

1                   **COMPETENCY TO STAND TRIAL AMENDMENTS**

2                                   2012 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Kay L. McIff**

5                           Senate Sponsor: Todd Weiler

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies Title 77, Chapter 15, Inquiry into Sanity of Defendant, regarding the  
10 process for determining a defendant's competency to stand trial.

11 **Highlighted Provisions:**

12           This bill:

13           ▶ amends the process for determining a defendant's competency to stand trial to  
14 clarify that the court may not order an examination of the defendant or order a  
15 hearing on the mental condition of the defendant unless the court finds that the  
16 allegations in the petition raise a bona fide doubt as to the defendant's competency  
17 to stand trial;

18           ▶ requires the experts conducting the competency exam to consider any exhibition of  
19 false or exaggerated symptoms related to capacity to stand trial;

20           ▶ requires that experts who determine the defendant is incompetent to stand trial shall  
21 provide in their report information regarding any instruments, methods, and  
22 observations used to determine if the defendant exhibits false or exaggerated  
23 symptoms; and

24           ▶ provides that if there is a conflict between the opinions of the examining experts,  
25 the court is not required to appoint an additional expert unless the court finds the  
26 appointment necessary.

27 **Money Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **77-15-5**, as last amended by Laws of Utah 2008, Chapter 212

34 **77-15-6**, as last amended by Laws of Utah 2008, Chapter 212



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

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

38 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**  
39 **defendant -- Scope of examination and report.**

40 (1) (a) When a petition is filed pursuant to Section 77-15-3 raising the issue of the  
41 defendant's competency to stand trial or when the court raises the issue of the defendant's  
42 competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay  
43 all proceedings. If the proceedings are in a court other than the district court in which the  
44 petition is filed, the district court shall notify that court of the filing of the petition.

45 (b) The district court in which the petition is filed [~~shall pass upon the sufficiency of~~]:

46 (i) shall review the allegations of incompetency [~~. If a petition is opposed by either~~  
47 ~~party, the court shall, prior to granting or denying the petition, hold a limited hearing solely for~~  
48 ~~the purpose of determining the sufficiency of the petition. If the court finds that the allegations~~  
49 ~~of incompetency raise a bona fide doubt as to the defendant's competency to stand trial, it shall~~  
50 ~~enter an order for a hearing on the mental condition of the person who is the subject of the~~  
51 ~~petition.];~~

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

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

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

58           (v) shall order an examination of the defendant and a hearing on the defendant's mental  
59 condition if the court finds that the allegations raise a bona fide doubt as to the defendant's  
60 competency to stand trial.

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

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

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

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

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

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

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

85           (i) comprehend and appreciate the charges or allegations against ~~him~~ the defendant;

- 86 (ii) disclose to counsel pertinent facts, events, and states of mind;
- 87 (iii) comprehend and appreciate the range and nature of possible penalties, if
- 88 applicable, that may be imposed in the proceedings against [~~him~~] the defendant;
- 89 (iv) engage in reasoned choice of legal strategies and options;
- 90 (v) understand the adversary nature of the proceedings against [~~him~~] the defendant;
- 91 (vi) manifest appropriate courtroom behavior; and
- 92 (vii) testify relevantly, if applicable;
- 93 (b) the impact of the mental disorder, or mental retardation, if any, on the nature and
- 94 quality of the defendant's relationship with counsel;
- 95 (c) if psychoactive medication is currently being administered:
- 96 (i) whether the medication is necessary to maintain the defendant's competency; and
- 97 (ii) the effect of the medication, if any, on the defendant's demeanor and affect and
- 98 ability to participate in the proceedings[-]; and
- 99 (d) whether the defendant is exhibiting false or exaggerated physical or psychological
- 100 symptoms relevant to the defendant's capacity to stand trial.
- 101 (5) If the expert's opinion is that the defendant is incompetent to proceed, the expert
- 102 shall indicate in the report:
- 103 (a) which of the above factors contributes to the defendant's incompetency;
- 104 (b) the nature of the defendant's mental disorder or mental retardation and its
- 105 relationship to the factors contributing to the defendant's incompetency;
- 106 (c) the treatment or treatments appropriate and available; [~~and~~]
- 107 (d) the defendant's capacity to give informed consent to treatment to restore
- 108 competency[-]; and
- 109 (e) any diagnostic instruments, methods, and observations used by the expert to
- 110 determine whether or not the defendant is exhibiting false or exaggerated physical or
- 111 psychological symptoms relevant to the defendant's capacity to stand trial and the expert's
- 112 opinion as to the significance of any false or exaggerated symptoms regarding the defendant's
- 113 capacity.

114           (6) The experts examining the defendant shall provide an initial report to the court and  
115 the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The  
116 report shall inform the court of the examiner's opinion concerning the competency of the  
117 defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that  
118 additional time is needed to complete the report. If the examiner informs the court that  
119 additional time is needed, the examiner shall have up to an additional 30 days to provide the  
120 report to the court and counsel. The examiner [~~must~~] shall provide the report within 60 days  
121 from the receipt of the court's order unless, for good cause shown, the court authorizes an  
122 additional period of time to complete the examination and provide the report.

123           (7) Any written report submitted by the experts shall:  
124           (a) identify the specific matters referred for evaluation;  
125           (b) describe the procedures, techniques, and tests used in the examination and the  
126 purpose or purposes for each;  
127           (c) state the expert's clinical observations, findings, and opinions on each issue referred  
128 for examination by the court, and indicate specifically those issues, if any, on which the expert  
129 could not give an opinion; and  
130           (d) identify the sources of information used by the expert and present the basis for the  
131 expert's clinical findings and opinions.

132           (8) (a) Any statement made by the defendant in the course of any competency  
133 examination, whether the examination is with or without the consent of the defendant, any  
134 testimony by the expert based upon [~~such~~] the statement, and any other fruits of the statement  
135 may not be admitted in evidence against the defendant in any criminal proceeding except on an  
136 issue respecting mental condition on which the defendant has introduced evidence. The  
137 evidence may be admitted, however, where relevant to a determination of the defendant's  
138 competency.

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

141           (9) (a) When the report is received the court shall set a date for a mental hearing

142 ~~[which]~~. The hearing shall be held in not less than five and not more than 15 days, unless the  
143 court enlarges the time for good cause.

144 (b) Any person or organization directed by the department to conduct the examination  
145 may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency  
146 of the defendant, all experts should be called to testify at the hearing if reasonably available. A  
147 conflict in the opinions of the experts does not require the appointment of an additional expert  
148 unless the court determines the appointment to be necessary.

149 (c) The court may call any examiner to testify at the hearing who is not called by the  
150 parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

151 (10) (a) A person shall be presumed competent unless the court, by a preponderance of  
152 the evidence, finds the person incompetent to proceed. The burden of proof is upon the  
153 proponent of incompetency at the hearing.

154 (b) An adjudication of incompetency to proceed ~~shall~~ does not operate as an  
155 adjudication of incompetency to give informed consent for medical treatment or for any other  
156 purpose, unless specifically set forth in the court order.

157 (11) (a) If the court finds the defendant incompetent to stand trial, its order shall  
158 contain findings addressing each of the factors in Subsections (4)(a) and (b) ~~[of this section]~~.  
159 The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where  
160 the defendant is committed or to the person who is responsible for assessing ~~his~~ the  
161 defendant's progress toward competency shall be provided contemporaneously with the  
162 transportation and commitment order of the defendant, unless exigent circumstances require  
163 earlier commitment in which case the court shall forward the order within five working days of  
164 the order of transportation and commitment of the defendant.

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

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

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

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

172 (12) If the court finds it necessary to order the defendant transported prior to the  
173 completion of findings and compilation of documents required under Subsection (11), the  
174 transportation and commitment order delivering the defendant to the Utah State Hospital, or  
175 other mental health facility as directed by the executive director of the Department of Human  
176 Services or ~~his~~ a designee, shall indicate that the defendant's commitment is based upon a  
177 finding of incompetency, and the mental health facility's copy of the order shall be  
178 accompanied by the reports of any experts filed with the court pursuant to the order of  
179 examination. The executive director of the Department of Human Services or ~~his~~ a designee  
180 may refuse to accept a defendant as a patient unless ~~he~~ the defendant is accompanied by a  
181 transportation and commitment order which is accompanied by the reports.

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

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

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

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

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

193 (15) Failure to comply with this section ~~shall~~ does not result in the dismissal of  
194 criminal charges.

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

196 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**  
197 **hearings -- Notice to prosecuting attorneys.**

198 (1) Except as provided in Subsection (5), if after hearing, the ~~[person]~~ defendant is  
199 found to be incompetent to stand trial, the court shall order the defendant committed to the  
200 custody of the executive director of the Department of Human Services or ~~[his]~~ a designee for  
201 the purpose of treatment intended to restore the defendant to competency. The court may  
202 recommend but not order placement of the defendant. The court may, however, order that the  
203 defendant be placed in a secure setting rather than a nonsecure setting. The director or ~~[his]~~ a  
204 designee shall designate the specific placement of the defendant during the period of evaluation  
205 and treatment to restore competency.

206 (2) The examiner or examiners designated by the executive director to assess the  
207 defendant's progress toward competency may not be involved in the routine treatment of the  
208 defendant. The examiner or examiners shall provide a full report to the court and prosecuting  
209 and defense attorneys within 90 days of arrival of the defendant at the treating facility. If any  
210 examiner is unable to complete the assessment within 90 days, that examiner shall provide to  
211 the court and counsel a summary progress report which informs the court that additional time is  
212 necessary to complete the assessment, in which case the examiner shall have up to an  
213 additional 90 days to provide the full report. The full report shall assess:

214 (a) whether the defendant is exhibiting false or exaggerated physical or psychological  
215 symptoms, and shall report:

216 (i) any diagnostic instruments, methods, and observations used by the examiner to  
217 make the determination; and

218 (ii) the examiner's opinion as to the effect of any false or exaggerated symptoms on the  
219 defendant's capacity to stand trial;

220 ~~[(a)]~~ (b) the facility's or program's capacity to provide appropriate treatment for the  
221 defendant;

222 ~~[(b)]~~ (c) the nature of treatments provided to the defendant;

223 ~~[(c)]~~ (d) what progress toward competency restoration has been made with respect to  
224 the factors identified by the court in its initial order;

225 ~~[(d)]~~ (e) the defendant's current level of mental disorder or mental retardation and need



226 for treatment, if any; and

227       ~~[(e)]~~ (f) the likelihood of restoration of competency and the amount of time estimated  
228 to achieve it.

229       (3) The court on its own motion or upon motion by either party or by the executive  
230 director may appoint additional mental health examiners to examine the defendant and advise  
231 the court on ~~[his]~~ the defendant's current mental status and progress toward competency  
232 restoration.

233       (4) Upon receipt of the full report, the court shall hold a hearing to determine the  
234 defendant's current status. At the hearing, the burden of proving that the defendant is  
235 competent is on the proponent of competency. Following the hearing, the court shall determine  
236 by a preponderance of evidence whether the defendant is:

237           (a) competent to stand trial;

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

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

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

244           (b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that  
245 the defendant remain committed to the custody of the executive director of the Department of  
246 Human Services or ~~[his]~~ a designee for the purpose of treatment intended to restore the  
247 defendant to competency.

248           (c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the  
249 defendant released from the custody of the director unless the prosecutor informs the court that  
250 commitment proceedings pursuant to Title 62A, Chapter 5, Services ~~[to]~~ for People with  
251 Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be  
252 initiated. These commitment proceedings must be initiated within seven days after the court's  
253 order entering the finding in Subsection (4)(c), unless the court enlarges the time for good

254 cause shown. The defendant may be ordered to remain in the custody of the director until  
255 commitment proceedings have been concluded. If the defendant is committed, the court which  
256 entered the order pursuant to Subsection (4)(c), shall be notified by the director at least 10 days  
257 prior to any release of the committed person.

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

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

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

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

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

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

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

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

289 (b) This Subsection (13) does not preclude pursuing involuntary civil commitment nor  
290 does it place any time limit on civil commitments.

291 (14) Neither release from a pretrial incompetency commitment under the provisions of  
292 this section nor civil commitment requires dismissal of criminal charges. The court may retain  
293 jurisdiction over the criminal case and may order periodic reviews to assess the defendant's  
294 competency to stand trial.

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

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

301 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7),  
302 (9), (12), or (13) ~~[shall]~~ is not ~~[be]~~ dismissal of the criminal charges.

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

306 (18) At any time that the defendant becomes competent to stand trial, the clinical  
307 director of the hospital or other facility or the executive director of the Department of Human  
308 Services shall certify that fact to the court. The court shall conduct a hearing within 15  
309 working days of the receipt of the clinical director's or executive director's report, unless the

310 court enlarges the time for good cause.

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

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