



# House of Representatives *State of Utah*

UTAH STATE CAPITOL COMPLEX • 350 STATE CAPITOL  
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February 27, 2012

Madam Speaker:

The Judiciary Committee reports a favorable recommendation on **H.B. 346**, AMENDMENTS REGARDING COMPETENCY TO STAND TRIAL, by Representative L. Christensen, with the following amendments:

1. *Page 1, Lines 15 through 19:*

15 trial to ~~{include}~~ provide for the court's consideration ~~{all available and~~  
~~relevant evidence}~~ the totality of the circumstances ,  
16 including ~~{testimony of witnesses who have been in contact with the~~  
~~defendant}~~ testimony of lay witnesses ~~{; 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}~~ .

2. *Page 1, Line 27 through Page 2, Line 28:*

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}~~

3. *Page 5, Lines 130 through 133:*

130 (11) ~~{(a) The court, in}~~ In determining the defendant's competency to  
stand trial, the court shall  
131 consider the totality of the circumstances, which ~~{includes}~~ may include ~~{the~~  
~~information presented under~~  
132 Subsection (11)(b)} the testimony of lay witnesses, in addition to the expert  
testimony, studies, and reports provided under this

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133 section.

4. *Page 5, Lines 134 through 141:*

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.}~~  
                  this section.}

5. *Page 6, Line 182 through Page 12, Line 360:*

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

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191 ~~the specific placement of the defendant during the period of evaluation and treatment~~  
192 ~~to restore~~  
193 ~~competency:~~  
194 ~~——(2) The examiner or examiners designated by the executive director to assess the~~  
195 ~~defendant's progress toward competency may not be involved in the routine~~  
196 ~~treatment of the~~  
197 ~~defendant. The examiner or examiners shall provide a full report to the court and~~  
198 ~~prosecuting~~  
199 ~~and defense attorneys within 90 days of arrival of the defendant at the treating~~  
200 ~~facility. If any~~  
201 ~~examiner is unable to complete the assessment within 90 days, that examiner shall~~  
202 ~~provide to~~  
203 ~~the court and counsel a summary progress report which informs the court that~~  
204 ~~additional time is~~  
205 ~~necessary to complete the assessment, in which case the examiner shall have up to an~~  
206 ~~additional 90 days to provide the full report. The full report shall assess:~~  
207 ~~——(a) the facility's or program's capacity to provide appropriate treatment for the~~  
208 ~~defendant;~~  
209 ~~——(b) the nature of treatments provided to the defendant;~~  
210 ~~——(c) what progress toward competency restoration has been made with respect to~~  
211 ~~the~~  
212 ~~factors identified by the court in its initial order;~~  
213 ~~——(d) the defendant's current level of mental disorder or mental retardation and~~  
214 ~~need for~~  
215 ~~treatment, if any; and~~  
216 ~~——(e) the likelihood of restoration of competency and the amount of time estimated~~  
217 ~~to~~  
218 ~~achieve it.~~  
219 ~~——(3) The court on its own motion or upon motion by either party or by the~~  
220 ~~executive~~  
221 ~~director may appoint additional mental health examiners to examine the defendant~~  
222 ~~and advise~~  
223 ~~the court on his current mental status and progress toward competency restoration.~~  
224 ~~——(4) Upon receipt of the full report, the court shall hold a hearing to determine~~

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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~~

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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~~

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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~~

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272 ~~jurisdiction over the criminal case and may order periodic reviews to assess the~~  
273 ~~defendant's~~  
274 ~~competency to stand trial:~~  
275 ~~——(15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5,~~  
276 ~~Services~~  
277 ~~[to] for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and~~  
278 ~~Mental Health~~  
279 ~~Act, may still be adjudicated competent to stand trial under this chapter:~~  
280 ~~——(16) (a) The remedy for a violation of the time periods specified in this section,~~  
281 ~~other~~  
282 ~~than those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to~~  
283 ~~compel the~~  
284 ~~hearing, or mandamus, but not release from detention or dismissal of the criminal~~  
285 ~~charges:~~  
286 ~~——(b) The remedy for a violation of the time periods specified in Subsection (5)(c),~~  
287 ~~(7),~~  
288 ~~(9), (12), or (13) shall not be dismissal of the criminal charges:~~  
289 ~~——(17) In cases in which the treatment of the defendant is precluded by court order~~  
290 ~~for a~~  
291 ~~period of time, that time period may not be considered in computing time limitations~~  
~~under this~~  
~~section:~~  
~~——(18) At any time that the defendant becomes competent to stand trial, the~~  
~~clinical~~  
~~director of the hospital or other facility or the executive director of the Department of~~  
~~Human~~  
~~Services shall certify that fact to the court. The court shall conduct a hearing within~~  
~~15~~  
~~working days of the receipt of the clinical director's or executive director's report,~~  
~~unless the~~  
~~court enlarges the time for good cause:~~  
~~——(19) The court may order a hearing or rehearing at any time on its own motion~~  
~~or upon~~  
~~recommendations of the clinical director of the hospital or other facility or the~~

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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

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~~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~~

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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~~

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~~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. }~~

Respectfully,

Kay L. McIff  
Committee Chair

Voting: 10-0-3

3 HB0346.HC1.WPD 2/27/12 9:17 am jdhowe/JDH SCA/NWB

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