

**MINUTES OF THE
HOUSE JUDICIARY STANDING COMMITTEE MEETING
Room 20, West Office Building
February 27, 2012**

MEMBERS PRESENT: Rep. Kay McIff, Chair
Rep. LaVar Christensen, Vice Chair
Rep. Derek Brown
Rep. Fred Cox
Rep. Brian Doughty
Rep. Chris Herrod
Rep. Eric Hutchings
Rep. Ken Ivory
Rep. Brian King
Rep. V. Lowry Snow
Rep. Mark A. Wheatley
Rep. Brad Wilson

MEMBERS ABSENT: Rep. Paul Ray

STAFF PRESENT: Mr. Jerry D. Howe, Policy Analyst
Ms. Linda Black, Committee Secretary

NOTE: A list of visitors and a copy of handouts are filed with the committee minutes.

Chair McIff called the meeting to order at 8:10 a.m.

MOTION: Rep. Brown moved to approve the minutes of February 23, 2012. The motion passed unanimously with Rep. Hutchings absent for the vote.

H.B. 0231S01 Guardianship Amendments *(Rep. K. Powell)*

Rep. Powell presented the bill to the committee.

MOTION: Rep. Ivory moved to amend the bill as follows:

1. *Page 8, Lines 226 through 231:*

226 (e) reflects the individual's need for a combination and sequence of special,
227 interdisciplinary, or generic services, supports, or other assistance that is of lifelong or
228 extended duration and is individually planned and coordinated {~~-, except that the term,~~
when
229 applied to infants and young children means individuals from birth to age five,
inclusive, who

- 230 ~~have substantial developmental delay or specific congenital or acquired conditions~~
~~with a high~~
231 ~~probability of resulting in developmental disabilities if services are not provided}~~ .

The motion passed unanimously with Rep. Hutchings absent for the vote.

Spoke to the bill: Mr. Rick Schwermer, Office of the Courts
Mr. Tim Shea, Office of the Courts

Spoke in opposition
to the bill: Mr. Michael Jensen

MOTION: Rep. Ivory moved to pass the bill out favorably as amended. The motion passed unanimously with Rep. Hutchings absent for the vote.

H.B. 346 Amendments Regarding Competency to Stand Trial (*Rep. L. Christensen*)

Rep. Christensen presented the bill to the committee.

MOTION: Rep. Christensen moved to amend the bill as follows:

1. *Page 1, Lines 15 through 16:*

- 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

2. *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
133 section.

3. *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. }

The motion passed unanimously with Rep. Hutchings absent for the vote.

Spoke to the bill: Mr. Ron Gordon, director, CCJJ

Spoke in favor of the bill: Ms. Gayle Ruzika, Utah Eagle Forum

MOTION: Rep. Cox moved to pass the bill out favorably as amended.

SUBSTITUTE

MOTION: Rep. King moved to amend the bill as follows:

1. *Page 1, Lines 16 through 19:*

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.** }

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 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~~
186 ~~be~~
187 ~~incompetent to stand trial, the court shall order the defendant committed to the~~
188 ~~custody of the~~
189 ~~executive director of the Department of Human Services or his designee for the~~
190 ~~purpose of~~
191 ~~treatment intended to restore the defendant to competency. The court may~~
192 ~~recommend but not~~
193 ~~order placement of the defendant. The court may, however, order that the defendant~~
194 ~~be placed~~
195 ~~in a secure setting rather than a nonsecure setting. The director or his designee shall~~
196 ~~designate~~
197 ~~the specific placement of the defendant during the period of evaluation and treatment~~
198 ~~to restore~~
199 ~~competency.~~
200 ~~——(2) The examiner or examiners designated by the executive director to assess the~~
201 ~~defendant's progress toward competency may not be involved in the routine~~
202 ~~treatment of the~~
203 ~~defendant. The examiner or examiners shall provide a full report to the court and~~
204 ~~prosecuting~~
205 ~~and defense attorneys within 90 days of arrival of the defendant at the treating~~
206 ~~facility. If any~~
207 ~~examiner is unable to complete the assessment within 90 days, that examiner shall~~
208 ~~provide to~~
209 ~~the court and counsel a summary progress report which informs the court that~~
210 ~~additional time is~~
211 ~~necessary to complete the assessment, in which case the examiner shall have up to an~~
212 ~~additional 90 days to provide the full report. The full report shall assess:~~
213 ~~——(a) the facility's or program's capacity to provide appropriate treatment for the~~
214 ~~defendant;~~
215 ~~——(b) the nature of treatments provided to the defendant;~~
216 ~~——(c) what progress toward competency restoration has been made with respect to~~
217 ~~the~~
218 ~~factors identified by the court in its initial order;~~
219 ~~——(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~~
230 ~~court]~~
231 ~~that commitment proceedings pursuant to Title 62A, Chapter 5, Services [to] for~~
232 ~~People with~~
233 ~~Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will~~
234 ~~be~~
235 ~~initiated. These commitment proceedings must be initiated within seven days after~~
236 ~~the court's~~
237 ~~order entering the finding in Subsection (4)(c), unless the court enlarges the time for~~
238 ~~good~~
239 ~~cause shown. The defendant may be ordered to remain in the custody of the director~~
240 ~~until~~
241 ~~commitment proceedings have been concluded. If the defendant is committed, the~~
242 ~~court which~~
243 ~~entered the order pursuant to Subsection (4)(c), shall be notified by the director at~~
244 ~~least 10 days~~
245 ~~prior to any release of the committed person.~~
246 ~~—(6) If the defendant is recommitted to the department pursuant to Subsection~~
247 ~~(5)(b), the~~
248 ~~court shall hold a hearing one year following the recommitment.~~
249 ~~—(7) At the hearing held pursuant to Subsection (6), except for defendants~~
250 ~~charged with~~
251 ~~the crimes listed in Subsection (8), a defendant who has not been restored to~~
252 ~~competency shall~~
253 ~~be [ordered released or] temporarily detained pending civil commitment proceedings~~
254 ~~under the~~
255 ~~same terms as provided in Subsection (5)(c).~~
256 ~~—(8) If the defendant has been charged with aggravated murder, murder,~~
257 ~~attempted~~
258 ~~murder, manslaughter, or a first degree felony and the court determines that the~~
259 ~~defendant is~~
260 ~~making reasonable progress towards restoration of competency at the time of the~~
261 ~~hearing held~~
262 ~~pursuant to Subsection (6), the court may order the defendant recommitted for a~~
263 ~~period not to~~
264 ~~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~~
271 ~~provisions of~~
272 ~~this section nor civil commitment requires dismissal of criminal charges. The court~~
273 ~~may retain~~
274 ~~jurisdiction over the criminal case and may order periodic reviews to assess the~~
275 ~~defendant's~~
276 ~~competency to stand trial.~~
277 ~~——(15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5,~~
278 ~~Services~~
279 ~~[to] for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and~~
280 ~~Mental Health~~
281 ~~Act, may still be adjudicated competent to stand trial under this chapter.~~
282 ~~——(16) (a) The remedy for a violation of the time periods specified in this section,~~
283 ~~other~~
284 ~~than those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to~~
285 ~~compel the~~
286 ~~hearing, or mandamus, but not release from detention or dismissal of the criminal~~
287 ~~charges.~~
288 ~~——(b) The remedy for a violation of the time periods specified in Subsection (5)(c),~~
289 ~~(7),~~
290 ~~(9), (12), or (13) shall not be dismissal of the criminal charges.~~
291 ~~——(17) In cases in which the treatment of the defendant is precluded by court order~~
292 ~~for a~~
293 ~~period of time, that time period may not be considered in computing time limitations~~
294 ~~under this~~
295 ~~section.~~
296 ~~——(18) At any time that the defendant becomes competent to stand trial, the~~
297 ~~clinical~~
298 ~~director of the hospital or other facility or the executive director of the Department of~~
299 ~~Human~~
300 ~~Services shall certify that fact to the court. The court shall conduct a hearing within~~
301 ~~15~~
302 ~~working days of the receipt of the clinical director's or executive director's report,~~
303 ~~unless the~~
304 ~~court enlarges the time for good cause.~~

290 ~~—(19) The court may order a hearing or rehearing at any time on its own motion~~
291 ~~or upon~~
292 ~~recommendations of the clinical director of the hospital or other facility or the~~
293 ~~executive~~
294 ~~director of the Department of Human Services.~~
295 ~~—(20) Notice of a hearing on competency to stand trial shall be given to the~~
296 ~~prosecuting~~
297 ~~attorney. If the hearing is held in the county where the defendant is confined, notice~~
298 ~~shall also~~
299 ~~be given to the prosecuting attorney for that county.~~
300 ~~—Section 3. Section 77-15-6.5 is amended to read:~~
301 ~~—77-15-6.5. Petition for involuntary medication of incompetent defendant.~~
302 ~~—(1) As used in this section:~~
303 ~~—(a) "Executive director" means the executive director of the Department of~~
304 ~~Human~~
305 ~~Services or the executive director's designee.~~
306 ~~—(b) "Final order" means a court order that determines the rights of the parties~~
307 ~~and~~
308 ~~concerning which appellate remedies have been exhausted or the time for appeal has~~
309 ~~expired.~~
310 ~~—(2) (a) At any time after a defendant has been found incompetent to proceed and~~
311 ~~has~~
312 ~~been committed to the Department of Human Services under Section 77-15-6 for~~
313 ~~treatment to~~
314 ~~restore competency, the executive director shall notify the court, prosecuting~~
315 ~~attorney, and~~
316 ~~attorney for the defendant if the executive director has determined that the defendant~~
317 ~~is not~~
318 ~~responding to treatment and is unlikely to be restored to competency without the~~
319 ~~involuntary~~
320 ~~administration of antipsychotic medication.~~
321 ~~—(b) The executive director shall provide the notification under Subsection (2)(a)~~
322 ~~only if~~
323 ~~there is no basis for involuntarily medicating the defendant for reasons other than to~~
324 ~~restore the~~
325 ~~defendant's competency.~~

312 ~~—(3) In the notice under Subsection (2)(a), the executive director shall state~~
313 ~~whether the~~
314 ~~executive director believes:~~
315 ~~—(a) medication is necessary to render the defendant competent;~~
316 ~~—(b) medication is substantially likely to render the defendant competent;~~
317 ~~—(c) medication is substantially unlikely to produce side effects which would~~
318 ~~significantly interfere with the defendant's ability to assist in his defense;~~
319 ~~—(d) no less intrusive means are available, and whether any of those means have~~
320 ~~been~~
321 ~~attempted to render the defendant competent; and~~
322 ~~—(e) medication is medically appropriate and is in the defendant's best medical~~
323 ~~interest~~
324 ~~in light of his medical condition.~~
325 ~~—(4) (a) Upon receipt of the notice under Subsection (2)(a), the court shall conduct~~
326 ~~a~~
327 ~~hearing within 30 days, unless the court extends the time for good cause, to determine~~
328 ~~whether~~
329 ~~the court should convene a hearing regarding the involuntary medication of the~~
330 ~~defendant.~~
331 ~~—(b) The prosecuting attorney shall represent the state at any hearing under this~~
332 ~~section.~~
333 ~~—(c) The court shall consider whether the following factors apply in determining~~
334 ~~whether the defendant should be involuntarily medicated:~~
335 ~~—(i) important state interests are at stake in restoring the defendant's~~
336 ~~competency;~~
337 ~~—(ii) involuntary medication will significantly further the important state~~
338 ~~interests, in~~
339 ~~that the medication proposed:~~
340 ~~—(A) is substantially likely to render the defendant competent to stand trial; and~~
341 ~~—(B) is substantially unlikely to produce side effects which would significantly~~
342 ~~interfere~~
343 ~~with the defendant's ability to assist the defense counsel in conducting his defense;~~
344 ~~—(iii) involuntary medication is necessary to further important state interests,~~
345 ~~because~~
346 ~~any alternate less intrusive treatments are unlikely to achieve substantially the same~~
347 ~~results; and~~

336 ~~——(iv) the administration of the proposed medication is medically appropriate, as it~~
337 ~~is in~~
338 ~~the defendant's best medical interest in light of his medical condition.~~
339 ~~——(5) In determining whether the proposed treatment is medically appropriate and~~
340 ~~is in~~
341 ~~the defendant's best medical interest, the potential penalty the defendant may be~~
342 ~~subject to, if~~
343 ~~the defendant is convicted of any charged offense, is not a relevant consideration.~~
344 ~~——(6) (a) If the court finds by clear and convincing evidence that the involuntary~~
345 ~~administration of antipsychotic medication is appropriate, it shall make findings~~
346 ~~addressing~~
347 ~~each of the factors in Subsection (4)(c) and shall issue an order authorizing the~~
348 ~~Department of~~
349 ~~Human Services to involuntarily administer antipsychotic medication to the~~
350 ~~defendant in order~~
351 ~~to restore his competency, subject to the periodic reviews and other procedures~~
352 ~~provided in~~
353 ~~Section 77-15-6.~~
354 ~~——(b) When issuing an order under Subsection (6)(a), the court shall consider~~
355 ~~ordering~~
356 ~~less intrusive means for administering the drugs, such as a court order to the~~
357 ~~defendant~~
358 ~~enforceable by the contempt power, before ordering more intrusive methods of~~
359 ~~involuntary~~
360 ~~medication:~~
361 ~~——(7) The provisions in Section 77-15-6 establishing time limitations for treatment~~
362 ~~of~~
363 ~~incompetent defendants before they must [be either released or civilly committed]~~
364 ~~undergo~~
365 ~~civil commitment proceedings are tolled from the time the executive director gives~~
366 ~~notice to~~
367 ~~the court and the parties under Subsection (2) until:~~
368 ~~——(a) the court has issued a final order for the involuntary medication of the~~
369 ~~defendant;~~
370 ~~and the defendant has been medicated under that order; or~~
371 ~~——(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. }~~

The motion passed with Rep. Brown, Rep. Cox, and Rep. Herrod voting in opposition. Rep. Hutchings and Rep. Ivory were absent for the vote.

MOTION: Rep. Brown moved to pass the bill out favorably as amended. The motion passed unanimously with Rep. Hutchings and Rep. Ivory absent for the vote.

H.B. 452 Family Expenses Amendments (*Rep. S. Sandstrom*)

Rep. Sandstrom presented the bill to the committee.

MOTION: Rep. Brown moved to amend the bill as follows:

1. *Page 2, Lines 28 through 36:*

28 (2) ~~{A}~~ In addition to the expenses of the family and education of the
children, a creditor shall be entitled to recover from ~~{either}~~ the husband
~~{or}~~ and wife. ~~{or both, for~~
29 ~~the payment of a family expense when there is a written contract signed by either~~
~~spouse that~~
30 ~~allows for the recovery of}~~ jointly and severally, the following additional amounts
if the amounts are provided for in a written contract signed by either the husband or
wife ;
31 (a) a collection ~~{costs}~~ fee as provided in Section 12-1-11 ;
32 (b) interest at the rate specified in the contract ;
33 (c) court costs; ~~{and}~~
34 (d) attorney fees ; and
(e) any other amounts provided for in the contract .
35 (3) This section shall be applied to all contracts that were entered into by either
spouse
36 during the marriage.

MOTION: Rep. Snow moved to amend the bill as follows:

1. *Page 2, Line 34:*

34 (d) reasonable attorney fees.

The motion passed unanimously with Rep. Ivory absent for the vote.

Spoke to the bill: Mr. Quinn Kofford

MOTION: Rep. Herrod moved to pass the bill out favorably as amended. The motion passed with Rep. Brown, Rep. Christensen, Rep. Cox, Rep. Hutchings, and Rep. Wilson voting in opposition. Rep. Ivory was absent for the vote.

S.B. 55 **Amendments to Adoption Code** (*Sen. T. Weiler*)

The bill was not considered.

H.B. 433 **Expanded Uses of School District Property Tax Revenue** (*Rep. K. McIff*)

The bill was not considered.

H.B. 457 **Eminent Domain Revisions** (*Rep. B. Last*)

The bill was not considered.

MOTION: Rep. Snow moved to adjourn the meeting. Chair McIff adjourned the meeting at 9:22 a.m.

Rep. Kay McIff, Chair