section 4. Section **77-15-2** is amended to read:

105 **77-15-2. Definitions.**

106 [~~For the purposes of this chapter, a person is incompetent to proceed if he is suffering~~
107 ~~from a mental disorder or mental retardation resulting either in:~~]

108 [~~(1) his inability to have a rational and factual understanding of the proceedings against~~
109 ~~him or of the punishment specified for the offense charged; or]~~

110 [~~(2) his inability to consult with his counsel and to participate in the proceedings~~
111 ~~against him with a reasonable degree of rational understanding.]~~

112 As used in this chapter:

113 (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to
114 determine if an individual is competent to stand trial.

115 (2) "Competent to stand trial" means that a defendant has:

116 (a) a rational and factual understanding of the criminal proceedings against the
117 defendant and of the punishment specified for the offense charged; and

118 (b) the ability to consult with the defendant's legal counsel with a reasonable degree of
119 rational understanding in order to assist in the defense.

120 (3) "Department" means the Department of Human Services.

121 (4) "Forensic evaluator" means a licensed mental health professional who is:

122 (a) not involved in the defendant's treatment; and

123 (b) trained and certified by the department as qualified to conduct a competency
124 evaluation, a restoration screening, and a progress toward competency evaluation.

125 (5) "Incompetent to proceed" means that a defendant is not competent to stand trial.

126 (6) "Petition" means a petition to request a court to determine whether a defendant is
127 competent to stand trial.

128 (7) "Progress toward competency evaluation" means an evaluation to determine
129 whether an individual who is receiving restoration treatment is:

130 (a) competent to stand trial;

131 (b) incompetent to proceed but has a substantial probability of becoming competent to
132 stand trial in the foreseeable future; or

133 (c) incompetent to proceed and does not have a substantial probability of becoming
134 competent to stand trial in the foreseeable future.

135 (8) "Restoration screening" means a standardized assessment of an individual
136 determined to be incompetent to stand trial for the purpose of determining the appropriate
137 placement and restoration treatment for the individual.

138 (9) "Restoration treatment" means treatment provided to an individual who is
139 incompetent to proceed and provided for the purpose of restoring the individual to competency.

140 Section 5. Section **77-15-3** is amended to read:

141 **77-15-3. Petition for inquiry regarding defendant or prisoner -- Filing --**

142 **Contents.**

143 (1) ~~[Whenever a person]~~ When a defendant charged with a public offense or serving a
144 sentence of imprisonment is ~~[or becomes]~~ incompetent to proceed, ~~[as defined in this chapter, a~~
145 ~~petition may be filed]~~ an individual described in Subsection (2)(b) may file a petition in the
146 district court of the county where the charge is pending or where the [person] defendant is
147 confined.

148 (2) (a) The petition shall contain a certificate that it is filed in good faith and on
149 reasonable grounds to believe the defendant is incompetent to proceed. The petition shall
150 contain a recital of the facts, observations, and conversations with the defendant that have
151 formed the basis for the petition. If filed by defense counsel, the petition ~~[shall contain such~~
152 ~~information without invading the lawyer-client]~~ may not disclose information in violation of
153 the attorney-client privilege.

154 (b) The petition may be based upon knowledge or information and belief and may be
155 filed by the ~~[party alleged incompetent to proceed]~~ defendant, any person acting on ~~[his]~~
156 of the defendant, the prosecuting attorney, or any person having custody or supervision over the

157 [person] defendant.

158 Section 6. Section 77-15-3.5 is enacted to read:

159 **77-15-3.5. Incompetent to proceed in misdemeanor cases.**

160 (1) When a defendant charged with a misdemeanor is incompetent to proceed, a
161 petition may be filed in the district court of the county where the charge is pending or where
162 the defendant is confined.

163 (2) If the most severe charge against a defendant is a misdemeanor and the defendant is
164 adjudicated by a court as incompetent to proceed:

165 (a) the department shall provide restoration treatment to the defendant; and

166 (b) the court may refer the defendant to pretrial diversion services, upon agreement of
167 the prosecution and defense counsel.

168 (3) Unless the prosecutor indicates that civil commitment proceedings will be initiated
169 under Subsection 77-15-6(5)(c), a court shall release a defendant who is incompetent to
170 proceed if:

171 (a) the most severe charge against the defendant is no more severe than a class B
172 misdemeanor;

173 (b) more than 60 days have passed after the day on which the court adjudicated the
174 defendant incompetent to proceed; and

175 (c) the defendant has not been restored to competency.

176 (4) A court may dismiss the charges against a defendant who was released under
177 Subsection (3).

178 (5) At least 10 days before the day on which the department releases a defendant from
179 civil commitment, the department shall notify the court that entered the civil commitment
180 order.

181 Section 7. Section 77-15-4 is amended to read:

182 **77-15-4. Court may raise issue of competency at any time.**

183 The court in which a charge is pending may raise the issue of [the] a defendant's
184 competency at any time. If raised by the court, the court shall permit counsel for each party
185 [~~shall be permitted~~] to address the issue of competency.

186 Section 8. Section 77-15-5 is amended to read:

187 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**

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

189 (1) (a) When a petition is filed [~~pursuant to Section 77-15-3 raising the issue of the~~
190 ~~defendant's competency to stand trial~~] under Section 77-15-3 or 77-15-3.5, or when the court
191 raises the issue of the defendant's competency [~~pursuant to~~] under Section 77-15-4, the court in
192 which criminal proceedings are pending shall stay all criminal proceedings. If the criminal
193 proceedings are in a court other than the [~~district~~] court in which the petition is filed, the
194 [~~district~~] court in which the petition is filed shall notify [~~that court of the filing of the~~] the court
195 in which the criminal proceedings are pending of the petition.

196 (b) The [~~district~~] court in which the petition is filed:

197 (i) shall review the allegations of incompetency;

198 (ii) may hold a limited hearing solely for the purpose of determining the sufficiency of
199 the petition, if the court finds the petition is not clearly sufficient on its face;

200 (iii) shall hold a hearing, if the petition is opposed by either party;

201 (iv) may not order an examination of the defendant or order a hearing on the mental
202 condition of the defendant unless the court finds that the allegations in the petition raise a bona
203 fide doubt as to the defendant's competency to stand trial; [~~and~~]

204 (v) [~~shall order an examination of the defendant and a hearing on the defendant's~~
205 ~~mental condition~~] if the court finds that the allegations raise a bona fide doubt as to the
206 defendant's competency to stand trial[;], shall order:

207 (A) the department to have the defendant evaluated by a forensic evaluator; and

208 (B) a hearing on the defendant's competency to stand trial; and

209 (vi) shall permit either party to call an additional forensic evaluator to evaluate the
210 defendant and report to the court, at the party's expense.

211 [(2)(a) ~~After the granting of a petition and prior to a full competency hearing, the court~~
212 ~~may order the Department of Human Services to examine the person and to report to the court~~
213 ~~concerning the defendant's mental condition.~~]

214 [(b) ~~The defendant shall be examined by at least two mental health experts not~~
215 ~~involved in the current treatment of the defendant.~~]

216 [(c) ~~If the issue is sufficiently raised in the petition or if it becomes apparent that the~~
217 ~~defendant may be incompetent due to intellectual disability, at least one expert experienced in~~
218 ~~intellectual disability assessment shall evaluate the defendant. Upon appointment of the~~

219 ~~experts, the petitioner or other party as directed by the court shall provide information and~~
220 ~~materials to the examiners relevant to a determination of the defendant's competency and shall~~
221 ~~provide copies of the charging document, arrest or incident reports pertaining to the charged~~
222 ~~offense, known criminal history information, and known prior mental health evaluations and~~
223 ~~treatments.]~~

224 ~~[(d) The prosecuting and defense attorneys shall cooperate in providing the relevant~~
225 ~~information and materials to the examiners, and the court may make the necessary orders to~~
226 ~~provide the information listed in Subsection (2)(c) to the examiners. The court may provide in~~
227 ~~its order for a competency examination of a defendant]~~

228 (2) (a) If the petition or other information sufficiently raises concerns that the
229 defendant may have intellectual or developmental disabilities, a forensic evaluator who is
230 experienced in intellectual or developmental disability assessments shall conduct the
231 competency evaluation.

232 (b) The petitioner or other party, as directed by the court, shall provide to the forensic
233 evaluator information and materials relevant to a determination of the defendant's competency,
234 including the charging document, arrest or incident reports pertaining to the charged offense,
235 known criminal history information, and known prior mental health evaluations and treatments.

236 (c) For purposes of a competency evaluation, a court may order that custodians of
237 mental health records pertaining to the defendant [shall] provide those records to the
238 [examiners] forensic evaluator without the need for consent of the defendant [or further order
239 of the court].

240 (3) [During the examination under Subsection (2)] Pending a competency evaluation,
241 unless the court or the [executive director of the] department directs otherwise, the defendant
242 shall be retained in the same custody or status [he] that the defendant was in at the time the
243 examination was ordered.

244 ~~[(4) The experts shall in the conduct of their examination and in their report to the~~
245 ~~court consider and address, in addition to any other factors determined to be relevant by the~~
246 ~~experts:]~~

247 ~~[(a) the defendant's present capacity to:]~~

248 ~~[(i) comprehend and appreciate the charges or allegations against the defendant;]~~

249 ~~[(ii) disclose to counsel pertinent facts, events, and states of mind;]~~

250 ~~[(iii) comprehend and appreciate the range and nature of possible penalties, if~~
251 ~~applicable, that may be imposed in the proceedings against the defendant;]~~
252 ~~[(iv) engage in reasoned choice of legal strategies and options;]~~
253 ~~[(v) understand the adversary nature of the proceedings against the defendant;]~~
254 ~~[(vi) manifest appropriate courtroom behavior; and]~~
255 ~~[(vii) testify relevantly, if applicable;]~~
256 ~~[(b) the impact of the mental disorder or intellectual disability, if any, on the nature and~~
257 ~~quality of the defendant's relationship with counsel;]~~
258 ~~[(c) if psychoactive medication is currently being administered:]~~
259 ~~[(i) whether the medication is necessary to maintain the defendant's competency; and]~~
260 ~~[(ii) the effect of the medication, if any, on the defendant's demeanor and affect and~~
261 ~~ability to participate in the proceedings; and]~~
262 ~~[(d) whether the defendant is exhibiting false or exaggerated physical or psychological~~
263 ~~symptoms relevant to the defendant's capacity to stand trial.]~~
264 (4) The forensic evaluator shall consider and address the defendant's present capacity
265 to:
266 (a) rationally and factually understand the criminal proceedings against the defendant
267 and the punishment specified for the offense charged; and
268 (b) consult with the defendant's legal counsel with a reasonable degree of rational
269 understanding in order to assist in the defense.
270 (5) If the ~~[expert's]~~ forensic evaluator's opinion is that the defendant is incompetent to
271 proceed, the ~~[expert]~~ forensic evaluator shall indicate in the report to the court:
272 (a) ~~[which of the above factors contributes]~~ the factors that contribute to the
273 defendant's incompetency~~[(b)]~~, including the nature of the defendant's mental disorder or
274 intellectual or developmental disability and its relationship to the factors contributing to the
275 defendant's incompetency; and
276 ~~[(c) the treatment or treatments appropriate and available;]~~
277 ~~[(d) the defendant's capacity to give informed consent to treatment to restore~~
278 ~~competency; and]~~
279 ~~[(e) any diagnostic instruments, methods, and observations used by the expert to~~
280 ~~determine whether or not the defendant is exhibiting false or exaggerated physical or~~

281 ~~psychological symptoms relevant to the defendant's capacity to stand trial and the expert's~~
282 ~~opinion as to the significance of any false or exaggerated symptoms regarding the defendant's~~
283 ~~capacity.]~~

284 (b) whether there is a substantial probability that restoration treatment may, in the
285 foreseeable future, bring the defendant to competency to stand trial, or that the defendant
286 cannot become competent to stand trial in the foreseeable future.

287 (6) ~~(a) [The experts examining the defendant]~~ The forensic evaluator shall provide an
288 initial report to the court and the prosecuting and defense attorneys within 30 days of the
289 receipt of the court's order. The report shall inform the court of the examiner's opinion
290 concerning the competency of the defendant to stand trial~~[, or, in the alternative, the examiner~~
291 ~~may inform the court in writing that additional time is needed to complete the report. If the~~
292 ~~examiner informs the court that additional time is needed, the examiner shall have up to an~~
293 ~~additional 30 days to provide the report to the court and counsel. The examiner shall provide~~
294 ~~the report within 60 days from the receipt of the court's order unless, for good cause shown, the~~
295 ~~court authorizes an additional period of time to complete the examination and provide the~~
296 ~~report].~~

297 (b) (i) If the forensic evaluator is unable to complete the report in the time specified in
298 Subsection (6)(a), the forensic evaluator shall give written notice to the court.

299 (ii) A forensic evaluator who provides the notice described in Subsection (6)(b)(i) shall
300 receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day on
301 which the forensic evaluator received the court's order to conduct a competency evaluation and
302 file a report.

303 (iii) The court may further extend the deadline for completion of the evaluation and
304 report if the court determines that there is good cause for the extension.

305 (iv) Upon receipt of an extension described in Subsection (6)(b)(iii), the forensic
306 evaluator shall file the report as soon as reasonably possible.

307 ~~[(7) Any written report submitted by the experts shall:]~~

308 ~~[(a) identify the specific matters referred for evaluation;]~~

309 ~~[(b) describe the procedures, techniques, and tests used in the examination and the~~
310 ~~purpose or purposes for each;]~~

311 ~~[(c) state the expert's clinical observations, findings, and opinions on each issue~~

312 referred for examination by the court, and indicate specifically those issues, if any, on which
313 the expert could not give an opinion; and]

314 [~~(d) identify the sources of information used by the expert and present the basis for the~~
315 ~~expert's clinical findings and opinions.~~]

316 [(8)] (7) (a) Any statement made by the defendant in the course of any competency
317 examination, whether the examination is with or without the consent of the defendant, any
318 testimony by [~~the expert~~] a forensic evaluator based upon the statement, and any other fruits of
319 the statement may not be admitted in evidence against the defendant in any criminal proceeding
320 except on an issue respecting mental condition on which the defendant has introduced
321 evidence. The evidence may be admitted, however, where relevant to a determination of the
322 defendant's competency.

323 (b) [~~Prior to~~] Before examining the defendant, [~~examiners should~~] the forensic
324 evaluator shall specifically advise the defendant of the limits of confidentiality as provided
325 under Subsection [(8)] (7)(a).

326 [(9)] (8) (a) [~~When the report is received~~] Upon receipt of the forensic evaluator's
327 report, the court shall set a date for a [~~mental~~] competency hearing. The hearing shall be held
328 [~~in~~] not less than [~~five~~] 5 and not more than 15 days[~~, unless the court enlarges the time for~~
329 ~~good cause.~~] after the day on which the court received the forensic evaluator's report, unless for
330 good cause the court sets a later date.

331 (b) Any person [~~or organization~~] directed by the department to conduct the
332 [~~examination~~] competency evaluation may be subpoenaed to testify at the hearing. [~~If the~~
333 ~~experts are in conflict as to the competency of the defendant, all experts should be called to~~
334 ~~testify at the hearing if reasonably available. A conflict in the opinions of the experts does not~~
335 ~~require the appointment of an additional expert unless the court determines the appointment to~~
336 ~~be necessary.~~]

337 (c) The court may call any [~~examiner~~] forensic evaluator to testify at the hearing who is
338 not called by the parties. If the court calls [~~an examiner~~] a forensic evaluator, counsel for the
339 parties may cross-examine the [~~expert~~] forensic evaluator.

340 [(10)] (9) (a) A [~~person~~] defendant shall be presumed competent to stand trial unless
341 the court, by a preponderance of the evidence, finds the [~~person~~] defendant incompetent to
342 proceed. The burden of proof is upon the proponent of incompetency at the hearing.

343 (b) An adjudication of [~~incompetency~~] incompetent to proceed does not operate as an
 344 adjudication of incompetency to give informed consent for medical treatment or for any other
 345 purpose, unless specifically set forth in the court order.

346 [~~(11)~~] (10) In determining the defendant's competency to stand trial, the court shall
 347 consider the totality of the circumstances, which may include the testimony of lay witnesses, in
 348 addition to the [~~expert testimony, studies, and reports provided under this section~~] forensic
 349 evaluator's report and testimony.

350 [~~(12)~~] (11) (a) If the court finds the defendant incompetent to stand trial[~~, its order shall~~
 351 ~~contain~~]:

352 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:

353 (i) include findings addressing each of the factors in Subsections [~~(4)(a) and (b)~~]; (4)
 354 and (5);

355 (ii) include a transportation order, if necessary;

356 (iii) be accompanied by the forensic evaluator's report, any [~~The order issued pursuant~~
 357 ~~to Subsection 77-15-6(1) which the court sends to the facility where the defendant is~~
 358 ~~committed or to the person who is responsible for assessing the defendant's progress toward~~
 359 ~~competency shall be provided contemporaneously with the transportation and commitment~~
 360 ~~order of the defendant, unless exigent circumstances require earlier commitment in which case~~
 361 ~~the court shall forward the order within five working days of the order of transportation and~~
 362 ~~commitment of the defendant.]~~

363 [~~(b) The order finding the defendant incompetent to stand trial shall be accompanied~~
 364 ~~by:~~

365 (i) [~~copies of the reports of the experts filed with the court pursuant to the order of~~
 366 ~~examination if not provided previously;~~]

367 (ii) [~~copies of any of the~~] psychiatric, psychological, or social work reports submitted
 368 to the court relative to the mental condition of the defendant[~~; and (iii)~~], and any other
 369 documents made available to the court by either the defense or the prosecution, pertaining to
 370 the defendant's current or past mental condition[~~;~~]; and

371 (iv) be sent by the court to the department; and

372 (b) the prosecuting attorney shall provide to the department:

373 (i) the charging document and probable cause statement, if any;

374 (ii) arrest or incident reports prepared by law enforcement and pertaining to the
 375 charged offense; and

376 (iii) additional supporting documents.

377 ~~[(13)(a) If the court finds it necessary to order the defendant transported prior to the~~
 378 ~~completion of findings and compilation of documents required under Subsection (12), the~~
 379 ~~transportation and commitment order delivering the defendant to the Utah State Hospital, or~~
 380 ~~other mental health facility as directed by the executive director of the Department of Human~~
 381 ~~Services or a designee, shall indicate that the defendant's commitment is based upon a finding~~
 382 ~~of incompetency, and the mental health facility's copy of the order shall be accompanied by the~~
 383 ~~reports of any experts filed with the court pursuant to the order of examination.]~~

384 ~~[(b) The executive director of the Department of Human Services or a designee may~~
 385 ~~refuse to accept a defendant as a patient unless the defendant is accompanied by a~~
 386 ~~transportation and commitment order which is accompanied by the reports.]~~

387 ~~[(14) Upon a finding of incompetency to stand trial by the court, the prosecuting and~~
 388 ~~defense attorneys shall provide information and materials relevant to the defendant's~~
 389 ~~competency to the facility where the defendant is committed or to the person responsible for~~
 390 ~~assessing the defendant's progress towards competency. In addition to any other materials, the~~
 391 ~~prosecuting attorney shall provide:]~~

392 ~~[(a) copies of the charging document and supporting affidavits or other documents used~~
 393 ~~in the determination of probable cause;]~~

394 ~~[(b) arrest or incident reports prepared by a law enforcement agency pertaining to the~~
 395 ~~charged offense; and]~~

396 ~~[(c) information concerning the defendant's known criminal history.]~~

397 ~~[(15) (12) The court may make any reasonable order to [insure] ensure compliance~~
 398 ~~with this section.~~

399 ~~[(16) (13) Failure to comply with this section does not result in the dismissal of~~
 400 ~~criminal charges.~~

401 Section 9. Section **77-15-6** is amended to read:

402 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**
 403 **hearings -- Notice to prosecuting attorneys.**

404 (1) (a) Except as provided in Subsection (5), if after a hearing~~[, the defendant is found]~~

405 a court finds a defendant to be incompetent to [stand trial] proceed, the court shall order the
406 defendant committed to the ~~[custody of the executive director of the Department of Human~~
407 ~~Services or a designee for the purpose of treatment intended to restore the defendant to~~
408 ~~competency]~~ department for restoration treatment.

409 (b) The court may recommend but may not order placement of the defendant. The
410 court may, however, order that the defendant be placed in a secure setting rather than a
411 nonsecure setting. ~~[The director or a]~~ Following restoration screening, the department's
412 designee shall designate and inform the court of the specific placement [of the defendant
413 during the period of evaluation and treatment to restore competency] and restoration treatment
414 program for the defendant.

415 (c) A defendant whom a court determines is incompetent to proceed may not be held
416 for restoration treatment longer than:

417 (i) the time reasonably necessary to determine whether there is a substantial probability
418 that the defendant will become competent to stand trial in the foreseeable future, or that the
419 defendant cannot become competent to stand trial in the foreseeable future; and

420 (ii) the maximum period of incarceration that the defendant could receive if the
421 defendant were convicted of the most severe offense of the offenses charged.

422 ~~[(2) The examiner or examiners designated by the executive director to assess the~~
423 ~~defendant's progress toward competency may not be involved in the routine treatment of the~~
424 ~~defendant. The examiner or examiners shall provide a full report to the court and prosecuting~~
425 ~~and defense attorneys within 90 days of arrival of the defendant at the treating facility. If any~~
426 ~~examiner]~~

427 (2) (a) The department shall designate a forensic evaluator, who is not involved in the
428 treatment of the defendant, to conduct a progress toward competency evaluation and report to
429 the court. Either party may also, at the party's expense, designate a forensic evaluator, who is
430 not involved in the treatment of the defendant, to conduct a progress toward competency
431 evaluation and report to the court.

432 (b) The forensic evaluator shall complete the progress toward competency evaluation
433 and submit a report within 90 days after the day on which the forensic evaluator receives the
434 commitment order. If the forensic evaluator is unable to complete the [assessment] report
435 within 90 days, [that examiner] the forensic evaluator shall provide to the court and counsel a

436 summary progress ~~[report which]~~ statement that informs the court that additional time is
437 necessary to complete the ~~[assessment]~~ report, in which case the examiner shall have up to an
438 additional ~~[90]~~ 45 days to provide the full report.

439 (c) The ~~[full]~~ report shall assess:

440 ~~[(a)]~~ (i) whether the defendant is exhibiting false or exaggerated physical or
441 psychological symptoms~~[, and shall report: (i) any diagnostic instruments, methods, and~~
442 ~~observations used by the examiner to make the determination, and (ii) the examiner's]~~ and shall
443 state the forensic evaluator's opinion as to the effect of any false or exaggerated symptoms on
444 the defendant's [capacity] competency to stand trial;

445 ~~[(b)]~~ (ii) the facility's or program's capacity to provide appropriate restoration treatment
446 for the defendant;

447 ~~[(c)]~~ (iii) the nature of ~~[treatments]~~ restoration treatment provided to the defendant;

448 ~~[(d)]~~ (iv) what progress the defendant has made toward competency restoration ~~[has~~
449 ~~been made with respect to the factors identified by the court in its initial order]; and~~

450 ~~[(e) the defendant's current level of mental disorder or mental retardation and need for~~
451 ~~treatment, if any; and]~~

452 ~~[(f)]~~ (v) the likelihood of restoration ~~[of competency and]~~ to competency, the amount
453 of time estimated to achieve ~~[it]~~ competency, or the amount of time estimated to determine
454 whether restoration to competency may be achieved.

455 (3) The court on its own motion or upon motion by either party or ~~[by the executive~~
456 ~~director]~~ the department may appoint additional ~~[mental health examiners to examine the~~
457 ~~defendant and advise the court on the defendant's current mental status and progress toward~~
458 ~~competency restoration]~~ forensic evaluators to conduct a progress toward competency
459 evaluation.

460 (4) ~~[Upon receipt of the full report, the court shall hold a hearing to determine the~~
461 ~~defendant's current status.]~~ Within 15 days after the day on which the court receives the
462 forensic evaluator's report of the progress toward competency evaluation, the court shall hold a
463 hearing to review the defendant's competency. At the hearing, the burden of proving that the
464 defendant is competent to stand trial is on the proponent of competency. Following the
465 hearing, the court shall determine by a preponderance of evidence whether the defendant is:

466 (a) competent to stand trial;

467 (b) incompetent to [~~stand trial~~] proceed, with a substantial probability that the
468 defendant may become competent in the foreseeable future; or

469 (c) incompetent to [~~stand trial~~] proceed, without a substantial probability that the
470 defendant may become competent in the foreseeable future.

471 (5) (a) If the court [~~enters a finding pursuant to Subsection (4)(a);~~] determines that the
472 defendant is competent to stand trial, the court shall:

473 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
474 charges[-]; and

475 (ii) order that the defendant be returned to the placement and status that the defendant
476 was in at the time when the petition for the adjudication of competency was filed, unless the
477 court determines that a different placement is more appropriate.

478 (b) [~~If the court enters a finding pursuant to Subsection (4)(b), the court may order that~~
479 ~~the defendant remain committed to the custody of the executive director of the Department of~~
480 ~~Human Services or a designee for the purpose of treatment intended to restore the defendant to~~
481 ~~competency]~~ If the court determines that the defendant is not competent to proceed but that
482 there is a substantial probability that the defendant may become competent in the foreseeable
483 future, the court may order that the defendant remain committed to the department or the
484 department's designee for the purpose of restoration treatment.

485 (c) If the court [~~enters a finding pursuant to Subsection (4)(c);~~] determines that the
486 defendant is incompetent to proceed and that there is not a substantial probability that the
487 defendant may become competent in the foreseeable future, the court shall order the defendant
488 released from [~~the custody of the director]~~ commitment to the department, unless the
489 prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5,
490 Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental
491 Health Act, will be initiated. These commitment proceedings must be initiated within seven
492 days [~~after the court's order entering the finding in Subsection (4)(c), unless the court enlarges~~
493 ~~the time for good cause shown. The defendant may be ordered to remain in the custody of the~~
494 ~~director until commitment proceedings have been concluded.] after the day on which the court
495 makes the determination described in Subsection (4)(c), unless the court finds that there is
496 good cause to delay the initiation of the civil commitment proceedings. The court may order
497 the defendant to remain in the commitment of the department until the civil commitment~~

498 proceedings conclude. If the defendant is civily committed, [~~the court which entered the order~~
499 ~~pursuant to Subsection (4)(c), shall be notified by the director]~~ the department shall notify the
500 court that adjudicated the defendant incompetent to proceed at least 10 days [~~prior to~~] before
501 any release of the committed [~~person~~] individual.

502 ~~[(6) If the defendant is recommitted to the department pursuant to Subsection (5)(b);~~
503 ~~the court shall hold a hearing one year following the recommitment.]~~

504 ~~[(7) At the hearing held pursuant to Subsection (6), except for defendants charged with~~
505 ~~the crimes listed in Subsection (8), a defendant who has not been restored to competency shall~~
506 ~~be ordered released or temporarily detained pending civil commitment proceedings under the~~
507 ~~same terms as provided in Subsection (5)(c).]~~

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

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

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

514 (7) If a defendant is not competent to proceed by the day of the competency review
515 hearing that follows the extension of a defendant's commitment, a court shall:

516 (a) except for a defendant charged with crimes listed in Subsection (8), order a
517 defendant:

518 (i) released; or

519 (ii) temporarily detained pending civil commitment proceedings under the same terms
520 as described in Subsection (5)(c); and

521 (b) terminate the defendant's commitment to the department for restoration treatment.

522 (8) If the defendant has been charged with aggravated murder, murder, attempted
523 murder, manslaughter, or a first degree felony and the court determines that the defendant is
524 making reasonable progress towards restoration of competency at the time of the hearing held
525 pursuant to Subsection (6), the court may [~~order the defendant recommitted~~] extend the
526 commitment for a period not to exceed [~~18~~] 9 months for the purpose of [~~treatment to restore~~
527 the defendant to competency] restoration treatment, with a mandatory review hearing at the end
528 of the [~~18-month~~] 9-month period.

529 ~~[(9) Except for defendants charged with aggravated murder or murder, a defendant who~~
530 ~~has not been restored to competency at the time of the hearing held pursuant to Subsection (8)~~
531 ~~shall be ordered released or temporarily detained pending civil commitment proceedings under~~
532 ~~the same terms as provided in Subsection (5)(c).]~~

533 (9) If at the 9-month review hearing described in Subsection (8), the court determines
534 that the defendant is not competent to proceed, the court shall:

535 (a) order the defendant, except for a defendant charged with aggravated murder or
536 murder, to be:

537 (i) released; or

538 (ii) temporarily detained pending civil commitment proceedings under the same terms
539 as provided in Subsection (5)(c); and

540 (b) terminate the defendant's commitment to the department for restoration treatment.

541 (10) If the defendant has been charged with aggravated murder or murder and the court
542 determines that the defendant is making reasonable progress towards restoration of competency
543 at the time of the ~~[mandatory review hearing held pursuant to]~~ 9-month review hearing
544 described in Subsection (8), the court may ~~[order the defendant recommitted]~~ extend the
545 commitment for a period not to exceed ~~[36]~~ 24 months for the purpose of ~~[treatment to restore~~
546 ~~competency]~~ restoration treatment.

547 (11) If the ~~[defendant is recommitted to the department pursuant to]~~ court extends the
548 defendant's commitment term under Subsection (10), the court shall hold a hearing no ~~[later~~
549 ~~than at 18-month]~~ less frequently than at 12-month intervals following the ~~[recommitment]~~
550 extension for the purpose of determining the defendant's competency status.

551 ~~[(12) A defendant who has not been restored to competency at the expiration of the~~
552 ~~additional 36-month commitment period ordered pursuant to Subsection (10) shall be ordered~~
553 ~~released or temporarily detained pending civil commitment proceedings under the same terms~~
554 ~~as provided in Subsection (5)(c).]~~

555 (12) If, at the end of the 24-month commitment period described in Subsection (10),
556 the court determines that the defendant is not competent to proceed, the court shall:

557 (a) order the defendant to be:

558 (i) released; or

559 (ii) temporarily detained pending civil commitment proceedings under the same terms

560 as provided in Subsection (5)(c); and

561 (b) terminate the defendant's commitment to the department for restoration treatment.

562 ~~[(13)(a) In no event may the maximum period of detention under this section exceed~~
563 ~~the maximum period of incarceration which the defendant could receive if the defendant were~~
564 ~~convicted of the charged offense.]~~

565 ~~[(b) This Subsection (13) does not preclude pursuing involuntary civil commitment nor~~
566 ~~does it place any time limit on civil commitments.]~~

567 ~~[(14)] (13) Neither release from a pretrial incompetency commitment under the~~
568 ~~provisions of this section nor civil commitment requires dismissal of criminal charges. The~~
569 ~~court may retain jurisdiction over the criminal case and may order periodic reviews [to assess~~
570 ~~the defendant's competency to stand trial].~~

571 ~~[(15)] (14) A defendant who is civilly committed pursuant to Title 62A, Chapter 5,~~
572 ~~Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental~~
573 ~~Health Act, may still be adjudicated competent to stand trial under this chapter.~~

574 ~~[(16)] (15) (a) The remedy for a violation of the time periods specified in this section,~~
575 ~~other than those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to~~
576 ~~compel the hearing, or mandamus, but not release from detention or dismissal of the criminal~~
577 ~~charges.~~

578 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7),
579 (9), (12), or (13) is not dismissal of the criminal charges.

580 ~~[(17)] (16) In cases in which the treatment of the defendant is precluded by court order~~
581 ~~for a period of time, that time period may not be considered in computing time limitations~~
582 ~~under this section.~~

583 ~~[(18)] (17) (a) At any time that the defendant becomes competent to stand trial, the~~
584 ~~clinical director of the hospital [or other facility or the executive director of the Department of~~
585 ~~Human Services], the department, or the department's designee shall certify that fact to the~~
586 ~~court.~~

587 (b) The court shall conduct a competency review hearing:

588 (i) within 15 working days [of the receipt of the clinical director's or executive director's
589 report, unless the court enlarges the time for good cause.] after the day on which the court
590 receives the certification described in Subsection (17)(a); or

591 (ii) within 30 working days after the day on which the court receives the certification
592 described in Subsection (17)(a), if the court determines that more than 15 days are necessary
593 for good cause related to the defendant's competency.

594 ~~[(19)]~~ (18) The court may order a hearing or rehearing at any time on its own motion or
595 upon recommendations of the clinical director of the hospital or other facility or the ~~[executive~~
596 ~~director of the Department of Human Services]~~ department.

597 ~~[(20)]~~ (19) Notice of a hearing on competency to stand trial shall be given to the
598 prosecuting attorney. If the hearing is held in the county where the defendant is confined,
599 notice shall also be given to the prosecuting attorney for that county.

600 Section 10. Section **77-15-6.5** is amended to read:

601 **77-15-6.5. Petition for involuntary medication of incompetent defendant.**

602 ~~[(1) As used in this section:]~~

603 ~~[(a) "Executive director" means the executive director of the Department of Human~~
604 ~~Services or the executive director's designee.]~~

605 ~~[(b)]~~ (1) ~~["Final"]~~ As used in this section, "final order" means a court order that
606 determines the rights of the parties and concerning which appellate remedies have been
607 exhausted or the time for appeal has expired.

608 (2) (a) At any time after a defendant has been found incompetent to proceed and has
609 been committed to the ~~[Department of Human Services]~~ department under Section 77-15-6 for
610 ~~[treatment to restore competency, the executive director]~~ restoration treatment, the department
611 shall notify the court, prosecuting attorney, and attorney for the defendant if the [executive
612 ~~director has determined]~~ department determines that the defendant is not responding to
613 restoration treatment and is unlikely to be restored to competency without the involuntary
614 administration of antipsychotic medication.

615 (b) The ~~[executive director]~~ department shall provide the notification under Subsection
616 (2)(a) only if there is no basis for involuntarily medicating the defendant for reasons other than
617 to restore the defendant's competency.

618 (3) In the notice under Subsection (2)(a), the ~~[executive director]~~ department shall state
619 whether ~~[the executive director believes]:~~

620 (a) medication is necessary to render the defendant competent;

621 (b) medication is substantially likely to render the defendant competent;

622 (c) medication is substantially unlikely to produce side effects which would
623 significantly interfere with the defendant's ability to assist in ~~[his]~~ the defendant's defense;

624 (d) no less intrusive means are available, and whether any of those means have been
625 attempted to render the defendant competent; and

626 (e) medication is medically appropriate and is in the defendant's best medical interest
627 in light of ~~[his]~~ the defendant's medical condition.

628 (4) (a) ~~[Upon receipt of the notice under Subsection (2)(a), the]~~ The court shall conduct
629 a hearing within ~~[30 days, unless the court extends the time for good cause, to determine~~
630 ~~whether the court should convene a hearing]~~ 15 days, or, for good cause, within 30 days after
631 the day on which the court receives the notice described in Subsection (2)(a), regarding the
632 involuntary medication of the defendant.

633 (b) The prosecuting attorney shall represent the state at any hearing under this section.

634 (c) The court shall consider whether the following factors apply in determining
635 whether the defendant should be involuntarily medicated:

636 (i) important state interests are at stake in restoring the defendant's competency;

637 (ii) involuntary medication will significantly further the important state interests, in
638 that the medication proposed:

639 (A) is substantially likely to render the defendant competent to stand trial; and

640 (B) is substantially unlikely to produce side effects which would significantly interfere
641 with the defendant's ability to assist ~~[the defense counsel in conducting his]~~ in the defendant's
642 defense;

643 (iii) involuntary medication is necessary to further important state interests, because
644 any ~~[alternate]~~ less intrusive treatments are unlikely to achieve substantially the same results;
645 and

646 (iv) the administration of the proposed medication is medically appropriate, as it is in
647 the defendant's best medical interest in light of ~~[his]~~ the defendant's medical condition.

648 (5) In determining whether the proposed treatment is medically appropriate and is in
649 the defendant's best medical interest, the potential penalty the defendant may be subject to, if
650 the defendant is convicted of any charged offense, is not a relevant consideration.

651 (6) (a) If the court finds by clear and convincing evidence that the involuntary
652 administration of antipsychotic medication is appropriate, it shall make findings addressing

653 each of the factors in Subsection (4)(c) and shall issue an order authorizing the [~~Department of~~
654 ~~Human Services~~] department to involuntarily administer antipsychotic medication to the
655 defendant in order to restore [~~his~~] the defendant's competency, subject to the periodic reviews
656 and other procedures provided in Section 77-15-6.

657 (b) When issuing an order under Subsection (6)(a), the court shall consider ordering
658 less intrusive means for administering the drugs, such as a court order to the defendant
659 enforceable by the contempt power, before ordering more intrusive methods of involuntary
660 medication.

661 (7) The provisions in Section 77-15-6 establishing time limitations for treatment of
662 incompetent defendants before they must be either released or civilly committed are tolled
663 from the time the [~~executive director~~] department gives notice to the court and the parties under
664 Subsection (2) until:

665 (a) the court has issued a final order for the involuntary medication of the defendant,
666 and the defendant has been medicated under that order; or

667 (b) the court has issued a final order that the defendant will not be involuntarily
668 medicated.

669 (8) This section applies only when [~~the prosecution seeks~~] an order of involuntary
670 medication is sought solely for the purpose of rendering a defendant competent to [~~proceed~~]
671 stand trial.

672 Section 11. Section ~~77-15-7~~ is amended to read:

673 **77-15-7. Statute of limitations and speedy trial -- Effect of incompetency of**
674 **defendant.**

675 (1) The statute of limitations is tolled during any period in which the defendant is
676 adjudicated incompetent to proceed.

677 (2) Any period of time during which the defendant has been adjudicated incompetent
678 to proceed and any period during which [~~he~~] the defendant is being evaluated for competency
679 may not be computed in determining the defendant's speedy trial rights.

680 Section 12. Section ~~77-15-9~~ is amended to read:

681 **77-15-9. Expenses.**

682 (1) In determining the competence of a defendant to proceed, expenses of examination,
683 observation, or treatment, excluding travel to and from any mental health facility, shall be

684 charged to the [~~Department of Human Services~~] department when the offense is a state offense.
685 Travel expenses incurred by the defendant shall be charged to the county where prosecution is
686 commenced. Examination of [~~defendants~~] a defendant on local ordinance violations shall be
687 charged by the department to the municipality or county commencing the prosecution.

688 (2) When examination is initiated by the court or on motion of the prosecutor,
689 expenses of commitment and treatment of the [~~person confined to a mental health facility after~~
690 ~~examination, if he~~] defendant, if the defendant is determined to be incompetent to proceed,
691 shall also be charged to the department.

692 (3) Expenses of examination, treatment, or confinement in a mental health facility for
693 any [~~person~~] individual who has been convicted of a crime and placed in a state correctional
694 facility shall be charged to the Department of Corrections.

695 (4) [~~If the defendant, after examination, is found to be competent by the court,]~~ If, after
696 evaluation, the court determines that a defendant is competent to stand trial, all subsequent
697 costs are charged to the county commencing prosecution. If the defendant requested the
698 examination and is found to be competent to stand trial by the court, the department may
699 recover the expenses of the examination from the defendant.

Legislative Review Note
Office of Legislative Research and General Counsel