

1                                   **PETITION FOR INVOLUNTARY MEDICATION**  
2                                   **OF INCOMPETENT PERSON**

3                                   2006 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Scott L Wyatt**

6                                   Senate Sponsor: Gregory S. Bell

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the Code of Criminal Procedure to establish the procedure for  
11   judicial determination of when an incompetent defendant should be medicated  
12   involuntarily.

13   **Highlighted Provisions:**

14           This bill:

15           ▶ requires that the Department of Human Services advise the court, prosecutor, and  
16   defense counsel if the defendant, who has been found incompetent and has been  
17   committed to the department for treatment, is not responding to treatment without  
18   involuntary medication;

19           ▶ establishes criteria the Department of Human Services is to address in evaluating  
20   the defendant;

21           ▶ requires that upon receipt of notice from the Department of Health, the court shall  
22   schedule a hearing regarding if the defendant should be ordered to be involuntarily  
23   medicated and provides criteria the court shall consider;

24           ▶ provides a standard of clear and convincing evidence for the judicial determination;  
25   and

26           ▶ limits application of this bill to when the sole purpose for considering involuntary  
27   medication is to render the defendant competent to proceed with the criminal trial.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 ENACTS:

34 **77-15-6.5**, Utah Code Annotated 1953



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

37 Section 1. Section **77-15-6.5** is enacted to read:

38 **77-15-6.5. Petition for involuntary medication of incompetent defendant.**

39 (1) As used in this section:

40 (a) "Executive director" means the executive director of the Department of Human  
41 Services or the executive director's designee.

42 (b) "Final order" means a court order that determines the rights of the parties and  
43 concerning which appellate remedies have been exhausted or the time for appeal has expired.

44 (2) (a) At any time after a defendant has been found incompetent to proceed and has  
45 been committed to the Department of Human Services under Section 77-15-6 for treatment to  
46 restore competency, the executive director shall notify the court, prosecuting attorney, and  
47 attorney for the defendant if the executive director has determined that the defendant is not  
48 responding to treatment and is unlikely to be restored to competency without the involuntary  
49 administration of antipsychotic medication.

50 (b) The executive director shall provide the notification under Subsection (2)(a) only if  
51 there is no basis for involuntarily medicating the defendant for reasons other than to restore the  
52 defendant's competency.

53 (3) In the notice under Subsection (2)(a), the executive director shall address whether:

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

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

56 (c) medication is substantially unlikely to produce side effects which would  
57 significantly interfere with the defendant's ability to assist in his defense;

58 (d) any less intrusive means are available, and if so, if any of those means have been

59 attempted to render the defendant competent; and

60 (e) medication is medically appropriate and is in the defendant's best medical interest  
61 in light of his medical condition.

62 (4) (a) Upon receipt of the notice under Subsection (2)(a), the court shall conduct a  
63 hearing within 15 days, unless the court extends the time for good cause, to determine whether  
64 the court should convene a hearing regarding the involuntary medication of the defendant.

65 (b) The court shall conduct an involuntary medication hearing according to the  
66 procedures outlined in Subsections 62A-15-631(9)(b) through (9)(f).

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

68 (d) The court shall consider whether the following factors apply in determining  
69 whether the defendant should be involuntarily medicated:

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

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

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

74 (B) is substantially unlikely to produce side effects which would significantly interfere  
75 with the defendant's ability to assist the defense counsel in conducting his defense;

76 (iii) involuntary medication is necessary to further important state interests, because  
77 any alternate less intrusive treatments are unlikely to achieve substantially the same results; and

78 (iv) the administration of the proposed medication is medically appropriate, as it is in  
79 the defendant's best medical interest in light of his medical condition.

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

83 (6) (a) If the court finds by clear and convincing evidence that the involuntary  
84 administration of antipsychotic medication is appropriate, it shall make findings addressing  
85 each of the factors in Subsection (4)(d) and shall issue an order authorizing the Department of  
86 Human Services to involuntarily administer antipsychotic medication to the defendant in order  
87 to restore his competency, subject to the periodic reviews and other procedures provided in  
88 Section 77-15-6.

89 (b) When issuing an order under Subsection (6)(a), the court shall consider ordering

90 less intrusive means for administering the drugs, such as a court order to the defendant  
91 enforceable by the contempt power, before ordering more intrusive methods of involuntary  
92 medication.

93 (7) The provisions in Section 77-15-6 establishing time limitations for treatment of  
94 incompetent defendants before they must be either released or civilly committed are tolled  
95 from the time the executive director gives notice to the court and the parties under Subsection  
96 (2) until:

97 (a) the court determines the outcome of treatment administered pursuant to a final  
98 order issued under Subsection (6)(a) and the defendant has been involuntarily medicated under  
99 that final order; or

100 (b) the court determines that involuntary medication is not appropriate.

101 (8) This section applies only when the prosecution seeks an order of involuntary  
102 medication solely for the purpose of rendering a defendant competent to proceed.

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**Legislative Review Note**

**as of 2-10-06 8:28 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0414**

**Petition for Involuntary Medication of Incompetent Person**

*17-Feb-06*

*10:39 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**