

Senator Lincoln Fillmore proposes the following substitute bill:

COMPETENCY TO STAND TRIAL AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Edward H. Redd

LONG TITLE

General Description:

This bill amends provisions related to a defendant's competency to stand trial.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes procedures for determining the competency of a defendant charged with a misdemeanor;
- ▶ adds and modifies time frames for evaluations, reports, and court hearings relating to competency to stand trial determinations;
- ▶ clarifies standards for restoration treatment and competency review; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-1-104, as last amended by Laws of Utah 2017, Chapter 331



- 26 [62A-1-108.5](#), as last amended by Laws of Utah 2012, Chapters 316 and 347
- 27 [77-15-1](#), as last amended by Laws of Utah 2000, Chapter 256
- 28 [77-15-2](#), as last amended by Laws of Utah 1994, Chapter 162
- 29 [77-15-3](#), as last amended by Laws of Utah 1994, Chapter 162
- 30 [77-15-4](#), as last amended by Laws of Utah 1994, Chapter 162
- 31 [77-15-5](#), as last amended by Laws of Utah 2016, Chapter 115
- 32 [77-15-6](#), as last amended by Laws of Utah 2012, Chapter 109
- 33 [77-15-6.5](#), as last amended by Laws of Utah 2008, Chapter 212
- 34 [77-15-7](#), as repealed and reenacted by Laws of Utah 1994, Chapter 162
- 35 [77-15-9](#), as last amended by Laws of Utah 1994, Chapter 162

36 ENACTS:

37 [77-15-3.5](#), Utah Code Annotated 1953



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

40 Section 1. Section **62A-1-104** is amended to read:

41 **62A-1-104. Definitions.**

42 (1) As used in this title:

43 (a) "Competency evaluation" means the same as that term is defined in Section
44 [77-15-2](#).

45 ~~(a)~~ (b) "Concurrence of the board" means agreement by a majority of the members of
46 a board.

47 ~~(b)~~ (c) "Department" means the Department of Human Services established in
48 Section [62A-1-102](#).

49 ~~(c)~~ (d) "Executive director" means the executive director of the department,
50 appointed under Section [62A-1-108](#).

51 (e) "Forensic evaluator" means the same as that term is defined in Section [77-15-2](#).

52 ~~(d)~~ (f) "System of care" means a broad, flexible array of services and supports that:

- 53 (i) serves a child with or who is at risk for complex emotional and behavioral needs;
- 54 (ii) is community based;
- 55 (iii) is informed about trauma;
- 56 (iv) builds meaningful partnerships with families and children;

57 (v) integrates service planning, service coordination, and management across state and
58 local entities;

59 (vi) includes individualized case planning;

60 (vii) provides management and policy infrastructure that supports a coordinated
61 network of interdepartmental service providers, contractors, and service providers who are
62 outside of the department; and

63 (viii) is guided by the type and variety of services needed by a child with or who is at
64 risk for complex emotional and behavioral needs and by the child's family.

65 (2) The definitions provided in Subsection (1) are to be applied in addition to
66 definitions contained throughout this title that are applicable to specified chapters or parts.

67 Section 2. Section **62A-1-108.5** is amended to read:

68 **62A-1-108.5. Mental illness and intellectual disability examinations --**

69 **Responsibilities of the department.**

70 (1) In accomplishing [~~its duties to conduct mental illness and intellectual disability~~
71 ~~examinations~~] the department's duties to conduct a competency evaluation under Title 77, Utah
72 Code of Criminal Procedure, and a juvenile competency [evaluations pursuant to] evaluation
73 under Title 78A, Chapter 6, Juvenile Court Act, the department shall proceed as outlined in this
74 section and within appropriations authorized by the Legislature. [~~The executive director may~~
75 ~~delegate the executive director's responsibilities under this section to one or more divisions~~
76 ~~within the department.~~]

77 (2) When the department is ordered by [~~the district]~~ a court to conduct a [mental illness
78 or intellectual disability examination the executive director] competency evaluation, the
79 department shall[:(a) direct that the examination be performed at the Utah State Hospital; or(b)
80 designate at least one examiner,] designate a forensic evaluator, selected under Subsection (4),
81 to [examine] evaluate the defendant in the defendant's current custody or status.

82 (3) When the department is ordered by the juvenile court to conduct a juvenile
83 competency evaluation [~~pursuant to]~~ under Title 78A, Chapter 6, Juvenile Court Act, the
84 [~~executive director]~~ department shall:

85 (a) designate an examiner selected pursuant to Subsection (4) to evaluate the minor;
86 and

87 (b) upon a finding of good cause and order of the court, designate a second examiner to

88 evaluate the minor.

89 (4) The department shall establish criteria, in consultation with the Commission on
90 Criminal and Juvenile Justice, and shall contract with persons [~~or organizations~~] to conduct
91 [~~mental illness and intellectual disability or related condition;~~] competency evaluations and
92 juvenile competency evaluations under Subsections (2)[~~(b)~~] and (3)(b). In making this
93 selection, the department shall follow the provisions of Title 63G, Chapter 6a, Utah
94 Procurement Code.

95 (5) Nothing in this section prohibits the [~~executive director~~] department, at the request
96 of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah
97 Code of Criminal Procedure, and for good cause shown, from proposing a person who has not
98 been previously selected under Subsection (4) to contract with the department to conduct the
99 evaluation. In selecting that person, the criteria of the department established under Subsection
100 (4) and the provisions of Title 63G, Chapter 6a, Utah Procurement Code, shall be met.

101 Section 3. Section **77-15-1** is amended to read:

102 **77-15-1. Incompetent individual not to be tried for public offense.**

103 [~~No person~~] An individual who is incompetent to proceed [~~shall~~] may not be tried for a
104 public offense.

105 Section 4. Section **77-15-2** is amended to read:

106 **77-15-2. Definitions.**

107 [~~For the purposes of this chapter, a person is incompetent to proceed if he is suffering~~
108 ~~from a mental disorder or mental retardation resulting either in:~~]

109 [~~(1) his inability to have a rational and factual understanding of the proceedings against~~
110 ~~him or of the punishment specified for the offense charged; or]~~

111 [~~(2) his inability to consult with his counsel and to participate in the proceedings~~
112 ~~against him with a reasonable degree of rational understanding.]~~

113 As used in this chapter:

114 (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to
115 determine if an individual is competent to stand trial.

116 (2) "Competent to stand trial" means that a defendant has:

117 (a) a rational and factual understanding of the criminal proceedings against the
118 defendant and of the punishment specified for the offense charged; and

119 (b) the ability to consult with the defendant's legal counsel with a reasonable degree of
 120 rational understanding in order to assist in the defense.

121 (3) "Department" means the Department of Human Services.

122 (4) "Forensic evaluator" means a licensed mental health professional who is:

123 (a) not involved in the defendant's treatment; and

124 (b) trained and qualified by the department to conduct a competency evaluation, a
 125 restoration screening, and a progress toward competency evaluation.

126 (5) "Incompetent to proceed" means that a defendant is not competent to stand trial.

127 (6) "Petition" means a petition to request a court to determine whether a defendant is
 128 competent to stand trial.

129 (7) "Progress toward competency evaluation" means an evaluation to determine
 130 whether an individual who is receiving restoration treatment is:

131 (a) competent to stand trial;

132 (b) incompetent to proceed but has a substantial probability of becoming competent to
 133 stand trial in the foreseeable future; or

134 (c) incompetent to proceed and does not have a substantial probability of becoming
 135 competent to stand trial in the foreseeable future.

136 (8) "Restoration screening" means an assessment of an individual determined to be
 137 incompetent to stand trial for the purpose of determining the appropriate placement and
 138 restoration treatment for the individual.

139 (9) "Restoration treatment" means training and treatment that is:

140 (a) provided to an individual who is incompetent to proceed;

141 (b) tailored to the individual's particular impairment to competency; and

142 (c) limited to the purpose of restoring the individual to competency.

143 Section 5. Section **77-15-3** is amended to read:

144 **77-15-3. Petition for inquiry regarding defendant or prisoner -- Filing --**

145 **Contents.**

146 (1) [~~Whenever a person~~] When a defendant charged with a public offense or serving a
 147 sentence of imprisonment is [~~or becomes~~] incompetent to proceed, [~~as defined in this chapter, a~~
 148 petition may be filed] an individual described in Subsection (2)(b) may file a petition in the
 149 district court of the county where the charge is pending or where the [~~person~~] defendant is

150 confined.

151 (2) (a) The petition shall contain a certificate that it is filed in good faith and on
152 reasonable grounds to believe the defendant is incompetent to proceed. The petition shall
153 contain a recital of the facts, observations, and conversations with the defendant that have
154 formed the basis for the petition. If filed by defense counsel, the petition [~~shall contain such~~
155 ~~information without invading the lawyer-client~~] may not disclose information in violation of
156 the attorney-client privilege.

157 (b) The petition may be based upon knowledge or information and belief and may be
158 filed by the [~~party alleged incompetent to proceed~~] defendant, any person acting on [~~his~~] behalf
159 of the defendant, the prosecuting attorney, or any person having custody or supervision over the
160 [person] defendant.

161 Section 6. Section **77-15-3.5** is enacted to read:

162 **77-15-3.5. Incompetent to proceed in misdemeanor cases.**

163 (1) When a defendant charged with a misdemeanor is incompetent to proceed, a
164 petition may be filed in the district court of the county where the charge is pending or where
165 the defendant is confined.

166 (2) If the most severe charge against a defendant is a misdemeanor and the defendant is
167 adjudicated by a court as incompetent to proceed:

168 (a) the department shall provide restoration treatment to the defendant; and

169 (b) the court may refer the defendant to pretrial diversion services, upon agreement of
170 the prosecution and defense counsel.

171 (3) Unless the prosecutor indicates that civil commitment proceedings will be initiated
172 under Subsection 77-15-6(5)(c), a court shall release a defendant who is incompetent to
173 proceed if:

174 (a) the most severe charge against the defendant is no more severe than a class B
175 misdemeanor;

176 (b) more than 60 days have passed after the day on which the court adjudicated the
177 defendant incompetent to proceed; and

178 (c) the defendant has not been restored to competency.

179 (4) A court may dismiss the charges against a defendant who was released under
180 Subsection (3).

181 Section 7. Section ~~77-15-4~~ is amended to read:

182 **77-15-4. Court may raise issue of competency at any time.**

183 The court in which a charge is pending may raise the issue of ~~the~~ a defendant's
184 competency at any time. If raised by the court, the court shall permit counsel for each party
185 ~~[shall be permitted]~~ to address the issue of competency.

186 Section 8. Section ~~77-15-5~~ is amended to read:

187 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**
188 **defendant -- Scope of examination and report.**

189 ~~[(1)(a) When a petition is filed pursuant to Section ~~77-15-3~~ raising the issue of the~~
190 ~~defendant's competency to stand trial or when the court raises the issue of the defendant's~~
191 ~~competency pursuant to Section ~~77-15-4~~, the court in which proceedings are pending shall stay~~
192 ~~all proceedings. If the proceedings are in a court other than the district court in which the~~
193 ~~petition is filed, the district court shall notify that court of the filing of the petition.]~~

194 ~~[(b) The district court in which the petition is filed:]~~

195 (1) A court in which criminal proceedings are pending shall stay all criminal
196 proceedings, if:

197 (a) a petition is filed under Section ~~77-15-3~~ or ~~77-15-3.5~~; or

198 (b) the court raises the issue of the defendant's competency under Section ~~77-15-4~~.

199 (2) The court in which the petition described in Subsection (1)(a) is filed:

200 (a) shall inform the court in which criminal proceedings are pending of the petition, if
201 the petition is not filed in the court in which criminal proceedings are pending;

202 ~~[(i)]~~ (b) shall review the allegations of incompetency;

203 ~~[(ii)]~~ (c) may hold a limited hearing solely for the purpose of determining the
204 sufficiency of the petition, if the court finds the petition is not clearly sufficient on its face;

205 ~~[(iii)]~~ (d) shall hold a hearing, if the petition is opposed by either party;

206 ~~[(iv)]~~ (e) may not order an examination of the defendant or order a hearing on the
207 mental condition of the defendant unless the court finds that the allegations in the petition raise
208 a bona fide doubt as to the defendant's competency to stand trial; and

209 ~~[(v) shall order an examination of the defendant and a hearing on the defendant's~~
210 ~~mental condition]~~

211 (f) if the court finds that the allegations raise a bona fide doubt as to the defendant's

212 competency to stand trial[-], shall order:

213 (i) the department to have the defendant evaluated by one forensic evaluator, if:

214 (A) the most severe charge against the defendant is a misdemeanor; or

215 (B) the defendant is charged with a felony but is not charged with a capital felony, and

216 the court determines, based upon the allegations in the petition, that a second competency
217 evaluation is not necessary;

218 (ii) the department to have the defendant evaluated by two forensic evaluators, if:

219 (A) the defendant is charged with a capital felony; or

220 (B) the defendant is charged with a felony but is not charged with a capital felony, and

221 the court determines, based upon the allegations in the petition, that a second competency
222 evaluation is necessary; and

223 (iii) the defendant to be evaluated by an additional forensic evaluator, if requested by a
224 party, who shall:

225 (A) select the additional forensic evaluator; and

226 (B) pay for the costs of the additional forensic evaluator.

227 ~~[(2)(a) After the granting of a petition and prior to a full competency hearing, the court~~
228 ~~may order the Department of Human Services to examine the person and to report to the court~~
229 ~~concerning the defendant's mental condition.]~~

230 ~~[(b) The defendant shall be examined by at least two mental health experts not~~
231 ~~involved in the current treatment of the defendant.]~~

232 ~~[(c) If the issue is sufficiently raised in the petition or if it becomes apparent that the~~
233 ~~defendant may be incompetent due to intellectual disability, at least one expert experienced in~~
234 ~~intellectual disability assessment shall evaluate the defendant. Upon appointment of the~~
235 ~~experts, the petitioner or other party as directed by the court shall provide information and~~
236 ~~materials to the examiners relevant to a determination of the defendant's competency and shall~~
237 ~~provide copies of the charging document, arrest or incident reports pertaining to the charged~~
238 ~~offense, known criminal history information, and known prior mental health evaluations and~~
239 ~~treatments.]~~

240 ~~[(d) The prosecuting and defense attorneys shall cooperate in providing the relevant~~
241 ~~information and materials to the examiners, and the court may make the necessary orders to~~
242 ~~provide the information listed in Subsection (2)(c) to the examiners. The court may provide in~~

243 ~~its order for a competency examination of a defendant]~~

244 (3) (a) If the petition or other information sufficiently raises concerns that the
245 defendant may have intellectual or developmental disabilities, at least one forensic evaluator
246 who is experienced in intellectual or developmental disability assessments shall conduct a
247 competency evaluation.

248 (b) The petitioner or other party, as directed by the court, shall provide to the forensic
249 evaluator information and materials relevant to a determination of the defendant's competency,
250 including the charging document, arrest or incident reports pertaining to the charged offense,
251 known criminal history information, and known prior mental health evaluations and treatments.

252 (c) For purposes of a competency evaluation, a court may order that custodians of
253 mental health records pertaining to the defendant [shall] provide those records to [the] a
254 [examiners] forensic evaluator without the need for consent of the defendant [or further order
255 of the court].

256 (d) An order for a competency evaluation may not contain an order for any other
257 inquiry into the mental state of the defendant.

258 ~~[(3) During the examination under Subsection (2)]~~

259 (4) Pending a competency evaluation, unless the court or the [executive director of the]
260 department directs otherwise, the defendant shall be retained in the same custody or status [he]
261 that the defendant was in at the time the examination was ordered.

262 ~~[(4) The experts shall in the conduct of their examination and in their report to the~~
263 ~~court consider and address, in addition to any other factors determined to be relevant by the~~
264 ~~experts:]~~

265 (5) In the conduct of a competency evaluation, a progress toward competency
266 evaluation, and in a report to the court, a forensic evaluator shall consider and address, in
267 addition to any other factors determined to be relevant by the forensic evaluator:

268 (a) the defendant's present [~~capacity~~] ability to:

269 (i) rationally and factually understand the criminal proceedings against the defendant;

270 (ii) consult with the defendant's legal counsel with a reasonable degree of rational
271 understanding in order to assist in the defense;

272 ~~[(i) comprehend and appreciate]~~

273 (iii) understand the charges or allegations against the defendant;

274 ~~[(ii) disclose to counsel pertinent]~~
275 (iv) communicate facts, events, and states of mind;
276 ~~[(iii) comprehend and appreciate]~~
277 (v) understand the range [and nature] of possible penalties[; if applicable, that may be
278 imposed in the proceedings] associated with the charges or allegations against the defendant;
279 ~~[(iv)]~~ (vi) engage in reasoned choice of legal strategies and options;
280 ~~[(v)]~~ (vii) understand the [adversary] adversarial nature of the proceedings against the
281 defendant;
282 ~~[(vi)]~~ (viii) manifest [appropriate courtroom] behavior sufficient to allow the court to
283 proceed; and
284 ~~[(vii)]~~ (ix) testify relevantly, if applicable;
285 (b) the impact of the mental disorder or intellectual disability, if any, on the nature and
286 quality of the defendant's relationship with counsel;
287 (c) if psychoactive medication is currently being administered:
288 (i) whether the medication is necessary to maintain the defendant's competency; and
289 (ii) ~~[the effect of]~~ whether the medication[; if any,] may have an effect on the
290 defendant's demeanor ~~[and]~~, affect, and ability to participate in the proceedings; and
291 (d) whether the defendant is exhibiting false or exaggerated physical or psychological
292 symptoms relevant to the defendant's capacity to stand trial.
293 ~~[(5)]~~ (6) If the [expert's] forensic evaluator's opinion is that the defendant is
294 incompetent to proceed, the [expert] forensic evaluator shall indicate in the report to the court:
295 (a) [which of the above factors contributes] the factors that contribute to the
296 defendant's incompetency[;(b)], including the nature of the defendant's mental disorder or
297 intellectual or developmental disability, if any, and its relationship to the factors contributing to
298 the defendant's incompetency; and
299 ~~[(c) the treatment or treatments appropriate and available;]~~
300 ~~[(d) the defendant's capacity to give informed consent to treatment to restore~~
301 competency; and]
302 ~~[(e) any diagnostic instruments, methods, and observations used by the expert to~~
303 determine whether or not the defendant is exhibiting false or exaggerated physical or
304 psychological symptoms relevant to the defendant's capacity to stand trial and the expert's

305 ~~opinion as to the significance of any false or exaggerated symptoms regarding the defendant's~~
306 ~~capacity.]~~

307 (b) whether there is a substantial probability that restoration treatment may, in the
308 foreseeable future, bring the defendant to competency to stand trial, or that the defendant
309 cannot become competent to stand trial in the foreseeable future.

310 ~~[(6) The experts examining the defendant]~~

311 (7) (a) A forensic evaluator shall provide an initial report to the court and the
312 prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report
313 shall inform the court of the examiner's opinion concerning the competency of the defendant to
314 stand trial[, or, in the alternative, the examiner may inform the court in writing that additional
315 time is needed to complete the report. If the examiner informs the court that additional time is
316 needed, the examiner shall have up to an additional 30 days to provide the report to the court
317 and counsel. The examiner shall provide the report within 60 days from the receipt of the
318 court's order unless, for good cause shown, the court authorizes an additional period of time to
319 complete the examination and provide the report].

320 (b) (i) If the forensic evaluator is unable to complete the report in the time specified in
321 Subsection (7)(a), the forensic evaluator shall give written notice to the court.

322 (ii) A forensic evaluator who provides the notice described in Subsection (7)(b)(i) shall
323 receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day on
324 which the forensic evaluator received the court's order to conduct a competency evaluation and
325 file a report.

326 (iii) The court may further extend the deadline for completion of the evaluation and
327 report if the court determines that there is good cause for the extension.

328 (iv) Upon receipt of an extension described in Subsection (7)(b)(iii), the forensic
329 evaluator shall file the report as soon as reasonably possible.

330 ~~[(7)]~~ (8) Any written report submitted by [the experts] a forensic evaluator shall:

331 (a) identify the [specific matters referred] case ordered for evaluation by the case
332 number;

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

335 (c) state the [expert's] forensic evaluator's clinical observations, findings, and opinions

336 on each issue referred for examination by the court, and indicate specifically those issues, if
337 any, on which the ~~[expert]~~ forensic evaluator could not give an opinion; and

338 (d) identify the sources of information used by the ~~[expert]~~ forensic evaluator and
339 present the basis for the ~~[expert's]~~ forensic evaluator's clinical findings and opinions.

340 ~~[(8)]~~ (9) (a) Any statement made by the defendant in the course of any competency
341 examination, whether the examination is with or without the consent of the defendant, any
342 testimony by ~~[the expert]~~ a forensic evaluator based upon the statement, and any other fruits of
343 the statement may not be admitted in evidence against the defendant in any criminal proceeding
344 except on an issue respecting mental condition on which the defendant has introduced
345 evidence. The evidence may be admitted, however, where relevant to a determination of the
346 defendant's competency.

347 (b) ~~[Prior to]~~ Before examining the defendant, ~~[examiners should]~~ the forensic
348 evaluator shall specifically advise the defendant of the limits of confidentiality as provided
349 under Subsection ~~[(8)]~~ (9)(a).

350 ~~[(9)(a) When the report is received]~~

351 (10) (a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a
352 ~~[mental]~~ competency hearing. The hearing shall be held ~~[in]~~ not less than ~~[five]~~ 5 and not more
353 than 15 days ~~[-unless the court enlarges the time for good cause-]~~ after the day on which the
354 court received the forensic evaluators' reports, unless for good cause the court sets a later date.

355 (b) Any person ~~[or organization]~~ directed by the department to conduct the
356 ~~[examination]~~ competency evaluation may be subpoenaed to testify at the hearing. ~~[If the~~
357 ~~experts are in conflict as to the competency of the defendant, all experts should be called to~~
358 ~~testify at the hearing if reasonably available. A conflict in the opinions of the experts does not~~
359 ~~require the appointment of an additional expert unless the court determines the appointment to~~
360 ~~be necessary.]~~

361 (c) The court may call any ~~[examiner]~~ forensic evaluator to testify at the hearing who is
362 not called by the parties. If the court calls ~~[an examiner]~~ a forensic evaluator, counsel for the
363 parties may cross-examine the ~~[expert]~~ forensic evaluator.

364 (d) If the forensic evaluators are in conflict as to the competency of the defendant, all
365 forensic evaluators should be called to testify at the hearing if reasonably available. A conflict
366 in the opinions of the forensic evaluators does not require the appointment of an additional

367 forensic evaluator unless the court determines the appointment to be necessary.

368 ~~[(10)]~~ (11) (a) A ~~[person]~~ defendant shall be presumed competent to stand trial unless
369 the court, by a preponderance of the evidence, finds the ~~[person]~~ defendant incompetent to
370 proceed. The burden of proof is upon the proponent of incompetency at the hearing.

371 (b) An adjudication of ~~[incompetency]~~ incompetent to proceed does not operate as an
372 adjudication of incompetency to give informed consent for medical treatment or for any other
373 purpose, unless specifically set forth in the court order.

374 ~~[(11)]~~ (12) In determining the defendant's competency to stand trial, the court shall
375 consider the totality of the circumstances, which may include the testimony of lay witnesses, in
376 addition to the ~~[expert testimony, studies, and reports provided under this section]~~ forensic
377 evaluator's report, testimony, and studies.

378 ~~[(12)(a)]~~ (13) If the court finds the defendant incompetent to ~~[stand trial, its order shall~~
379 ~~contain]~~ proceed:

380 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:

381 (i) include findings addressing each of the factors in [Subsections (4)(a) and (b)].
382 Subsection (5)(a);

383 ~~[The order issued pursuant to Subsection 77-15-6(1) which the court sends to the~~
384 ~~facility where the defendant is committed or to the person who is responsible for assessing the~~
385 ~~defendant's progress toward competency shall be provided contemporaneously with the~~
386 ~~transportation and commitment order of the defendant, unless exigent circumstances require~~
387 ~~earlier commitment in which case the court shall forward the order within five working days of~~
388 ~~the order of transportation and commitment of the defendant.]~~

389 ~~[(b) The order finding the defendant incompetent to stand trial shall be accompanied~~
390 ~~by:]~~

391 ~~[(i) copies of the reports of the experts filed with the court pursuant to the order of~~
392 ~~examination if not provided previously;]~~

393 ~~[(ii) copies of any of the]~~

394 (ii) include a transportation order, if necessary;

395 (iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological,
396 or social work reports submitted to the court relative to the mental condition of the defendant[;
397 and (iii)], and any other documents made available to the court by either the defense or the

398 prosecution, pertaining to the defendant's current or past mental condition[-]; and

399 (iv) be sent by the court to the department; and

400 (b) the prosecuting attorney shall provide to the department:

401 (i) the charging document and probable cause statement, if any;

402 (ii) arrest or incident reports prepared by law enforcement and pertaining to the
403 charged offense; and

404 (iii) additional supporting documents.

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

412 ~~[(b) The executive director of the Department of Human Services or a designee may~~
413 ~~refuse to accept a defendant as a patient unless the defendant is accompanied by a~~
414 ~~transportation and commitment order which is accompanied by the reports.]~~

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

420 ~~[(a) copies of the charging document and supporting affidavits or other documents used~~
421 ~~in the determination of probable cause;]~~

422 ~~[(b) arrest or incident reports prepared by a law enforcement agency pertaining to the~~
423 ~~charged offense; and]~~

424 ~~[(c) information concerning the defendant's known criminal history.]~~

425 ~~[(15)] (14) The court may make any reasonable order to [insure] ensure compliance~~
426 ~~with this section.~~

427 ~~[(16)] (15) Failure to comply with this section does not result in the dismissal of~~
428 ~~criminal charges.~~

429 Section 9. Section 77-15-6 is amended to read:

430 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**
431 **hearings -- Notice to prosecuting attorneys.**

432 (1) (a) Except as provided in Subsection (5), if after a hearing~~], the defendant is found]~~
433 a court finds a defendant to be incompetent to [stand trial] proceed, the court shall order the
434 defendant committed to the ~~[custody of the executive director of the Department of Human~~
435 ~~Services or a designee for the purpose of treatment intended to restore the defendant to~~
436 competency] department for restoration treatment.

437 (b) The court may recommend but may not order placement of the defendant. The
438 court may, however, order that the defendant be placed in a secure setting rather than a
439 nonsecure setting. ~~[The director or a]~~ Following restoration screening, the department's
440 designee shall designate and inform the court of the specific placement ~~[of the defendant~~
441 ~~during the period of evaluation and treatment to restore competency]~~ and restoration treatment
442 program for the defendant.

443 (c) Restoration treatment shall be of sufficient scope and duration to:

444 (i) restore the individual to competency; or

445 (ii) determine whether the individual can be restored to competency in the foreseeable
446 future.

447 (d) A defendant whom a court determines is incompetent to proceed may not be held
448 for restoration treatment longer than:

449 (i) the time reasonably necessary to determine whether there is a substantial probability
450 that the defendant will become competent to stand trial in the foreseeable future, or that the
451 defendant cannot become competent to stand trial in the foreseeable future; and

452 (ii) the maximum period of incarceration that the defendant could receive if the
453 defendant were convicted of the most severe offense of the offenses charged.

454 ~~[(2) The examiner or examiners designated by the executive director to assess the~~
455 ~~defendant's progress toward competency may not be involved in the routine treatment of the~~
456 ~~defendant. The examiner or examiners shall provide a full report to the court and prosecuting~~
457 ~~and defense attorneys within 90 days of arrival of the defendant at the treating facility. If any~~
458 ~~examiner]~~

459 (2) (a) A defendant who is receiving restoration treatment shall receive a progress

460 toward competency evaluation, by:

461 (i) a forensic evaluator, designated by the department; and

462 (ii) an additional forensic evaluator, if requested by a party and paid for by the
463 requesting party.

464 (b) A forensic evaluator shall complete a progress toward competency evaluation and
465 submit a report within 90 days after the day on which the forensic evaluator receives the
466 commitment order. If the forensic evaluator is unable to complete the [assessment] report
467 within 90 days, [that examiner] the forensic evaluator shall provide to the court and counsel a
468 summary progress [report which] statement that informs the court that additional time is
469 necessary to complete the [assessment] report, in which case the examiner shall have up to an
470 additional [90] 45 days to provide the full report.

471 (c) The [full] report shall [assess]:

472 [~~(a)~~] (i) assess whether the defendant is exhibiting false or exaggerated physical or
473 psychological symptoms[~~, and shall report.~~];

474 [~~(i)~~] (ii) describe any diagnostic instruments, methods, and observations used by the
475 examiner to make the determination; [and]

476 [~~(ii)~~ the examiner's]

477 (iii) state the forensic evaluator's opinion as to the effect of any false or exaggerated
478 symptoms on the defendant's [capacity] competency to stand trial;

479 [~~(b)~~] (iv) assess the facility's or program's capacity to provide appropriate restoration
480 treatment for the defendant;

481 [~~(c)~~] (v) assess the nature of [~~treatments~~] restoration treatment provided to the
482 defendant;

483 [~~(d)~~] (vi) assess what progress the defendant has made toward competency restoration,
484 [has been made] with respect to the factors identified by the court in its initial order;

485 [~~(e)~~] (vii) describe the defendant's current level of [~~mental disorder or mental~~
486 retardation] intellectual or developmental disability and need for treatment, if any; and

487 [~~(f)~~] (viii) assess the likelihood of restoration [~~of competency and~~] to competency, the
488 amount of time estimated to achieve [it] competency, or the amount of time estimated to
489 determine whether restoration to competency may be achieved.

490 (3) The court on its own motion or upon motion by either party or [~~by the executive~~

491 ~~director] the department may appoint an additional [mental health examiners to examine the~~
492 ~~defendant and advise the court on the defendant's current mental status and progress toward~~
493 ~~competency restoration] forensic evaluator to conduct a progress toward competency~~
494 ~~evaluation. If the court appoints an additional forensic evaluator upon motion of a party, that~~
495 ~~party shall pay the costs of the additional forensic evaluator.~~

496 (4) ~~[Upon receipt of the full report, the court shall hold a hearing to determine the~~
497 ~~defendant's current status.] Within 15 days after the day on which the court receives the~~
498 ~~forensic evaluator's report of the progress toward competency evaluation, the court shall hold a~~
499 ~~hearing to review the defendant's competency. At the hearing, the burden of proving that the~~
500 ~~defendant is competent to stand trial is on the proponent of competency. Following the~~
501 ~~hearing, the court shall determine by a preponderance of evidence whether the defendant is:~~

502 (a) competent to stand trial;

503 (b) incompetent to ~~[stand trial] proceed,~~ with a substantial probability that the
504 defendant may become competent in the foreseeable future; or

505 (c) incompetent to ~~[stand trial] proceed,~~ without a substantial probability that the
506 defendant may become competent in the foreseeable future.

507 (5) (a) If the court ~~[enters a finding pursuant to Subsection (4)(a),]~~ determines that the
508 defendant is competent to stand trial, the court shall:

509 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
510 charges[-]; and

511 (ii) order that the defendant be returned to the placement and status that the defendant
512 was in at the time when the petition for the adjudication of competency was filed, unless the
513 court determines that a different placement is more appropriate.

514 (b) ~~[If the court enters a finding pursuant to Subsection (4)(b), the court may order that~~
515 ~~the defendant remain committed to the custody of the executive director of the Department of~~
516 ~~Human Services or a designee for the purpose of treatment intended to restore the defendant to~~
517 ~~competency] If the court determines that the defendant is not competent to proceed but that~~
518 ~~there is a substantial probability that the defendant may become competent in the foreseeable~~
519 ~~future, the court may order that the defendant remain committed to the department or the~~
520 ~~department's designee for the purpose of restoration treatment.~~

521 (c) If the court ~~[enters a finding pursuant to Subsection (4)(c)]~~ determines that the

522 defendant is incompetent to proceed and that there is not a substantial probability that the
523 defendant may become competent in the foreseeable future, the court shall order the defendant
524 released from [the custody of the director] commitment to the department, unless the
525 prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5,
526 Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental
527 Health Act, will be initiated. These commitment proceedings must be initiated within seven
528 days [after the court's order entering the finding in Subsection (4)(c), unless the court enlarges
529 the time for good cause shown. The defendant may be ordered to remain in the custody of the
530 director until commitment proceedings have been concluded:] after the day on which the court
531 makes the determination described in Subsection (4)(c), unless the court finds that there is
532 good cause to delay the initiation of the civil commitment proceedings. The court may order
533 the defendant to remain in the commitment of the department until the civil commitment
534 proceedings conclude. If the defendant is civilly committed, [the court which entered the order
535 pursuant to Subsection (4)(c), shall be notified by the director] the department shall notify the
536 court that adjudicated the defendant incompetent to proceed at least 10 days [prior to] before
537 any release of the committed [person] individual.

538 ~~[(6) If the defendant is recommitted to the department pursuant to Subsection (5)(b),~~
539 ~~the court shall hold a hearing one year following the recommitment.]~~

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

544 (6) If a court, under Subsection (5)(b), extends a defendant's commitment, the court
545 shall schedule a competency review hearing for the earlier of:

546 (a) the department's best estimate of when the defendant may be restored to
547 competency; or

548 (b) three months after the day on which the court determined under Subsection (5)(b)
549 to extend the defendant's commitment.

550 (7) If a defendant is not competent to proceed by the day of the competency review
551 hearing that follows the extension of a defendant's commitment, a court shall:

552 (a) except for a defendant charged with crimes listed in Subsection (8), order a

553 defendant:

554 (i) released; or

555 (ii) temporarily detained pending civil commitment proceedings under the same terms
556 as described in Subsection (5)(c); and

557 (b) terminate the defendant's commitment to the department for restoration treatment.

558 (8) If the defendant has been charged with aggravated murder, murder, attempted
559 murder, manslaughter, or a first degree felony and the court determines that the defendant is
560 making reasonable progress towards restoration of competency at the time of the hearing held
561 pursuant to Subsection (6), the court may [~~order the defendant recommitted~~] extend the
562 commitment for a period not to exceed [~~18~~] 9 months for the purpose of [~~treatment to restore~~
563 ~~the defendant to competency~~] restoration treatment, with a mandatory review hearing at the end
564 of the [~~18-month~~] 9-month period.

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

569 (9) If at the 9-month review hearing described in Subsection (8), the court determines
570 that the defendant is not competent to proceed, the court shall:

571 (a) order the defendant, except for a defendant charged with aggravated murder or
572 murder, to be:

573 (i) released; or

574 (ii) temporarily detained pending civil commitment proceedings under the same terms
575 as provided in Subsection (5)(c); and

576 (b) terminate the defendant's commitment to the department for restoration treatment.

577 (10) If the defendant has been charged with aggravated murder or murder and the court
578 determines that the defendant is making reasonable progress towards restoration of competency
579 at the time of the [~~mandatory review hearing held pursuant to~~] 9-month review hearing
580 described in Subsection (8), the court may [~~order the defendant recommitted~~] extend the
581 commitment for a period not to exceed [~~36~~] 24 months for the purpose of [~~treatment to restore~~
582 ~~competency~~] restoration treatment.

583 (11) If the [~~defendant is recommitted to the department pursuant to~~] court extends the

584 defendant's commitment term under Subsection (10), the court shall hold a hearing no [later
585 than at 18-month] less frequently than at 12-month intervals following the [recommitment]
586 extension for the purpose of determining the defendant's competency status.

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

591 (12) If, at the end of the 24-month commitment period described in Subsection (10),
592 the court determines that the defendant is not competent to proceed, the court shall:

593 (a) order the defendant to be:

594 (i) released; or

595 (ii) temporarily detained pending civil commitment proceedings under the same terms
596 as provided in Subsection (5)(c); and

597 (b) terminate the defendant's commitment to the department for restoration treatment.

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

601 ~~[(b) This Subsection (13) does not preclude pursuing involuntary civil commitment nor~~
602 ~~does it place any time limit on civil commitments.]]~~

603 ~~[(14)]~~ (13) Neither release from a pretrial incompetency commitment under the
604 provisions of this section nor civil commitment requires dismissal of criminal charges. The
605 court may retain jurisdiction over the criminal case and may order periodic reviews [to assess
606 the defendant's competency to stand trial].

607 ~~[(15)]~~ (14) A defendant who is civilly committed pursuant to Title 62A, Chapter 5,
608 Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental
609 Health Act, may still be adjudicated competent to stand trial under this chapter.

610 ~~[(16)]~~ (15) (a) The remedy for a violation of the time periods specified in this section,
611 other than those specified in Subsection (5)(c), (7), (9), or (12), [or (13)], shall be a motion to
612 compel the hearing, or mandamus, but not release from detention or dismissal of the criminal
613 charges.

614 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7),

615 (9), or (12), or ~~[(13)]~~ is not dismissal of the criminal charges.

616 ~~[(17)]~~ (16) In cases in which the treatment of the defendant is precluded by court order
617 for a period of time, that time period may not be considered in computing time limitations
618 under this section.

619 ~~[(18)]~~ (17) (a) At any time that the defendant becomes competent to stand trial, the
620 clinical director of the hospital ~~[or other facility or the executive director of the Department of~~
621 ~~Human Services]~~, the department, or the department's designee shall certify that fact to the
622 court.

623 (b) The court shall conduct a competency review hearing:

624 (i) within 15 working days ~~[of the receipt of the clinical director's or executive director's~~
625 ~~report, unless the court enlarges the time for good cause:]~~ after the day on which the court
626 receives the certification described in Subsection (17)(a); or

627 (ii) within 30 working days after the day on which the court receives the certification
628 described in Subsection (17)(a), if the court determines that more than 15 days are necessary
629 for good cause related to the defendant's competency.

630 ~~[(19)]~~ (18) The court may order a hearing or rehearing at any time on its own motion or
631 upon recommendations of the clinical director of the hospital or other facility or the ~~[executive~~
632 ~~director of the Department of Human Services]~~ department.

633 ~~[(20)]~~ (19) Notice of a hearing on competency to stand trial shall be given to the
634 prosecuting attorney. If the hearing is held in the county where the defendant is confined,
635 notice shall also be given to the prosecuting attorney for that county.

636 Section 10. Section ~~77-15-6.5~~ is amended to read:

637 **77-15-6.5. Petition for involuntary medication of incompetent defendant.**

638 ~~[(1) As used in this section:]~~

639 ~~[(a) "Executive director" means the executive director of the Department of Human~~
640 ~~Services or the executive director's designee.]~~

641 ~~[(b)]~~ (1) ~~["Final"]~~ As used in this section, "final order" means a court order that
642 determines the rights of the parties and concerning which appellate remedies have been
643 exhausted or the time for appeal has expired.

644 (2) (a) At any time after a defendant has been found incompetent to proceed and has
645 been committed to the ~~[Department of Human Services]~~ department under Section ~~77-15-6~~ for

646 ~~[treatment to restore competency, the executive director]~~ restoration treatment, the department
647 shall notify the court, prosecuting attorney, and attorney for the defendant if the ~~[executive~~
648 ~~director has determined]~~ department determines that the defendant is not responding to
649 restoration treatment and is unlikely to be restored to competency without the involuntary
650 administration of antipsychotic medication.

651 (b) The ~~[executive director]~~ department shall provide the notification under Subsection
652 (2)(a) only if there is no basis for involuntarily medicating the defendant for reasons other than
653 to restore the defendant's competency.

654 (3) In the notice under Subsection (2)(a), the ~~[executive director]~~ department shall state
655 whether ~~[the executive director believes]~~:

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

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

658 (c) medication is substantially unlikely to produce side effects which would
659 significantly interfere with the defendant's ability to assist in ~~[his]~~ the defendant's defense;

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

662 (e) medication is medically appropriate and is in the defendant's best medical interest
663 in light of ~~[his]~~ the defendant's medical condition.

664 (4) (a) ~~[Upon receipt of the notice under Subsection (2)(a), the]~~ The court shall conduct
665 a hearing within ~~[30 days, unless the court extends the time for good cause, to determine~~
666 ~~whether the court should convene a hearing]~~ 15 days, or, for good cause, within 30 days after
667 the day on which the court receives the notice described in Subsection (2)(a), regarding the
668 involuntary medication of the defendant.

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

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

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

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

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

676 (B) is substantially unlikely to produce side effects which would significantly interfere

677 with the defendant's ability to assist [~~the defense counsel in conducting his~~] in the defendant's
678 defense;

679 (iii) involuntary medication is necessary to further important state interests, because
680 any [~~alternate~~] less intrusive treatments are unlikely to achieve substantially the same results;
681 and

682 (iv) the administration of the proposed medication is medically appropriate, as it is in
683 the defendant's best medical interest in light of [~~his~~] the defendant's medical condition.

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

687 (6) (a) If the court finds by clear and convincing evidence that the involuntary
688 administration of antipsychotic medication is appropriate, it shall make findings addressing
689 each of the factors in Subsection (4)(c) and shall issue an order authorizing the [~~Department of~~
690 ~~Human Services~~] department to involuntarily administer antipsychotic medication to the
691 defendant in order to restore [~~his~~] the defendant's competency, subject to the periodic reviews
692 and other procedures provided in Section 77-15-6.

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

697 (7) The provisions in Section 77-15-6 establishing time limitations for treatment of
698 incompetent defendants before they must be either released or civilly committed are tolled
699 from the time the [~~executive director~~] department gives notice to the court and the parties under
700 Subsection (2) until:

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

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

705 (8) This section applies only when [~~the prosecution seeks~~] an order of involuntary
706 medication is sought solely for the purpose of rendering a defendant competent to [~~proceed~~]
707 stand trial.

708 Section 11. Section 77-15-7 is amended to read:

709 **77-15-7. Statute of limitations and speedy trial -- Effect of incompetency of**
710 **defendant.**

711 (1) The statute of limitations is tolled during any period in which the defendant is
712 adjudicated incompetent to proceed.

713 (2) Any period of time during which the defendant has been adjudicated incompetent
714 to proceed and any period during which [~~he~~] the defendant is being evaluated for competency
715 may not be computed in determining the defendant's speedy trial rights.

716 Section 12. Section 77-15-9 is amended to read:

717 **77-15-9. Expenses.**

718 (1) In determining the competence of a defendant to proceed, expenses of examination,
719 observation, or treatment, excluding travel to and from any mental health facility, shall be
720 charged to the [~~Department of Human Services~~] department when the offense is a state offense.
721 Travel expenses incurred by the defendant shall be charged to the county where prosecution is
722 commenced. Examination of [~~defendants~~] a defendant on local ordinance violations shall be
723 charged by the department to the municipality or county commencing the prosecution.

724 (2) When examination is initiated by the court or on motion of the prosecutor,
725 expenses of commitment and treatment of the [~~person confined to a mental health facility after~~
726 ~~examination, if he~~] defendant, if the defendant is determined to be incompetent to proceed,
727 shall also be charged to the department.

728 (3) Expenses of examination, treatment, or confinement in a mental health facility for
729 any [~~person~~] individual who has been convicted of a crime and placed in a state correctional
730 facility shall be charged to the Department of Corrections.

731 (4) [~~If the defendant, after examination, is found to be competent by the court,~~] If, after
732 evaluation, the court determines that a defendant is competent to stand trial, all subsequent
733 costs are charged to the county commencing prosecution. If the defendant requested the
734 examination and is found to be competent to stand trial by the court, the department may
735 recover the expenses of the examination from the defendant.