

57 (a) mental illness; or
 58 (b) intellectual disability
 59 (6) "Intellectual disability" means an intellectual disability as defined in the current
 60 edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
 61 American Psychiatric Association.

62 (7) "Mental illness" means the same as that term is defined in Section 62A-15-602.

63 ~~(6)~~ (8) "Petition" means a petition to request a court to determine whether a defendant
 64 is competent to stand trial.

65 ~~(7)~~ (9) "Progress toward competency evaluation" means an evaluation to determine
 66 whether an individual who is receiving restoration treatment is:

- 67 (a) competent to stand trial;
- 68 (b) incompetent to proceed but has a substantial probability of becoming competent to
- 69 stand trial in the foreseeable future; or
- 70 (c) incompetent to proceed and does not have a substantial probability of becoming
- 71 competent to stand trial in the foreseeable future.

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

75 ~~(9)~~ (10) "Restoration treatment" means training and treatment that is:

- 76 (a) provided to an individual who is incompetent to proceed;
- 77 (b) tailored to the individual's particular impairment to competency; and
- 78 (c) limited to the purpose of restoring the individual to competency.

79 Section 2. Section **77-15-3.5** is amended to read:

80 **77-15-3.5. Incompetent to proceed in misdemeanor cases.**

81 (1) When a defendant charged with a misdemeanor [is] may be incompetent to
 82 proceed, ~~H~~→ [a] any ←~~H~~ petition [may] shall be filed in [~~the district court of the county where the~~
 82a ~~charge is~~
 83 ~~pending or where the defendant is confined]~~ accordance with Section 77-15-3.

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

- 86 (a) the department shall provide restoration treatment to the defendant; and
- 87 (b) the court may refer the defendant to pretrial diversion services, upon agreement of

88 the prosecution and defense counsel.

89 (3) Unless the prosecutor or another individual indicates that civil commitment
90 proceedings will be initiated under Subsection 77-15-6(5)(c), a court shall release a defendant
91 who is incompetent to proceed if:

92 (a) the most severe charge against the defendant is [~~no more severe than~~] a class B
93 misdemeanor;

94 (b) more than 60 days have passed after the day on which the court adjudicated the
95 defendant incompetent to proceed; ~~H→~~ [f] and [j] ~~←H~~

96 ~~H→~~ [~~(c) restoration treatment has been provided to the defendant; and~~] ~~←H~~

97 ~~H→~~ [f] (c) [j] [~~(d)~~] ~~←H~~ the defendant [~~has not been~~] is not restored to competency.

97a ~~H→~~ **(4) The department shall provide restoration treatment to the defendant within the**
97b **timeframe described in Subsection (3)(b).** ~~←H~~

98 ~~H→~~ [~~(4)~~] **(5)** ~~←H~~ [A] The court may, but is not required to, dismiss the charges against a
98a defendant

99 who was released under Subsection (3).

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

101 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**
102 **defendant -- Scope of examination and report.**

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

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

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

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

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

110 (b) shall review the allegations of incompetency;

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

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

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

117 [~~(f) if~~] (3) (a) If the court finds that [the allegations raise] there is a bona fide doubt as
118 to the defendant's competency to stand trial, the court shall order[:] the department to have one

119 or two forensic evaluators complete a competency evaluation for the defendant in accordance
 120 with Subsection (3)(b) and provide a report to the court regarding the competency of the
 121 defendant to stand trial.

122 [~~(i) the department to have the defendant evaluated by one forensic evaluator, if:]~~

123 [~~(A) the most severe charge against the defendant is a misdemeanor, or]~~

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

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

128 [~~(A) the defendant is charged with a capital felony, or]~~

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

132 [~~(iii) the defendant to be evaluated by an additional forensic evaluator, if requested by a~~
 133 ~~party, who shall:]~~

134 [~~(A) select the additional forensic evaluator; and]~~

135 [~~(B) pay for the costs of the additional forensic evaluator.:~~]

136 (b) The court shall order the department to have the defendant evaluated by one
 137 forensic evaluator unless:

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

139 (ii) the defendant is charged with a felony that is not a capital felony, and the court
 140 determines, based on the allegations in the petition, that good cause exists to order two
 141 competency evaluations.

142 (c) (i) This section does not prohibit a party from seeking an additional forensic
 143 evaluator to conduct a competency evaluation of the defendant.

144 (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c),
 145 the party shall:

146 (A) select the additional forensic evaluator; and

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

148 (d) The stipulation by parties to a bona fide doubt as to the defendant's competency to
 149 stand trial ~~H→~~ alone ~~←H~~ may not take the place of a competency evaluation ordered under this
 149a Subsection (3).

150 ~~[(3)]~~ (4) (a) If the petition or other information sufficiently raises concerns that the
 151 defendant may have ~~[intellectual or developmental disabilities]~~ an intellectual disability, at
 152 least one forensic evaluator who is experienced in ~~[intellectual or developmental disability]~~
 153 assessments of intellectual disabilities shall conduct a competency evaluation.

154 (b) The petitioner or other party, as directed by the court or requested by the
 155 department, shall provide to the forensic evaluator nonmedical information and materials
 156 relevant to a determination of the defendant's competency, including the charging document,
 157 arrest or incident reports pertaining to the charged offense, and known criminal history
 158 information ~~H→~~ [f] , **and known prior mental health evaluations and treatments** [f] ~~←H~~ .

159 (c) For purposes of a competency evaluation, a ~~[court may order that custodians]~~
 160 custodian of mental health records pertaining to the defendant ~~[provide those records to a~~
 161 ~~forensic evaluator without the need for consent of the defendant.]~~, including the defendant's
 162 prior mental health evaluations or records relating to the defendant's substance use disorder,
 163 may provide the records to:

164 (i) with the defendant's consent, a forensic evaluator or the department on the
 165 department's request; or

166 (ii) a forensic evaluator by court order.

167 (d) A court order under Subsection (4)(c) shall include a protective order that expires
 168 180 days after the day on which:

169 (i) the defendant is found guilty;

170 (ii) the defendant enters a guilty plea;

171 (iii) the court sentences the defendant; or

172 (iv) if the case is appealed, the day on which the final appeal is resolved.

173 (e) (i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f), the
 174 court shall order the forensic evaluator to destroy all records subject to the protective order
 175 within the 180 day period described in Subsection (4)(d).

176 (ii) A forensic evaluator is not required to destroy the records subject to the protective
 177 order if destroying the records is a violation of ethical standards to which the forensic evaluator
 178 is subject for occupational licensing.

179 (f) The court may extend the protective order described in Subsection (4)(d) if:

180 (i) the court finds the defendant incompetent to proceed without a substantial

181 probability that the defendant will become competent in the foreseeable future;

182 (ii) the prosecutor or another individual indicates to the court that the prosecutor or
 183 other individual will seek civil commitment of the defendant under Section 77-15-6; and

184 (iii) the court orders the records be maintained and used only for the purposes of
 185 examining the defendant in connection with the petition for civil commitment.

186 ~~[(d)]~~ (g) An order for a competency evaluation may not contain an order for any other
 187 inquiry into the mental state of the defendant that is not described in this Subsection (4).

188 ~~[(4)]~~ (5) Pending a competency evaluation, unless the court or the department directs
 189 otherwise, the defendant shall be retained in the same custody or status that the defendant was
 190 in at the time the examination was ordered.

191 ~~[(5)]~~ (6) In the conduct of a competency evaluation~~[, a progress toward competency~~
 192 ~~evaluation,]~~ and in a report to the court, a forensic evaluator shall consider and address, in
 193 addition to any other factors determined to be relevant by the forensic evaluator:

194 (a) (i) the impact of the defendant's mental illness or intellectual disability on the
 195 defendant's present ability to:

196 ~~[(i)]~~ (A) rationally and factually understand the criminal proceedings against the
 197 defendant; and

198 ~~[(ii)]~~ (B) consult with the defendant's legal counsel with a reasonable degree of rational
 199 understanding in order to assist in the defense;

200 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator

201 ~~H→~~ [may] shall ~~←H~~ consider ~~H→~~ , as applicable ~~←H~~ :

202 (i) the defendant's present ability to:

203 ~~[(iii)]~~ (A) understand the charges or allegations against the defendant;

204 ~~[(iv)]~~ (B) communicate facts, events, and states of mind;

205 ~~[(v)]~~ (C) understand the range of possible penalties associated with the charges or
 206 allegations against the defendant;

207 ~~[(vi)]~~ (D) engage in reasoned choice of legal strategies and options;

208 ~~[(vii)]~~ (E) understand the adversarial nature of the proceedings against the defendant;

209 ~~[(viii)]~~ (F) manifest behavior sufficient to allow the court to proceed; and

210 ~~[(ix)]~~ (G) testify relevantly, if applicable; and

211 ~~[(b) the impact of the mental disorder or intellectual disability, if any, on the nature and~~

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

245 (iv) Upon receipt of an extension described in Subsection ~~[(7)(b)(iii)]~~ (8)(b)(iii), the
 246 forensic evaluator shall file the report as soon as reasonably possible.

247 ~~[(8)]~~ (9) Any written report submitted by a forensic evaluator shall:

248 (a) identify the case ordered for evaluation by the case number;

249 (b) describe the procedures, techniques, and tests used in the examination and the
 250 purpose or purposes for each, the time spent by the forensic evaluator with the defendant for
 251 purposes of the examination, and the compensation to be paid ~~H~~→ [by] to ←~~H~~ the evaluator for the
 251a report;

252 (c) state the forensic evaluator's clinical observations, findings, and opinions on each
 253 ~~[issue referred for examination by the court, and indicate specifically those issues, if any, on~~
 254 ~~which the forensic evaluator could not give an opinion]~~ factor described in Subsection (6); and

255 (d) identify the sources of information used by the forensic evaluator and present the
 256 basis for the forensic evaluator's clinical findings and opinions.

257 ~~[(9)]~~ (10) (a) Any statement made by the defendant in the course of any competency
 258 examination, whether the examination is with or without the consent of the defendant, any
 259 testimony by a forensic evaluator based upon the statement, and any other fruits of the
 260 statement may not be admitted in evidence against the defendant in any criminal proceeding
 261 except on an issue respecting mental condition on which the defendant has introduced
 262 evidence~~[- The evidence may be admitted, however, where]~~, unless the evidence is relevant to
 263 a determination of the defendant's competency.

264 (b) Before examining the defendant, the forensic evaluator shall specifically advise the
 265 defendant of the limits of confidentiality as provided under Subsection ~~[(9)(a)]~~ (10)(a).

266 ~~[(10)]~~ (11) (a) Upon receipt of the forensic evaluators' reports, the court shall set a date
 267 for a competency hearing. The hearing shall be held not less than [5] five and not more than 15
 268 days after the day on which the court received the forensic evaluators' reports, unless for good
 269 cause the court sets a later date.

270 (b) Any person directed by the department to conduct the competency evaluation may
 271 be subpoenaed to testify at the hearing.

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

367 evaluation.

368 (b) If the court appoints an additional forensic evaluator upon motion of a party, that
369 party shall pay the costs of the additional forensic evaluator.

370 (4) (a) Within 15 days after the day on which the court receives the forensic evaluator's
371 report of the progress toward competency evaluation, the court shall hold a hearing to review
372 the defendant's competency.

373 (b) At the hearing, the burden of proving that the defendant is ~~H→~~ [f] **competent** [f] ~~←H~~
373a ~~H→~~ [incompetent] ~~←H~~

374 to stand trial is on the proponent of ~~H→~~ [f] **competency** [f] [incompetency] ~~←H~~ .

375 (c) Following the hearing, the court shall determine by a preponderance of evidence
376 whether the defendant is:

377 [~~(a)~~] (i) competent to stand trial;

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

380 [~~(c)~~] (iii) incompetent to proceed, without a substantial probability that the defendant
381 may become competent in the foreseeable future.

382 (5) (a) If at any time the court determines that the defendant is competent to stand trial,
383 the court shall:

384 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
385 charges; and

386 (ii) order that the defendant be returned to the placement and status that the defendant
387 was in at the time when the petition for the adjudication of competency was filed or raised by
388 the court, unless the court determines that [~~a different~~] placement of the defendant in a less
389 restrictive environment is more appropriate.

390 (b) If the court determines that the defendant is [~~not competent~~] incompetent to
391 proceed [~~but that there is~~] with a substantial probability that the defendant may become
392 competent in the foreseeable future, the court may order that the defendant remain committed
393 to the department or the department's designee for the purpose of restoration treatment.

394 (c) (i) If the court determines that the defendant is incompetent to proceed [~~and that~~
395 ~~there is not~~] without a substantial probability that the defendant may become competent in the
396 foreseeable future, the court shall order the defendant released from commitment to the
397 department, unless the prosecutor or another individual informs the court that civil