

1 **AMENDMENTS REGARDING COMPETENCY TO STAND**

2 **TRIAL**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: LaVar Christensen**

6 Senate Sponsor: Mark B. Madsen

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Code of Criminal Procedure regarding the procedures for
11 determining a defendant's competency to stand trial.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ modifies the hearing procedure for determining if a defendant is competent to stand
15 trial to include for the court's consideration all available and relevant evidence,
16 including testimony of witnesses who have been in contact with the defendant; and

17 ▶ provides that a defendant who is not restored to competency to stand trial after
18 forensic treatment shall be temporarily detained and undergo civil commitment
19 proceedings.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **77-15-5**, as last amended by Laws of Utah 2008, Chapter 212

27 **77-15-6**, as last amended by Laws of Utah 2008, Chapter 212



28 77-15-6.5, as last amended by Laws of Utah 2008, Chapter 212



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

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

32 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**
33 **defendant -- Scope of examination and report.**

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

39 (b) The district court in which the petition is filed shall pass upon the sufficiency of the
40 allegations of incompetency. If a petition is opposed by either party, the court shall, prior to
41 granting or denying the petition, hold a limited hearing solely for the purpose of determining
42 the sufficiency of the petition. If the court finds that the allegations of incompetency raise a
43 bona fide doubt as to the defendant's competency to stand trial, it shall enter an order for a
44 hearing on the mental condition of the person who is the subject of the petition.

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

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

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

57 (d) The prosecuting and defense attorneys shall cooperate in providing the relevant
58 information and materials to the examiners, and the court may make the necessary orders to

59 provide the information listed in Subsection (2)(c) to the examiners. The court may provide in
60 its order for a competency examination of a defendant that custodians of mental health records
61 pertaining to the defendant shall provide those records to the examiners without the need for
62 consent of the defendant or further order of the court.

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

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

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

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

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

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

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

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

75 (vi) manifest appropriate courtroom behavior; and

76 (vii) testify relevantly, if applicable;

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

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

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

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

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

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

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

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

89 (d) the defendant's capacity to give informed consent to treatment to restore

90 competency.

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

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

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

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

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

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

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

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

118 (9) When the report is received the court shall set a date for a mental hearing which
119 shall be held in not less than five and not more than 15 days, unless the court enlarges the time
120 for good cause. Any person or organization directed by the department to conduct the

121 examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the
122 competency of the defendant, all experts should be called to testify at the hearing if reasonably
123 available. The court may call any examiner to testify at the hearing who is not called by the
124 parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

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

130 (11) (a) The court, in determining the defendant's competency to stand trial, shall
131 consider the totality of the circumstances, which includes the information presented under
132 Subsection (11)(b) in addition to the expert testimony, studies, and reports provided under this
133 section.

134 (b) The information to be considered by the court shall include all available and
135 relevant evidence, witnesses, and testimony to ensure that there is no manipulation of the
136 process or a wrongful or artificial attempt or motivation on the part of the defendant to avoid
137 being found competent to stand trial.

138 (c) All witnesses and evidence regarding the defendant's personal contact with
139 individuals which may relate to the competency of the defendant to stand trial shall be
140 considered by the court and applied to its determination of the defendant's competency under
141 this section.

142 ~~[(H)]~~ (12) (a) If the court finds the defendant incompetent to stand trial, its order shall
143 contain findings addressing each of the factors in Subsections (4)(a) and (b) of this section.
144 The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where
145 the defendant is committed or to the person who is responsible for assessing his progress
146 toward competency shall be provided contemporaneously with the transportation and
147 commitment order of the defendant, unless exigent circumstances require earlier commitment
148 in which case the court shall forward the order within five working days of the order of
149 transportation and commitment of the defendant.

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

151 (i) copies of the reports of the experts filed with the court pursuant to the order of

152 examination if not provided previously;

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

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

157 ~~[(12)]~~ (13) (a) If the court finds it necessary to order the defendant transported prior to
158 the completion of findings and compilation of documents required under Subsection ~~[(11)]~~
159 (12), the transportation and commitment order delivering the defendant to the Utah State
160 Hospital, or other mental health facility as directed by the executive director of the Department
161 of Human Services or his designee, shall indicate that the defendant's commitment is based
162 upon a finding of incompetency, and the mental health facility's copy of the order shall be
163 accompanied by the reports of any experts filed with the court pursuant to the order of
164 examination.

165 (b) The executive director of the Department of Human Services or his designee may
166 refuse to accept a defendant as a patient unless he is accompanied by a transportation and
167 commitment order which is accompanied by the reports.

168 ~~[(13)]~~ (14) Upon a finding of incompetency to stand trial by the court, the prosecuting
169 and defense attorneys shall provide information and materials relevant to the defendant's
170 competency to the facility where the defendant is committed or to the person responsible for
171 assessing his progress towards competency. In addition to any other materials, the prosecuting
172 attorney shall provide:

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

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

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

178 ~~[(14)]~~ (15) The court may make any reasonable order to insure compliance with this
179 section.

180 ~~[(15)]~~ (16) Failure to comply with this section shall not result in the dismissal of
181 criminal charges.

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

183 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**
184 **hearings -- Notice to prosecuting attorneys.**

185 (1) Except as provided in Subsection (5), if after hearing[;] the person is found to be
186 incompetent to stand trial, the court shall order the defendant committed to the custody of the
187 executive director of the Department of Human Services or his designee for the purpose of
188 treatment intended to restore the defendant to competency. The court may recommend but not
189 order placement of the defendant. The court may, however, order that the defendant be placed
190 in a secure setting rather than a nonsecure setting. The director or his designee shall designate
191 the specific placement of the defendant during the period of evaluation and treatment to restore
192 competency.

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

201 (a) the facility's or program's capacity to provide appropriate treatment for the
202 defendant;

203 (b) the nature of treatments provided to the defendant;

204 (c) what progress toward competency restoration has been made with respect to the
205 factors identified by the court in its initial order;

206 (d) the defendant's current level of mental disorder or mental retardation and need for
207 treatment, if any; and

208 (e) the likelihood of restoration of competency and the amount of time estimated to
209 achieve it.

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

213 (4) Upon receipt of the full report, the court shall hold a hearing to determine the

214 defendant's current status. At the hearing, the burden of proving that the defendant is
215 competent is on the proponent of competency. Following the hearing, the court shall determine
216 by a preponderance of evidence whether the defendant is:

217 (a) competent to stand trial;

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

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

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

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

228 (c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order ~~the~~
229 ~~defendant released from the custody of the director unless the prosecutor informs the court]~~
230 that commitment proceedings pursuant to Title 62A, Chapter 5, Services ~~[to]~~ for People with
231 Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be
232 initiated. These commitment proceedings must be initiated within seven days after the court's
233 order entering the finding in Subsection (4)(c), unless the court enlarges the time for good
234 cause shown. The defendant may be ordered to remain in the custody of the director until
235 commitment proceedings have been concluded. If the defendant is committed, the court which
236 entered the order pursuant to Subsection (4)(c), shall be notified by the director at least 10 days
237 prior to any release of the committed person.

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

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

244 (8) If the defendant has been charged with aggravated murder, murder, attempted

245 murder, manslaughter, or a first degree felony and the court determines that the defendant is
246 making reasonable progress towards restoration of competency at the time of the hearing held
247 pursuant to Subsection (6), the court may order the defendant recommitted for a period not to
248 exceed 18 months for the purpose of treatment to restore the defendant to competency with a
249 mandatory review hearing at the end of the 18-month period.

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

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

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

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

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

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

274 (15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services
275 [~~to~~] for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health

276 Act, may still be adjudicated competent to stand trial under this chapter.

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

280 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7),
281 (9), (12), or (13) shall not be dismissal of the criminal charges.

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

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

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

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

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

297 **77-15-6.5. Petition for involuntary medication of incompetent defendant.**

298 (1) As used in this section:

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

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

303 (2) (a) At any time after a defendant has been found incompetent to proceed and has
304 been committed to the Department of Human Services under Section 77-15-6 for treatment to
305 restore competency, the executive director shall notify the court, prosecuting attorney, and
306 attorney for the defendant if the executive director has determined that the defendant is not

307 responding to treatment and is unlikely to be restored to competency without the involuntary
308 administration of antipsychotic medication.

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

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

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

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

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

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

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

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

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

326 (c) The court shall consider whether the following factors apply in determining
327 whether the defendant should be involuntarily medicated:

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

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

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

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

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

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

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

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

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

351 (7) The provisions in Section 77-15-6 establishing time limitations for treatment of
352 incompetent defendants before they must [~~be either released or civilly committed~~] undergo
353 civil commitment proceedings are tolled from the time the executive director gives notice to
354 the court and the parties under Subsection (2) until:

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

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

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

Legislative Review Note
as of 2-13-12 12:36 PM

Office of Legislative Research and General Counsel