

1 **CODE OF CRIMINAL PROCEDURE**

2 **AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Rebecca D. Lockhart**

6 **Senate Sponsor: Curtis S. Bramble**

8 **LONG TITLE**

9 **General Description:**

10 This bill eliminates references to civil commitment in the criminal competency statutes.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ deletes provisions that reference civil commitment procedures within the criminal
14 competency procedures.

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **77-15-5**, as last amended by Laws of Utah 2003, Chapter 82

22 **77-15-6**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

23 **77-15-6.5**, as enacted by Laws of Utah 2006, Chapter 335

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

26 Section 1. Section **77-15-5** is amended to read:

27 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**
28 **defendant -- Scope of examination and report.**

29 (1) When a petition is filed pursuant to Section 77-15-3 raising the issue of the

30 defendant's competency to stand trial or when the court raises the issue of the defendant's
31 competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay
32 all proceedings. If the proceedings are in a court other than the district court in which the
33 petition is filed, the district court shall notify that court of the filing of the petition. The district
34 court in which the petition is filed shall pass upon the sufficiency of the allegations of
35 incompetency. If a petition is opposed by either party, the court shall, prior to granting or
36 denying the petition, hold a limited hearing solely for the purpose of determining the sufficiency
37 of the petition. If the court finds that the allegations of incompetency raise a bona fide doubt as
38 to the defendant's competency to stand trial, it shall enter an order for a hearing on the mental
39 condition of the person who is the subject of the petition.

40 (2) (a) After the granting of a petition and prior to a full competency hearing, the court
41 may order the Department of Human Services to examine the person and to report to the court
42 concerning the defendant's mental condition.

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

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

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

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

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

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

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

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

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

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

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

70 (vi) manifest appropriate courtroom behavior; and

71 (vii) testify relevantly, if applicable;

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

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

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

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

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

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

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

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

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

86 (6) The experts examining the defendant shall provide an initial report to the court and
87 the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The
88 report shall inform the court of the examiner's opinion concerning the competency of the
89 defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that
90 additional time is needed to complete the report. If the examiner informs the court that
91 additional time is needed, the examiner shall have up to an additional 30 days to provide the
92 report to the court and counsel. The examiner must provide the report within 60 days from the
93 receipt of the court's order unless, for good cause shown, the court authorizes an additional
94 period of time to complete the examination and provide the report.

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

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

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

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

102 (d) identify the sources of information used by the expert and present the basis for the
103 expert's clinical findings and opinions.

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

110 (b) Prior to examining the defendant, examiners should specifically advise the defendant
111 of the limits of confidentiality as provided under Subsection (8)(a).

112 (9) When the report is received the court shall set a date for a mental hearing which
113 shall be held in not less than five and not more than 15 days, unless the court enlarges the time

114 for good cause. [~~The hearing shall be conducted according to the procedures outlined in~~
115 ~~Subsections 62A-15-631(9)(b) through (9)(f).~~] Any person or organization directed by the
116 department to conduct the examination may be subpoenaed to testify at the hearing. If the
117 experts are in conflict as to the competency of the defendant, all experts should be called to
118 testify at the hearing if reasonably available. The court may call any examiner to testify at the
119 hearing who is not called by the parties. If the court calls an examiner, counsel for the parties
120 may cross-examine the expert.

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

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

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

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

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

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

141 (12) If the court finds it necessary to order the defendant transported prior to the

142 completion of findings and compilation of documents required under Subsection (11), the
143 transportation and commitment order delivering the defendant to the Utah State Hospital, or
144 other mental health facility as directed by the executive director of the Department of Human
145 Services or his designee, shall indicate that the defendant's commitment is based upon a finding
146 of incompetency, and the mental health facility's copy of the order shall be accompanied by the
147 reports of any experts filed with the court pursuant to the order of examination. The executive
148 director of the Department of Human Services or his designee may refuse to accept a defendant
149 as a patient unless he is accompanied by a transportation and commitment order which is
150 accompanied by the reports.

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

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

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

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

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

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

164 Section 2. Section **77-15-6** is amended to read:

165 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**
166 **hearings -- Notice to prosecuting attorneys.**

167 (1) Except as provided in Subsection (5), if after hearing, the person is found to be
168 incompetent to stand trial, the court shall order the defendant committed to the custody of the
169 executive director of the Department of Human Services or his designee for the purpose of

170 treatment intended to restore the defendant to competency. The court may recommend but not
171 order placement of the defendant. The court may, however, order that the defendant be placed
172 in a secure setting rather than a nonsecure setting. The director or his designee shall designate
173 the specific placement of the defendant during the period of evaluation and treatment to restore
174 competency.

175 (2) The examiner or examiners designated by the executive director to assess the
176 defendant's progress toward competency may not be involved in the routine treatment of the
177 defendant. The examiner or examiners shall provide a full report to the court and prosecuting
178 and defense attorneys within 90 days of ~~[receipt]~~ arrival of the ~~[court's order]~~ defendant at the
179 treating facility. If any examiner is unable to complete the assessment within 90 days, that
180 examiner shall provide to the court and counsel a summary progress report which informs the
181 court that additional time is necessary to complete the assessment, in which case the examiner
182 shall have up to an additional 90 days to provide the full report. The full report shall assess:

- 183 (a) the facility's or program's capacity to provide appropriate treatment for the
184 defendant;
- 185 (b) the nature of treatments provided to the defendant;
- 186 (c) what progress toward competency restoration has been made with respect to the
187 factors identified by the court in its initial order;
- 188 (d) the defendant's current level of mental disorder or mental retardation and need for
189 treatment, if any; and
- 190 (e) the likelihood of restoration of competency and the amount of time estimated to
191 achieve it.

192 (3) The court on its own motion or upon motion by either party or by the executive
193 director may appoint additional mental health examiners to examine the defendant and advise
194 the court on his current mental status and progress toward competency restoration.

195 (4) Upon receipt of the full report, the court shall hold a hearing to determine the
196 defendant's current status. At the hearing, the burden of proving that the defendant is
197 competent is on the proponent of competency. Following the hearing, the court shall determine

198 by a preponderance of evidence whether the defendant is:

199 (a) competent to stand trial;

200 (b) incompetent to stand trial with a substantial probability that the defendant may
201 become competent in the foreseeable future; or

202 (c) incompetent to stand trial without a substantial probability that the defendant may
203 become competent in the foreseeable future.

204 (5) (a) If the court enters a finding pursuant to Subsection (4)(a), the court shall
205 proceed with the trial or such other procedures as may be necessary to adjudicate the charges.

206 (b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that
207 the defendant remain committed to the custody of the executive director of the Department of
208 Human Services or his designee for the purpose of treatment intended to restore the defendant
209 to competency.

210 (c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the
211 defendant released from the custody of the director unless the prosecutor informs the court that
212 commitment proceedings pursuant to Title 62A, Chapter 5, Services to People with Disabilities,
213 or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These
214 commitment proceedings must be initiated within seven days after the court's order entering the
215 finding in Subsection (4)(c), unless the court enlarges the time for good cause shown. The
216 defendant may be ordered to remain in the custody of the director until commitment
217 proceedings have been concluded. If the defendant is committed, the court which entered the
218 order pursuant to Subsection (4)(c), shall be notified by the director at least ten days prior to
219 any release of the committed person.

220 (6) If the defendant is recommitted to the department pursuant to Subsection (5)(b), the
221 court shall hold a hearing one year following the recommitment.

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

226 (8) If the defendant has been charged with aggravated murder, murder, attempted
227 murder, manslaughter, or a first degree felony and the court determines that the defendant is
228 making reasonable progress towards restoration of competency at the time of the hearing held
229 pursuant to Subsection (6), the court may order the defendant recommitted for a period not to
230 exceed 18 months for the purpose of treatment to restore the defendant to competency with a
231 mandatory review hearing at the end of the 18-month period.

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

236 (10) If the defendant has been charged with aggravated murder or murder and the court
237 determines that he is making reasonable progress towards restoration of competency at the time
238 of the mandatory review hearing held pursuant to Subsection (8), the court may order the
239 defendant recommitted for a period not to exceed 36 months for the purpose of treatment to
240 restore him to competency.

241 (11) If the defendant is recommitted to the department pursuant to Subsection (10), the
242 court shall hold a hearing no later than at 18-month intervals following the recommitment for
243 the purpose of determining the defendant's competency status.

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

248 (13) In no event may the maximum period of detention under this section exceed the
249 maximum period of incarceration which the defendant could receive if he were convicted of the
250 charged offense. This Subsection (13) does not preclude pursuing involuntary civil commitment
251 nor does it place any time limit on civil commitments.

252 (14) Neither release from a pretrial incompetency commitment under the provisions of
253 this section nor civil commitment requires dismissal of criminal charges. The court may retain

254 jurisdiction over the criminal case and may order periodic reviews to assess the defendant's
255 competency to stand trial.

256 (15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services to
257 People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act,
258 may still be adjudicated competent to stand trial under this chapter.

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

262 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7),
263 (9), (12), or (13) shall not be dismissal of the criminal charges.

264 (17) In cases in which the treatment of the defendant is precluded by court order for a
265 period of time, that time period may not be considered in computing time limitations under this
266 section.

267 (18) At any time that the defendant becomes competent to stand trial, the clinical
268 director of the hospital or other facility or the executive director of the Department of Human
269 Services shall certify that fact to the court. The court shall conduct a hearing within 15 working
270 days of the receipt of the clinical director's or executive director's report, unless the court
271 enlarges the time for good cause.

272 (19) The court may order a hearing or rehearing at any time on its own motion or upon
273 recommendations of the clinical director of the hospital or other facility or the executive
274 director of the Department of Human Services.

275 (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting
276 attorney. If the hearing is held in the county where the defendant is confined, notice shall also
277 be given to the prosecuting attorney for that county.

278 Section 3. Section **77-15-6.5** is amended to read:

279 **77-15-6.5. Petition for involuntary medication of incompetent defendant.**

280 (1) As used in this section:

281 (a) "Executive director" means the executive director of the Department of Human

282 Services or the executive director's designee.

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

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

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

294 (3) In the notice under Subsection (2)(a), the executive director shall state whether the
295 executive director believes:

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

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

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

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

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

304 (4) (a) Upon receipt of the notice under Subsection (2)(a), the court shall conduct a
305 hearing within 30 days, unless the court extends the time for good cause, to determine whether
306 the court should convene a hearing regarding the involuntary medication of the defendant.

307 ~~[(b) The court shall conduct an involuntary medication hearing according to the
308 procedures outlined in Subsections 62A-15-631(9)(b) through (9)(f).]~~

309 ~~[(c)]~~ (b) The prosecuting attorney shall represent the state at any hearing under this

310 section.

311 ~~(d)~~ (c) The court shall consider whether the following factors apply in determining
312 whether the defendant should be involuntarily medicated:

313 (i) important state interests are at stake in restoring the defendant's competency;
314 (ii) involuntary medication will significantly further the important state interests, in that
315 the medication proposed:

316 (A) is substantially likely to render the defendant competent to stand trial; and
317 (B) is substantially unlikely to produce side effects which would significantly interfere
318 with the defendant's ability to assist the defense counsel in conducting his defense;

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

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

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

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

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

336 (7) The provisions in Section 77-15-6 establishing time limitations for treatment of
337 incompetent defendants before they must be either released or civilly committed are tolled from

338 the time the executive director gives notice to the court and the parties under Subsection (2)
339 until:

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

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

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