

**Effective 5/7/2025**

## **Chapter 15**

### **Defendant's Competency to Proceed**

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

An individual who is incompetent to proceed may not be tried for a public offense.

Amended by Chapter 147, 2018 General Session

#### **77-15-2 Definitions.**

As used in this chapter:

- (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to determine if an individual is competent to stand trial.
- (2) "Competent to stand trial" means that a defendant has:
  - (a) a rational and factual understanding of the criminal proceedings against the defendant and of the punishment specified for the offense charged; and
  - (b) the ability to consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense.
- (3) "Department" means the Department of Health and Human Services.
- (4) "Forensic evaluator" means a licensed mental health professional who:
  - (a) is not involved in the defendant's treatment;
  - (b) is trained and qualified by the department to conduct a competency evaluation, a restoration screening, and a progress toward competency evaluation, based on knowledge, experience, or education relating to:
    - (i) intellectual functioning or psychopathology; and
    - (ii) the legal system and the rights of a defendant in a criminal trial; and
  - (c) if under contract with the department, demonstrates ongoing education and training relating to forensic mental health in accordance with rules established by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) "Incompetent to proceed" means that a defendant is not competent to stand trial as a result of:
  - (a) mental illness; or
  - (b) intellectual disability.
- (6) "Mental illness" means the same as that term is defined in Section 26B-5-301.
- (7) "Petition" means a petition to request a court to determine whether a defendant is competent to stand trial.
- (8) "Progress toward competency evaluation" means an evaluation to determine whether an individual who is receiving restoration treatment is:
  - (a) competent to stand trial;
  - (b) incompetent to proceed but has a substantial probability of becoming competent to stand trial in the foreseeable future; or
  - (c) incompetent to proceed and does not have a substantial probability of becoming competent to stand trial in the foreseeable future.
- (9) "Restoration treatment" means training and treatment that is:
  - (a) provided to an individual who is incompetent to proceed;
  - (b) tailored to the individual's particular impairment to competency; and
  - (c) limited to the purpose of restoring the individual to competency.

Amended by Chapter 46, 2025 General Session

**77-15-3 Petition for inquiry regarding defendant -- Filing -- Contents.**

- (1) When a defendant charged with a public offense is incompetent to proceed, an individual described in Subsection (2)(b) may file a petition in the district court of the county where the charge is pending or where the defendant is confined.
- (2)
  - (a)
    - (i) The petition shall contain a certificate that it is filed in good faith and on reasonable grounds to believe the defendant is incompetent to proceed.
    - (ii) The petition shall contain a recital of the facts, observations, and conversations with the defendant that have formed the basis for the petition.
    - (iii) If filed by defense counsel, the petition may not disclose information in violation of the attorney-client privilege.
  - (b) The petition may be based upon knowledge or information and belief and may be filed by the defendant, any person acting on behalf of the defendant, the prosecuting attorney, or any person having custody or supervision over the defendant.

Amended by Chapter 145, 2024 General Session

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

- (1) When a defendant charged with a misdemeanor may be incompetent to proceed, any petition shall be filed in accordance with Section 77-15-3.
- (2) If the most severe charge against a defendant is a misdemeanor and the defendant is adjudicated by a court as incompetent to proceed:
  - (a) the department shall provide restoration treatment to the defendant; and
  - (b) the court may refer the defendant to pretrial diversion services, upon agreement of the prosecution and defense counsel.
- (3) Unless the prosecutor or another individual indicates that civil commitment proceedings will be initiated under Subsection 77-15-6(5)(c), a court shall release a defendant who is incompetent to proceed if:
  - (a) the most severe charge against the defendant is a class B misdemeanor;
  - (b) more than 60 days have passed after the day on which the court adjudicated the defendant incompetent to proceed; and
  - (c) the defendant is not restored to competency.
- (4) The department shall provide restoration treatment to the defendant within the timeframe described in Subsection (3)(b).
- (5) The court may, but is not required to, dismiss the charges against a defendant who was released under Subsection (3).

Amended by Chapter 171, 2023 General Session

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

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

Amended by Chapter 147, 2018 General Session

**77-15-5 Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.**

- (1) A court in which criminal proceedings are pending shall stay all criminal proceedings, if:
  - (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or
  - (b) the court raises the issue of the defendant's competency under Section 77-15-4.
- (2) The court in which the petition described in Subsection (1)(a) is filed:
  - (a) shall inform the court in which criminal proceedings are pending of the petition, if the petition is not filed in the court in which criminal proceedings are pending;
  - (b) shall review the allegations of incompetency;
  - (c) may hold a limited hearing solely for the purpose of determining the sufficiency of the petition, if the court finds the petition is not clearly sufficient on its face;
  - (d) shall hold a hearing, if the petition is opposed by either party; and
  - (e) may not order an examination of the defendant or order a hearing on the mental condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial.
- (3)
  - (a)
    - (i) If the court finds that there is a bona fide doubt as to the defendant's competency to stand trial, the court shall order the department to have one or two forensic evaluators complete a competency evaluation for the defendant in accordance with Subsection (3)(b) and provide a report to the court regarding the competency of the defendant to stand trial.
    - (ii) If the court orders two competency evaluations, the competency evaluations must be ordered in the same order.
  - (b) The court shall order the department to have the defendant evaluated by one forensic evaluator unless:
    - (i) the defendant is charged with a capital felony; or
    - (ii) the defendant is charged with a felony that is not a capital felony, and the court determines, based on the allegations in the petition, that good cause exists to order two competency evaluations.
  - (c)
    - (i) This section does not prohibit a party from seeking an additional forensic evaluator to conduct a competency evaluation of the defendant.
    - (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c), the party shall:
      - (A) select the additional forensic evaluator; and
      - (B) pay the costs of the additional forensic evaluator.
  - (d)
    - (i) After the court receives the reports of all evaluations ordered under this Subsection (3), the court may order the department to conduct an additional evaluation or an updated evaluation:
      - (A) upon motion of a party or the court's own motion; and
      - (B) if the court finds good cause based on:
        - (I) a change in circumstances; or
        - (II) the receipt of new information that was not previously considered and that could materially affect the determination of the defendant's competency to stand trial.
    - (ii) An additional or updated evaluation that the department conducts as ordered by the court as described in Subsection (3)(d)(i), may, at the discretion of the department, be limited to

addressing the change in circumstances or new information described in Subsection (3)(d)(i)(B)(II).

- (iii) This Subsection (3)(d) does not prohibit or limit a party from seeking an additional competency evaluation under Subsection (3)(c) or Subsection (11).
  - (e) The stipulation by parties to a bona fide doubt as to the defendant's competency to stand trial alone may not take the place of a competency evaluation ordered under this Subsection (3).
  - (f) In accordance with state licensing laws, the court may only order the department to provide an initial evaluation and progress toward competency evaluation for a defendant who is located within the state.
- (4)
- (a) If the petition or other information sufficiently raises concerns that the defendant may have an intellectual disability, at least one forensic evaluator who is experienced in assessments of intellectual disabilities shall conduct a competency evaluation.
  - (b) The petitioner or other party, as directed by the court or requested by the department, shall provide to the forensic evaluator nonmedical information and materials relevant to a determination of the defendant's competency, including the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.
  - (c) For purposes of a competency evaluation, a custodian of mental health records pertaining to the defendant, including the defendant's prior mental health evaluations or records relating to the defendant's substance use disorder, may provide the records to:
    - (i) with the defendant's consent, a forensic evaluator or the department on the department's request; or
    - (ii) a forensic evaluator by court order.
  - (d) A court order under Subsection (4)(c) shall include a protective order that expires 180 days after the day on which:
    - (i) the defendant is found guilty;
    - (ii) the defendant enters a guilty plea;
    - (iii) the court sentences the defendant; or
    - (iv) if the case is appealed, the day on which the final appeal is resolved.
  - (e)
    - (i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f), the court shall order the forensic evaluator to destroy all records subject to the protective order within the 180 day period described in Subsection (4)(d).
    - (ii) A forensic evaluator is not required to destroy the records subject to the protective order if destroying the records is a violation of ethical standards to which the forensic evaluator is subject for occupational licensing.
  - (f) The court may extend the protective order described in Subsection (4)(d) if:
    - (i) the court finds the defendant incompetent to proceed without a substantial probability that the defendant will become competent in the foreseeable future;
    - (ii) the prosecutor or another individual indicates to the court that the prosecutor or other individual will seek civil commitment of the defendant under Section 77-15-6; and
    - (iii) the court orders the records be maintained and used only for the purposes of examining the defendant in connection with the petition for civil commitment.
  - (g) An order for a competency evaluation may not contain an order for any other inquiry into the mental state of the defendant that is not described in this Subsection (4).

(5)

- (a) Pending a competency evaluation, unless the court or the department directs otherwise, the defendant shall be retained in the same custody or status that the defendant was in at the time the examination was ordered.
  - (b) If clinically appropriate, based on the department's recommendation and request, the defendant may be transferred to a clinical or inpatient setting temporarily for the purpose of the competency evaluation.
  - (c) If the department transfers the defendant as described Subsection (5)(b), the department shall provide notice of the transfer to the court and the parties.
- (6) In the conduct of a competency evaluation and in a report to the court, a forensic evaluator shall consider and address, in addition to any other factors determined to be relevant by the forensic evaluator:
- (a) the impact of the defendant's mental illness or intellectual disability on the defendant's present ability to:
    - (i) rationally and factually understand the criminal proceedings against the defendant; and
    - (ii) consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense;
  - (b) in making the determinations described in Subsection (6)(a), the forensic evaluator shall consider, as applicable the defendant's present ability to:
    - (i) understand the charges or allegations against the defendant;
    - (ii) communicate facts, events, and states of mind;
    - (iii) understand the range of possible penalties associated with the charges or allegations against the defendant;
    - (iv) engage in reasoned choice of legal strategies and options;
    - (v) understand the adversarial nature of the proceedings against the defendant;
    - (vi) manifest behavior sufficient to allow the court to proceed; and
    - (vii) testify relevantly, if applicable; and
  - (c) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.
- (7) Upon a determination that the defendant is incompetent to proceed, the forensic evaluator shall indicate in the report to the court:
- (a) the factors that contribute to the defendant's incompetency, including the nature of the defendant's mental illness or intellectual disability, if any, and its relationship to the factors contributing to the defendant's incompetency;
  - (b) whether there is a substantial probability that:
    - (i) restoration treatment may bring the defendant to competency to stand trial in the foreseeable future; or
    - (ii) the defendant cannot become competent to stand trial in the foreseeable future;
  - (c) whether the defendant would benefit from restoration treatment; and
  - (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c), an explanation of the reason for the determination and a summary of the treatment provided to the defendant in the past.
- (8)
- (a)
    - (i) A forensic evaluator shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order.
    - (ii) The report shall inform the court of the examiner's opinion concerning the competency of the defendant to stand trial.
  - (b)

- (i) If the forensic evaluator is unable to complete the report in the time specified in Subsection (8)(a), the forensic evaluator shall give written notice to the court.
  - (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i) shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day on which the forensic evaluator received the court's order to conduct a competency evaluation and file a report.
  - (iii) Except as provided in Subsection (8)(b)(iv), the court may further extend the deadline for completion of the evaluation and report if the court determines that there is good cause for the extension.
  - (iv) If an extension is sought because the forensic evaluator has been appointed to examine an inmate for competency to be executed or has been called to testify at a competency hearing described in Section 77-19-204, the court shall further extend the deadline to complete the report on the defendant's competency to stand trial.
  - (v) Upon receipt of an extension described in Subsection (8)(b)(iii), the forensic evaluator shall file the report as soon as reasonably possible.
- (9) Any written report submitted by a forensic evaluator shall:
- (a) identify the case ordered for evaluation by the case number;
  - (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each, the time spent by the forensic evaluator with the defendant for purposes of the examination, and the compensation to be paid to the evaluator for the report;
  - (c) state the forensic evaluator's clinical observations, findings, and opinions on each factor described in Subsection (6); and
  - (d) identify the sources of information used by the forensic evaluator and present the basis for the forensic evaluator's clinical findings and opinions.
- (10)
- (a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by a forensic evaluator based upon the statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence, unless the evidence is relevant to a determination of the defendant's competency.
  - (b) Before examining the defendant, the forensic evaluator shall specifically advise the defendant of the limits of confidentiality as provided under Subsection (10)(a).
- (11)
- (a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a competency hearing. The hearing shall be held not less than five and not more than 15 days after the day on which the court received the forensic evaluators' reports, unless for good cause the court sets a later date.
  - (b) Any person directed by the department to conduct the competency evaluation may be subpoenaed to testify at the hearing.
  - (c) The court may call any forensic evaluator to testify at the hearing who is not called by the parties. If the court calls a forensic evaluator, counsel for the parties may cross-examine the forensic evaluator.
  - (d)
    - (i) If the forensic evaluators are in conflict as to the competency of the defendant, all forensic evaluators should be called to testify at the hearing if reasonably available.
    - (ii) A conflict in the opinions of the forensic evaluators does not require the appointment of an additional forensic evaluator unless the court finds good cause for the appointment.

- (iii) If a party seeks an additional competency evaluation under this Subsection (11), that party shall:
  - (A) select the additional forensic evaluator; and
  - (B) pay the costs of the additional forensic evaluator.
- (12)
  - (a)
    - (i) A defendant shall be presumed competent to stand trial unless the court, by a preponderance of the evidence, finds the defendant incompetent to proceed.
    - (ii) The burden of proof is upon the proponent of incompetency at the hearing.
  - (b) An adjudication of incompetent to proceed does not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.
- (13) In determining the defendant's competency to stand trial, the court shall consider the totality of the circumstances, including:
  - (a) the petition;
  - (b) the defendant's criminal and arrest history;
  - (c) prior mental health evaluations and treatments provided to the court by the defendant;
  - (d) subject to Subsection (15), whether the defendant was found incompetent to proceed in a criminal action unrelated to the charged offense for which the petition is filed;
  - (e) the testimony of lay witnesses, if any;
  - (f) the forensic evaluator's testimony and report;
  - (g) the materials on which the forensic evaluator's report is based; and
  - (h) any other relevant evidence or consideration bearing on the competency of the defendant.
- (14) If the court finds the defendant incompetent to proceed:
  - (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:
    - (i) include findings addressing each of the factors in Subsection (6)(a);
    - (ii) include a transportation order, if necessary;
    - (iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant, and any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition; and
    - (iv) be sent by the court to the department; and
  - (b) the prosecuting attorney shall provide to the department:
    - (i) the charging document and probable cause statement, if any;
    - (ii) arrest or incident reports prepared by law enforcement and pertaining to the charged offense; and
    - (iii) additional supporting documents.
- (15) The court may not find the defendant incompetent to proceed based solely on a court having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6 in an unrelated criminal action if the court in the unrelated criminal action ordered the release more than one year before the day on which the petition described in Subsection (13)(a) is filed.
- (16) The court may make any reasonable order to ensure compliance with this section.
- (17) Failure to comply with this section does not result in the dismissal of criminal charges.
- (18) This section does not apply to progress toward competency evaluations.

Amended by Chapter 76, 2026 General Session

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

- (1)
  - (a) Except as provided in Subsection (5), if after a hearing a court finds a defendant to be incompetent to proceed, the court shall order the defendant committed to the department for restoration treatment.
  - (b)
    - (i) Except as provided in Subsection (1)(b)(ii), the court may recommend but may not order placement of a defendant who is found incompetent to proceed.
    - (ii) The court may order that the defendant be placed in a secure setting rather than a nonsecure setting.
  - (c) Following restoration screening, the department's designee shall designate and inform the court of the specific placement and restoration treatment program for the defendant.
  - (d) Restoration treatment shall be of sufficient scope and duration to:
    - (i) restore the defendant to competency; or
    - (ii) determine whether the defendant can be restored to competency in the foreseeable future.
  - (e) A defendant who a court determines is incompetent to proceed may not be held for restoration treatment longer than:
    - (i) the time reasonably necessary to determine that the defendant cannot become competent to stand trial in the foreseeable future; and
    - (ii) the maximum period of incarceration that the defendant could receive if the defendant were convicted of the most severe offense of the offenses charged.
- (2)
  - (a) A defendant who is receiving restoration treatment shall receive a progress toward competency evaluation, by:
    - (i) a forensic evaluator, designated by the department; and
    - (ii) an additional forensic evaluator, if requested by a party and paid for by the requesting party.
  - (b) A forensic evaluator shall complete a progress toward competency evaluation and submit a report within 90 days after the day on which the forensic evaluator receives the commitment order from the department.
  - (c) The report shall:
    - (i) assess whether the defendant is exhibiting false or exaggerated physical or psychological symptoms;
    - (ii) describe any diagnostic instruments, methods, and observations used by the evaluator to make the determination;
    - (iii) describe the defendant's current mental illness or intellectual disability, if any;
    - (iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated symptoms on the defendant's competency to stand trial;
    - (v) assess the facility's or program's capacity to provide appropriate restoration treatment for the defendant;
    - (vi) assess the nature of restoration treatment provided to the defendant;
    - (vii) assess what progress the defendant has made toward competency restoration, with respect to the factors identified by the court in its initial order;
    - (viii) assess whether the defendant can reasonably be restored to competency in the foreseeable future given the restoration treatment currently being provided and the facility's or program's capacity to provide appropriate restoration treatment for the defendant; and

- (ix) assess the likelihood of restoration to competency, the amount of time estimated to achieve competency, or the amount of time estimated to determine whether restoration to competency may be achieved.
- (d) If clinically appropriate, a report concluding that the defendant is competent to proceed may include a statement by the facility's treating physician regarding:
  - (i) whether the defendant is taking any antipsychotic medication as prescribed;
  - (ii) whether ongoing administration of antipsychotic medication is necessary to maintain the defendant's competency to stand trial;
  - (iii) whether antipsychotic medication is substantially likely to maintain the defendant's competency to stand trial;
  - (iv) whether antipsychotic medication is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in the defendant's defense;
  - (v) that no less intrusive means are available, and whether any of those means have been attempted to render the defendant competent; and
  - (vi) whether antipsychotic medication is medically appropriate and in the defendant's best medical interest in light of the defendant's medical condition.
- (3)
  - (a) The court on its own motion or upon motion by either party or the department may appoint an additional forensic evaluator to conduct a progress toward competency evaluation.
  - (b) If the court appoints an additional forensic evaluator upon motion of a party, that party shall pay the costs of the additional forensic evaluator.
- (4)
  - (a) Within 15 days after the day on which the court receives the forensic evaluator's report of the progress toward competency evaluation, the court shall hold a hearing to review the defendant's competency.
  - (b) At the hearing, the burden of proving that the defendant is competent to stand trial is on the proponent of competency.
  - (c) Following the hearing, the court shall determine by a preponderance of evidence whether the defendant:
    - (i) is competent to stand trial;
    - (ii) is competent, but requires the ongoing administration of antipsychotic medication in order to maintain the defendant's competency to stand trial;
    - (iii) is incompetent to proceed, with a substantial probability that the defendant may become competent in the foreseeable future; or
    - (iv) is incompetent to proceed, without a substantial probability that the defendant may become competent in the foreseeable future.
- (5)
  - (a) If at any time the court determines that the defendant is competent to stand trial, the court shall:
    - (i) proceed with the trial or other procedures as may be necessary to adjudicate the charges;
    - (ii) order that the defendant be returned to the placement and status that the defendant was in at the time when the petition for the adjudication of competency was filed or raised by the court, unless the court determines that placement of the defendant in a less restrictive environment is more appropriate;
    - (iii) order the ongoing administration of antipsychotic medication to the defendant for the purpose of maintaining the defendant's competency to stand trial, if the court finds that the administration of antipsychotic medication is necessary to maintain the defendant's competency to stand trial under Subsection (4)(c)(ii); and

- (iv) require the agency, jail, or prison with custody over the defendant to report to the court any noncompliance with the court's orders under this Subsection (5) within 48 hours of the noncompliance.
- (b) If the court determines that the defendant is incompetent to proceed with a substantial probability that the defendant may become competent in the foreseeable future, the court may order that the defendant remain committed to the department or the department's designee for the purpose of restoration treatment.
- (c)
  - (i) If the court determines that the defendant is incompetent to proceed without a substantial probability that the defendant may become competent in the foreseeable future, the court shall order the defendant released from commitment to the department, unless the prosecutor or another individual informs the court that civil commitment proceedings pursuant to Title 26B, Chapter 5, Health Care - Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, will be initiated.
  - (ii) The commitment proceedings must be initiated by a petition filed within seven days after the day on which the court makes the determination described in Subsection (4)(c)(iv), unless the court finds that there is good cause to delay the initiation of the civil commitment proceedings.
  - (iii) The court may order the defendant to remain committed to the department until the civil commitment proceedings conclude.
  - (iv) If the defendant is civilly committed and admitted to a secure setting, the department shall provide notice to the court that adjudicated the defendant incompetent to proceed and to the prosecution agency that prosecuted the case at least 15 days before any proposed release of the committed individual from the secure setting.
  - (v) If the prosecution agency that prosecuted the case intends to refile charges against the committed individual:
    - (A) the prosecution agency shall provide written notice of that intent to the department within 15 days after the department provides the notice described in Subsection (5)(c)(iv); and
    - (B) the department shall postpone release of the committed individual for at least 30 days after the day on which the department receives the written notice of intent from the prosecution agency.
  - (vi) If the prosecution agency that prosecuted the case refiles charges against the committed individual and the individual's competency is raised, the department shall postpone release of the individual until the competency proceedings conclude.
- (6)
  - (a) At any time following the court's order under Subsection (5)(a)(iii), the defendant, the prosecuting attorney, the department, the treating physician, or the agency, jail, or prison with custody over the defendant, may notify the court of the need to review the medication order under Subsection (5)(a)(iii) for continued appropriateness and feasibility.
  - (b) The court shall set the matter for a hearing if the notification under Subsection (6)(a) establishes good cause to review the matter.
- (7) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall schedule a competency review hearing for the earlier of:
  - (a) the department's best estimate of when the defendant may be restored to competency; or
  - (b) three months after the day on which the court determined under Subsection (5)(b) to extend the defendant's commitment.

- (8) Unless the defendant is charged with a crime listed in Subsection (9), if a defendant is incompetent to proceed by the day of the competency review hearing that follows the extension of a defendant's commitment, the court shall:
  - (a) order the defendant be:
    - (i) released or temporarily detained pending civil commitment proceedings as described in Subsection (5)(c); and
    - (ii) terminate the defendant's commitment to the department for restoration treatment; or
  - (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment up to 45 additional days.
- (9) If the defendant is charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (7), the court may extend the commitment for a period not to exceed nine months for the purpose of restoration treatment, with a mandatory review hearing at the end of the nine-month period.
- (10) Unless the defendant is charged with aggravated murder or murder, if, at the nine-month review hearing described in Subsection (9), the court determines that the defendant is incompetent to proceed, the court shall:
  - (a)
    - (i) order the defendant be released or temporarily detained pending civil commitment proceedings as provided in Subsection (5)(c); and
    - (ii) terminate the defendant's commitment to the department for restoration treatment; or
  - (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment for up to 135 additional days.
- (11) If the defendant is charged with aggravated murder or murder and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the nine-month review hearing described in Subsection (9), the court may extend the commitment for a period not to exceed 24 months for the purpose of restoration treatment.
- (12) If the court extends the defendant's commitment term under Subsection (11), the court shall hold a hearing no less frequently than at 12-month intervals following the extension for the purpose of determining the defendant's competency status.
- (13) If, at the end of the 24-month commitment period described in Subsection (11), the court determines that the defendant is incompetent to proceed, the court shall:
  - (a)
    - (i) order the defendant be released or temporarily detained pending civil commitment proceedings as provided in Subsection (5)(c); and
    - (ii) terminate the defendant's commitment to the department for restoration treatment; or
  - (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment for up to 12 additional months.
- (14)
  - (a) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges.
  - (b) The court may retain jurisdiction over the criminal case and may order periodic reviews.

- (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5, Health Care - Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, may still be adjudicated competent to stand trial under this chapter.
- (16)
- (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (8), (10), or (13), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.
  - (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (8), (9), or (13), or is not dismissal of the criminal charges.
- (17) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.
- (18)
- (a) If, at any time, the defendant becomes competent to stand trial while the defendant is committed to the department, the clinical director of the Utah State Hospital, the department, or the department's designee shall certify that fact to the court.
  - (b) The court shall conduct a competency review hearing:
    - (i) within 15 working days after the day on which the court receives the certification described in Subsection (18)(a); or
    - (ii) within 30 working days after the day on which the court receives the certification described in Subsection (18)(a), if the court determines that more than 15 working days are necessary for good cause related to the defendant's competency.
- (19) The court may order a hearing at any time on the court's own motion or upon recommendations of the clinical director of the Utah State Hospital or other facility or the department.
- (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney and all counsel of record.

Amended by Chapter 76, 2026 General Session

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

- (1) As used in this section, "final order" means a court order that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.
- (2)
- (a) At any time after a defendant has been found incompetent to proceed and has been committed to the department under Section 77-15-6 for restoration treatment, the department shall notify the court, prosecuting attorney, and attorney for the defendant if the department determines that the defendant is not responding to restoration treatment and is unlikely to be restored to competency without the involuntary administration of antipsychotic medication.
  - (b) The department shall provide the notification under Subsection (2)(a) only if there is no basis for involuntarily medicating the defendant for reasons other than to restore the defendant's competency.
- (3) In the notice under Subsection (2)(a), the department shall state whether:
- (a) medication is necessary to render the defendant competent;
  - (b) medication is substantially likely to render the defendant competent;
  - (c) medication is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in the defendant's defense;

- (d) no less intrusive means are available, and whether any of those means have been attempted to render the defendant competent; and
  - (e) medication is medically appropriate and is in the defendant's best medical interest in light of the defendant's medical condition.
- (4)
- (a) The court shall conduct a hearing within 15 days, or, for good cause, within 30 days after the day on which the court receives the notice described in Subsection (2)(a), regarding the involuntary medication of the defendant.
  - (b) The prosecuting attorney shall represent the state at any hearing under this section.
  - (c) The court shall consider whether the following factors apply in determining whether the defendant should be involuntarily medicated:
    - (i) important state interests are at stake in restoring the defendant's competency;
    - (ii) involuntary medication will significantly further the important state interests, in that the medication proposed:
      - (A) is substantially likely to render the defendant competent to stand trial; and
      - (B) is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in the defendant's defense;
    - (iii) involuntary medication is necessary to further important state interests, because any less intrusive treatments are unlikely to achieve substantially the same results; and
    - (iv) the administration of the proposed medication is medically appropriate, as it is in the defendant's best medical interest in light of the defendant's medical condition.
- (5) In determining whether the proposed treatment is medically appropriate and is in the defendant's best medical interest, the potential penalty the defendant may be subject to, if the defendant is convicted of any charged offense, is not a relevant consideration.
- (6)
- (a) If the court finds by clear and convincing evidence that the involuntary administration of antipsychotic medication is appropriate, it shall make findings addressing each of the factors in Subsection (4)(c) and shall issue an order authorizing the department to involuntarily administer antipsychotic medication to the defendant in order to restore the defendant's competency, subject to the periodic reviews and other procedures provided in Section 77-15-6.
  - (b) When issuing an order under Subsection (6)(a), the court shall consider ordering less intrusive means for administering the drugs, such as a court order to the defendant enforceable by the contempt power, before ordering more intrusive methods of involuntary medication.
- (7) The provisions in Section 77-15-6 establishing time limitations for treatment of incompetent defendants before they must be either released or civilly committed are tolled from the time the department gives notice to the court and the parties under Subsection (2) until:
- (a) the court has issued a final order for the involuntary medication of the defendant, and the defendant has been medicated under that order; or
  - (b) the court has issued a final order that the defendant will not be involuntarily medicated.
- (8) This section applies only when an order of involuntary medication is sought solely for the purpose of rendering a defendant competent to stand trial.

Amended by Chapter 147, 2018 General Session

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

- (1) The statute of limitations is tolled during any period in which the defendant is adjudicated incompetent to proceed.
- (2) Any period of time during which the defendant has been adjudicated incompetent to proceed and any period during which the defendant is being evaluated for competency may not be computed in determining the defendant's speedy trial rights.

Amended by Chapter 147, 2018 General Session

**77-15-8 Bail exonerated on commitment of defendant.**

When a defendant awaiting trial is committed to a mental health facility, bail shall be exonerated.

Enacted by Chapter 15, 1980 General Session

**77-15-9 Expenses.**

- (1) In determining the competence of a defendant to proceed, expenses of examination, observation, or treatment, excluding travel to and from any mental health facility, shall be charged to the department when the offense is a state offense. Travel expenses incurred by the defendant shall be charged to the county where prosecution is commenced. Examination of a defendant on local ordinance violations shall be charged by the department to the municipality or county commencing the prosecution.
- (2) When examination is initiated by the court or on motion of the prosecutor, expenses of commitment and treatment of the defendant, if the defendant is determined to be incompetent to proceed, shall also be charged to the department.
- (3) Expenses of examination, treatment, or confinement in a mental health facility for any individual who has been convicted of a crime and placed in a state correctional facility shall be charged to the Department of Corrections.
- (4) If, after evaluation, the court determines that a defendant is competent to stand trial, all subsequent costs are charged to the county commencing prosecution. If the defendant requested the examination and is found to be competent to stand trial by the court, the department may recover the expenses of the examination from the defendant.

Amended by Chapter 147, 2018 General Session

**77-15-10 Involuntary medication order portability.**

- (1) As used in this section:
  - (a) "Covered individual" means an individual subject to an involuntary medication order.
  - (b) "Facility" means:
    - (i) a county jail;
    - (ii) the Utah State Hospital established in Section 26B-5-302; or
    - (iii) a facility where a covered individual is receiving treatment and where an administrative hearing regarding the involuntary administration of a psychiatric medication is conducted, including:
      - (A) a licensed inpatient psychiatric facility; or
      - (B) a state correctional facility.
  - (c) "Involuntary medication order" means a court order or an administrative order that:
    - (i) is authorized by law or administrative rule; and

- (ii) permits the administration of psychiatric medication to an individual without the individual's consent.
- (d) "Qualified medical professional" means an individual who is licensed as:
  - (i) a physician under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
  - (ii) a psychiatrist under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
  - (iii) a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act; or
  - (iv) a nurse practitioner under Title 58, Chapter 31b, Nurse Practice Act.
- (e) "Receiving facility" means a facility where a covered individual is being transferred.
- (f) "Sending facility" means a facility where a covered individual is held or incarcerated.
- (2) An involuntary medication order remains valid and in effect when a covered individual is transferred from a sending facility to a receiving facility.
- (3) Before a receiving facility continues administering medication to an individual transferred from a sending facility under an involuntary medication order:
  - (a) a qualified medical professional employed by the receiving facility shall:
    - (i) review the covered individual's medical record from the sending facility and the involuntary medication order;
    - (ii) conduct a face-to-face assessment of the covered individual's current mental and physical condition;
    - (iii) assess whether the covered individual can be transitioned to receiving medication on a voluntary basis if the covered individual continues to need medication; and
  - (b) the qualified medical professional shall document in the covered individual's medical record a signed statement affirming that:
    - (i) the covered individual continues to suffer from a mental illness and, as a result of the mental illness, poses a likelihood of serious harm to the covered individual or others if treatment ordered in the involuntary medication order is discontinued; and
    - (ii) the administration of psychiatric medication as ordered in the involuntary medication order is:
      - (A) medically appropriate;
      - (B) in the covered individual's best interest; and
      - (C) the least restrictive treatment necessary to maintain the safety of the covered individual and others.
- (4)
  - (a) A sending facility and receiving facility shall coordinate transfer of a covered individual's medication plan.
  - (b) If the covered individual's medication is unavailable under the receiving facility's formulary, the medical director of the sending facility, or the medical director's designee, and the medical director of the receiving facility, or the medical director's designee, shall agree on a therapeutic equivalent or alternative that prevents interruption of the covered individual's treatment.
  - (c) If the medical director of the receiving facility does not agree to a therapeutic equivalent or alternative described in Subsection (4)(b), the receiving facility may not continue to involuntarily medicate the covered individual unless the receiving facility seeks a new involuntary medication order.
- (5) This section does not affect:
  - (a) the rights of a covered individual under this chapter; or
  - (b) the original expiration date of an involuntary medication order.

Enacted by Chapter 76, 2026 General Session