

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

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

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

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

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

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

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

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

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

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

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

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

57 (vi) manifest appropriate courtroom behavior; and

58 (vii) testify relevantly, if applicable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (d) identify the sources of information used by the expert and present the basis for the

90 expert's clinical findings and opinions.

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

98 (b) Prior to examining the defendant, examiners should specifically advise the
99 defendant of the limits of confidentiality as provided under [~~this~~] Subsection (8)(a).

100 (9) When the report is received the court shall set a date for a mental hearing which
101 shall be held in not less than five and not more than 15 days, unless the court enlarges the time
102 for good cause. The hearing shall be conducted according to the procedures outlined in
103 Subsections 62A-15-631(9)(b) through (9)(f). Any person or organization directed by the
104 department to conduct the examination may be subpoenaed to testify at the hearing. If the
105 experts are in conflict as to the competency of the defendant, all experts should be called to
106 testify at the hearing if reasonably available. The court may call any examiner to testify at the
107 hearing who is not called by the parties. If the court calls an examiner, counsel for the parties
108 may cross-examine the expert.

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

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

121 commitment of the defendant.

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

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

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

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

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

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

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

146 (b) arrest or incident reports prepared by a law enforcement agency pertaining to the
147 charged offense; and

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

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

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

Legislative Review Note
as of 10-24-02 9:50 AM

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

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-12-02 10:43 AM

The Judiciary Interim Committee recommended this bill.

Fiscal Note
Bill Number HB0009

Competency to Stand Trial Amendments

20-Jan-03

5:17 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst