

SB0019S01 compared with SB0019

~~{deleted text}~~ shows text that was in SB0019 but was deleted in SB0019S01.

Inserted text shows text that was not in SB0019 but was inserted into SB0019S01.

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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

~~{Committee Note:~~

~~— The Health and Human Services Interim Committee recommended this bill.~~

~~}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;

~~{~~ ~~→ amends procedures for conducting competency evaluations;~~

- ~~}~~ ▶ adds and modifies time frames for evaluations, reports, and court hearings relating to ~~{misdemeanors and felonies}~~ competency to stand trial determinations;

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- ▶ 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

62A-1-108.5, as last amended by Laws of Utah 2012, Chapters 316 and 347

77-15-1, as last amended by Laws of Utah 2000, Chapter 256

77-15-2, as last amended by Laws of Utah 1994, Chapter 162

77-15-3, as last amended by Laws of Utah 1994, Chapter 162

77-15-4, as last amended by Laws of Utah 1994, Chapter 162

77-15-5, as last amended by Laws of Utah 2016, Chapter 115

77-15-6, as last amended by Laws of Utah 2012, Chapter 109

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

77-15-7, as repealed and reenacted by Laws of Utah 1994, Chapter 162

77-15-9, as last amended by Laws of Utah 1994, Chapter 162

ENACTS:

77-15-3.5, Utah Code Annotated 1953

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

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

62A-1-104. Definitions.

(1) As used in this title:

(a) "Competency evaluation" means the same as that term is defined in Section

77-15-2.

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

~~(b)~~ (c) "Department" means the Department of Human Services established in

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Section 62A-1-102.

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

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

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

(i) serves a child with or who is at risk for complex emotional and behavioral needs;

(ii) is community based;

(iii) is informed about trauma;

(iv) builds meaningful partnerships with families and children;

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

(vi) includes individualized case planning;

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

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

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

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

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

Responsibilities of the department.

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

(2) When the department is ordered by ~~[the district]~~ a court to conduct a ~~[mental illness or intellectual disability examination the executive director]~~ competency evaluation, the

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~~department shall~~ [(a) direct that the examination be performed at the Utah State Hospital; or (b) designate at least one examiner;] designate a forensic evaluator, selected under Subsection (4), to [~~examine~~] evaluate the defendant in the defendant's current custody or status.

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

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

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

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

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

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

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

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

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

77-15-2. Definitions.

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

[~~(1) his inability to have a rational and factual understanding of the proceedings against~~

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~~him or of the punishment specified for the offense charged; or]~~

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

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

(a) competent to stand trial;

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

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

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

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

(a) provided to an individual who is incompetent to proceed ~~and provided for~~;

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

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

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

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

Contents.

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

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

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

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

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

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

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

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

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

(3) Unless the prosecutor indicates that civil commitment proceedings will be initiated

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under Subsection 77-15-6(5)(c), a court shall release a defendant who is incompetent to proceed if:

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

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

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

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

~~{~~ (5) At least 10 days before the day on which the department releases a defendant from civil commitment, the department shall notify the court that entered the civil commitment order.

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

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

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

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

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

[(1)(a) When a petition is filed {} pursuant to Section 77-15-3 raising the issue of the defendant's competency to stand trial {} under Section 77-15-3 or 77-15-3.5, or when the court raises the issue of the defendant's competency {} pursuant to {} under Section 77-15-4, the court in which { criminal } proceedings are pending shall stay all { criminal } proceedings. If the { criminal } proceedings are in a court other than the {} district {} court in which the petition is filed, the {} district {} court { in which the petition is filed } shall notify {} that court of the filing of the {} the court in which the criminal proceedings are pending of the petition.]

[(b) The {} district {} court in which the petition is filed: {

(i);]

(1) A court in which criminal proceedings are pending shall stay all criminal

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proceedings, if:

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

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

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

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

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

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

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

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

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

(f) if the court finds that the allegations raise a bona fide doubt as to the defendant's competency to stand trial[-], shall order:

~~(A) i) the department to have the defendant evaluated by ~~fa~~one forensic evaluator~~;~~ and~~;~~ if:~~

~~(B) a hearing on the defendant's competency to stand trial; and~~

~~(vi) shall permit either party to call~~(A) the most severe charge against the defendant is a misdemeanor; or

~~(B) the defendant is charged with a felony but is not charged with a capital felony, and the court determines, based upon the allegations in the petition, that a second competency evaluation is not necessary;~~

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

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

(B) the defendant is charged with a felony but is not charged with a capital felony, and the court determines, based upon the allegations in the petition, that a second competency evaluation is necessary; and

(iii) the defendant to be evaluated by an additional forensic evaluator ~~to evaluate the~~

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~~defendant and report to the court, at the party's expense}, if requested by a party, who shall:~~

(A) select the additional forensic evaluator; and

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

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

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

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

~~[(d) The prosecuting and defense attorneys shall cooperate in providing the relevant information and materials to the examiners, and the court may make the necessary orders to provide the information listed in Subsection (2)(c) to the examiners. The court may provide in its order for a competency examination of a defendant]~~

(~~2~~3) (a) If the petition or other information sufficiently raises concerns that the defendant may have intellectual or developmental disabilities, ~~at~~ at least one forensic evaluator who is experienced in intellectual or developmental disability assessments shall conduct ~~the~~ a competency evaluation.

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

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

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of the court].

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

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

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

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

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

~~{}~~(a) the defendant's present capacity ~~{ to:}~~

~~—— [(i) comprehend and appreciate the charges or allegations against the defendant;]~~

~~—— [(ii) disclose to counsel pertinent facts, events, and states of mind;]~~

~~—— [(iii) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;]~~

~~—— [(iv) engage in reasoned choice of legal strategies and options;]~~

~~—— [(v) understand the adversary nature of the proceedings against the defendant;]~~

~~—— [(vi) manifest appropriate courtroom behavior; and]~~

~~—— [(vii) testify relevantly, if applicable;]~~

~~—— [(b) the impact of the mental disorder or intellectual disability, if any, on the nature and quality of the defendant's relationship with counsel;]~~

~~—— [(c) if psychoactive medication is currently being administered:]~~

~~—— [(i) whether the medication is necessary to maintain the defendant's competency; and]~~

~~—— [(ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings; and]~~

~~—— [(d) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.]~~

~~—— (4) The forensic evaluator shall consider and address the defendant's present capacity~~

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to:

~~(a)~~ ability to:

~~(i) rationally and factually understand the criminal proceedings against the defendant and the punishment specified for the offense charged; and~~

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

~~(5)~~;

~~(i) comprehend and appreciate]~~

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

~~(ii) disclose to counsel pertinent]~~

~~(iv) communicate facts, events, and states of mind;~~

~~(iii) comprehend and appreciate]~~

~~(v) understand the range [and nature] of possible penalties[, if applicable, that may be imposed in the proceedings] associated with the charges or allegations against the defendant;~~

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

~~(v) (vii) understand the [adversary] adversarial nature of the proceedings against the defendant;~~

~~(vi) (viii) manifest [appropriate courtroom] behavior sufficient to allow the court to proceed; and~~

~~(vii) (ix) testify relevantly, if applicable;~~

~~(b) the impact of the mental disorder or intellectual disability, if any, on the nature and quality of the defendant's relationship with counsel;~~

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

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

~~(ii) [the effect of] whether the medication[, if any,] may have an effect on the defendant's demeanor [and], affect, and ability to participate in the proceedings; and~~

~~(d) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.~~

~~(5) (6) If the [expert's] forensic evaluator's opinion is that the defendant is incompetent to proceed, the [expert] forensic evaluator shall indicate in the report to the court:~~

~~(a) [which of the above factors contributes] the factors that contribute to the~~

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defendant's incompetency[;(b)], including the nature of the defendant's mental disorder or intellectual or developmental disability, if any, and its relationship to the factors contributing to the defendant's incompetency; and

~~[(c) the treatment or treatments appropriate and available;]~~

~~[(d) the defendant's capacity to give informed consent to treatment to restore competency; and]~~

~~[(e) any diagnostic instruments, methods, and observations used by the expert to determine whether or not the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial and the expert's opinion as to the significance of any false or exaggerated symptoms regarding the defendant's capacity.]~~

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

~~[(6) {(a)} { } The experts examining the defendant] { The }~~

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

(b) (i) If the forensic evaluator is unable to complete the report in the time specified in Subsection ~~(6) 7~~(a), the forensic evaluator shall give written notice to the court.

(ii) A forensic evaluator who provides the notice described in Subsection ~~(6) 7~~(b)(i) shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day on which the forensic evaluator received the court's order to conduct a competency evaluation and file a report.

(iii) The court may further extend the deadline for completion of the evaluation and

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report if the court determines that there is good cause for the extension.

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

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

~~{}~~ (a) identify the ~~[specific matters referred]~~ case ordered for evaluation by the case number; ~~{}~~

~~{}~~ (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each; ~~{}~~

~~{}~~ (c) state the ~~[expert's]~~ forensic evaluator's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the ~~[expert]~~ forensic evaluator could not give an opinion; and ~~{}~~

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

~~(8)~~ ~~(7)(9)~~ (a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by ~~[the expert]~~ a forensic evaluator based upon the statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

(b) ~~[Prior to]~~ Before examining the defendant, ~~[examiners should]~~ the forensic evaluator shall specifically advise the defendant of the limits of confidentiality as provided under Subsection ~~(8)~~ ~~(7)(9)~~ (a).

~~(9)~~ ~~(a)~~ When the report is received ~~{}~~

~~(8)~~ ~~(10)~~ (a) ~~{}~~ When the report is received ~~{}~~ Upon receipt of the forensic ~~{}~~ evaluator's report ~~{}~~ evaluators' reports, the court shall set a date for a ~~[mental]~~ competency hearing. ~~{}~~ The hearing shall be held ~~[in]~~ not less than ~~[five]~~ 5 and not more than 15 days ~~[, unless the court enlarges the time for good cause.]~~ after the day on which the court received the forensic ~~{}~~ evaluator's report ~~{}~~ evaluators' reports, unless for good cause the court sets a later date.

(b) Any person ~~[or organization]~~ directed by the department to conduct the ~~[examination]~~ competency evaluation may be subpoenaed to testify at the hearing. ~~[If the~~

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~~experts are in conflict as to the competency of the defendant, all experts should be called to testify at the hearing if reasonably available. A conflict in the opinions of the experts does not require the appointment of an additional expert unless the court determines the appointment to be necessary.]~~

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

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

~~[(10)]~~ ~~(9)~~11 (a) A [person] defendant shall be presumed competent to stand trial unless the court, by a preponderance of the evidence, finds the [person] defendant incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing.

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

~~[(11)]~~ ~~(10)~~12 In determining the defendant's competency to stand trial, the court shall consider the totality of the circumstances, which may include the testimony of lay witnesses, in addition to the ~~[expert testimony, studies, and reports provided under this section]~~ forensic evaluator's report ~~and~~, testimony, and studies.

~~[(12)(a)]~~ ~~(11)~~13 If the court finds the defendant incompetent to ~~[stand trial]~~, its ~~order shall contain~~ proceed:

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

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

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

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~~the order of transportation and commitment of the defendant.]~~

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

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

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

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

~~(iii) be accompanied by the forensic ~~valuator's report~~evaluators' reports, any psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant~~[-; and (iii)], and {+}~~ any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition~~[-]; and~~~~

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

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

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

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

~~(iii) additional supporting documents.~~

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

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

~~[(14) Upon a finding of incompetency to stand trial by the court, the prosecuting and defense attorneys shall provide information and materials relevant to the defendant's competency to the facility where the defendant is committed or to the person responsible for~~

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~~assessing the defendant's progress towards competency. In addition to any other materials, the prosecuting attorney shall provide:]~~

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

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

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

~~[(15)]~~ ~~(~~12~~;14)~~ The court may make any reasonable order to [~~insure~~] ensure compliance with this section.

~~[(16)]~~ ~~(~~13~~;15)~~ Failure to comply with this section does not result in the dismissal of criminal charges.

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

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

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

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

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

(i) restore the individual to competency; or

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

~~(~~17~~;d)~~ A defendant whom a court determines is incompetent to proceed may not be held for restoration treatment longer than:

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

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

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

~~(2) (a) {The department shall designate a forensic evaluator, who is not involved in the treatment of the defendant, to conduct}~~ A defendant who is receiving restoration treatment shall receive a progress toward competency evaluation ~~{ and report to the court. Either party may also, at the party's expense, designate}, by:~~

(i) a forensic evaluator, {who is not involved in the treatment of the defendant, to conduct a progress toward competency evaluation and report to the court.

~~— (b) The}~~ designated by the department; and

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

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

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

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

[(+)] (ii) describe any diagnostic instruments, methods, and observations used by the examiner to make the determination; [and { }]

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~~[(ii) the examiner's] {and shall}~~

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

~~[(b) (iii)iv) assess {}~~ the facility's or program's capacity to provide appropriate restoration treatment for the defendant;

~~[(c) (iii)v) assess {}~~ the nature of ~~[treatments]~~ restoration treatment provided to the defendant;

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

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

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

(3) The court on its own motion or upon motion by either party or ~~[by the executive director]~~ the department may appoint an additional ~~[mental health examiners to examine the defendant and advise the court on the defendant's current mental status and progress toward competency restoration]~~ forensic {evaluators} evaluator to conduct a progress toward competency evaluation. If the court appoints an additional forensic evaluator upon motion of a party, that party shall pay the costs of the additional forensic evaluator.

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

(a) competent to stand trial;

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

(c) incompetent to ~~[stand trial]~~ proceed, without a substantial probability that the

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defendant may become competent in the foreseeable future.

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

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

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

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

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

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any release of the committed ~~[person]~~ individual.

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

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

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

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

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

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

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

(i) released; or

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

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

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

~~[(9) Except for defendants charged with aggravated murder or murder, a defendant who has not been restored to competency at the time of the hearing held pursuant to Subsection (8) shall be ordered released or temporarily detained pending civil commitment proceedings under~~

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~~the same terms as provided in Subsection (5)(c).]~~

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

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

(i) released; or

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

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

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

(11) If the ~~[defendant is recommitted to the department pursuant to]~~ court extends the defendant's commitment term under Subsection (10), the court shall hold a hearing no ~~[later than at 18-month]~~ less frequently than at 12-month intervals following the ~~[recommitment]~~ extension for the purpose of determining the defendant's competency status.

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

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

(a) order the defendant to be:

(i) released; or

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

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

~~[(13)(a) In no event may the maximum period of detention under this section exceed~~

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~~the maximum period of incarceration which the defendant could receive if the defendant were convicted of the charged offense.]~~

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

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

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

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

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

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

~~[(18)] (17) (a) 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], the department, or the department's designee shall certify that fact to the court.~~

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

~~(i) 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.] after the day on which the court receives the certification described in Subsection (17)(a); or~~

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

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~~[(19)]~~ (18) 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 ~~[executive director of the Department of Human Services]~~ department.

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

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

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

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

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

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

(2) (a) At any time after a defendant has been found incompetent to proceed and has been committed to the ~~[Department of Human Services]~~ department under Section 77-15-6 for ~~[treatment to restore competency, the executive director]~~ restoration treatment, the department shall notify the court, prosecuting attorney, and attorney for the defendant if the ~~[executive director has determined]~~ department determines that the defendant is not responding to restoration treatment and is unlikely to be restored to competency without the involuntary administration of antipsychotic medication.

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

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

- (a) medication is necessary to render the defendant competent;
- (b) medication is substantially likely to render the defendant competent;
- (c) medication is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in ~~[his]~~ the defendant's defense;
- (d) no less intrusive means are available, and whether any of those means have been

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attempted to render the defendant competent; and

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

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

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

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

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

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

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

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

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

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

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

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

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and other procedures provided in Section 77-15-6.

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

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

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

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

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

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

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

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

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

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

77-15-9. Expenses.

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

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charged by the department to the municipality or county commencing the prosecution.

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

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel