

Representative Ryan D. Wilcox proposes the following substitute bill:

CIVIL COMMITMENT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill modifies provisions relating to competency to stand trial.

Highlighted Provisions:

This bill:

- ▶ defines terms and modifies definitions;
- ▶ modifies procedures and requirements for finding a defendant incompetent to stand trial in a criminal proceeding, including provisions relating to:
 - the court in which a petition to determine competency may be filed;
 - the information and circumstances on which the forensic evaluation of a defendant may be based;
 - the number of forensic evaluators required to evaluate a defendant;
 - the court's findings regarding a defendant's competency; and
 - commitment of an incompetent defendant for restoration treatment; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **77-15-2**, as last amended by Laws of Utah 2018, Chapter 147

29 **77-15-3.5**, as enacted by Laws of Utah 2018, Chapter 147

30 **77-15-5**, as last amended by Laws of Utah 2018, Chapter 147

31 **77-15-6**, as last amended by Laws of Utah 2018, Chapter 147



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

34 Section 1. Section **77-15-2** is amended to read:

35 **77-15-2. Definitions.**

36 As used in this chapter:

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

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

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

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

44 (3) "Department" means the Department of Health and Human Services.

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

46 (a) is not involved in the defendant's treatment; [~~and~~]

47 (b) is trained and qualified by the department to conduct a competency evaluation, a
48 restoration screening, and a progress toward competency evaluation[-], based on knowledge,
49 experience, or education relating to:

50 (i) intellectual functioning or psychopathology; and

51 (ii) the legal system and the rights of a defendant in a criminal trial; and

52 (c) if under contract with the department, demonstrates ongoing education and training
53 relating to forensic mental health in accordance with rules established by the department in
54 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

55 (5) "Incompetent to proceed" means that a defendant is not competent to stand trial[-]
56 as a result of:

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, a petition [~~may~~] shall be filed in [~~the district court of the county where the 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; [~~and~~]

96 (c) restoration treatment has been provided to the defendant; and

97 [~~(c)~~] (d) the defendant [~~has not been~~] is not restored to competency.

98 (4) [~~A~~] The court may, but is not required to, dismiss the charges against a 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 may not take the place of a competency evaluation ordered under this 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~~[-and known prior mental health evaluations and treatments].~~

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 may consider:

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~~

212 ~~quality of the defendant's relationship with counsel;~~
213 ~~[(e) if psychoactive medication is currently being administered:]~~
214 ~~[(i) whether the medication is necessary to maintain the defendant's competency; and]~~
215 ~~[(ii) whether the medication may have an effect on the defendant's demeanor, affect,~~
216 ~~and ability to participate in the proceedings; and]~~
217 ~~[(d)]~~ (c) whether the defendant is exhibiting false or exaggerated physical or
218 psychological symptoms relevant to the defendant's capacity to stand trial.
219 ~~[(6)]~~ (7) ~~[If the forensic evaluator's opinion is]~~ Upon a determination that the defendant
220 is incompetent to proceed, the forensic evaluator shall indicate in the report to the court:
221 (a) the factors that contribute to the defendant's incompetency, including the nature of
222 the defendant's mental ~~[disorder or intellectual or developmental disability]~~ illness or
223 intellectual disability, if any, and its relationship to the factors contributing to the defendant's
224 incompetency; ~~[and]~~
225 (b) whether there is a substantial probability that:
226 (i) restoration treatment may~~[, in the foreseeable future,]~~ bring the defendant to
227 competency to stand trial~~[, or that]~~ in the foreseeable future; or
228 (ii) the defendant cannot become competent to stand trial in the foreseeable future~~[,];~~
229 (c) whether the defendant would benefit from restoration treatment; and
230 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or
231 (7)(c), an explanation of the reason for the determination and a summary of the treatment
232 provided to the defendant in the past.
233 ~~[(7)]~~ (8) (a) A forensic evaluator shall provide an initial report to the court and the
234 prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report
235 shall inform the court of the examiner's opinion concerning the competency of the defendant to
236 stand trial.
237 (b) (i) If the forensic evaluator is unable to complete the report in the time specified in
238 Subsection ~~[(7)(a)]~~ (8)(a), the forensic evaluator shall give written notice to the court.
239 (ii) A forensic evaluator who provides the notice described in Subsection ~~[(7)(b)(i)]~~
240 (8)(b)(i) shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after
241 the day on which the forensic evaluator received the court's order to conduct a competency
242 evaluation and file a report.

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 by the evaluator for the 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

274 the forensic evaluator.

275 (d) (i) If the forensic evaluators are in conflict as to the competency of the defendant,
276 all forensic evaluators should be called to testify at the hearing if reasonably available.

277 (ii) A conflict in the opinions of the forensic evaluators does not require the
278 appointment of an additional forensic evaluator unless the court [~~determines the appointment to~~
279 ~~be necessary~~] finds good cause for the appointment.

280 [(H)] (12) (a) (i) A defendant shall be presumed competent to stand trial unless the
281 court, by a preponderance of the evidence, finds the defendant incompetent to proceed.

282 (ii) The burden of proof is upon the proponent of incompetency at the hearing.

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

286 [(12)] (13) In determining the defendant's competency to stand trial, the court shall
287 consider the totality of the circumstances, which may include the testimony of lay witnesses,
288 [~~in addition to the forensic evaluator's report, testimony, and studies~~] the forensic evaluator's
289 testimony and report, the materials on which the report is based, and any other relevant
290 considerations.

291 [(13)] (14) If the court finds the defendant incompetent to proceed:

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

293 (i) include findings addressing each of the factors in Subsection [(5)(a)] (6)(a);

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

295 (iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological,
296 or social work reports submitted to the court relative to the mental condition of the defendant,
297 and any other documents made available to the court by either the defense or the prosecution,
298 pertaining to the defendant's current or past mental condition; and

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

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

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

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

304 (iii) additional supporting documents.

305 ~~[(14)]~~ (15) The court may make any reasonable order to ensure compliance with this
306 section.

307 ~~[(15)]~~ (16) Failure to comply with this section does not result in the dismissal of
308 criminal charges.

309 Section 4. Section **77-15-6** is amended to read:

310 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**
311 **hearings -- Notice to prosecuting attorneys.**

312 (1) (a) Except as provided in Subsection (5), if after a hearing a court finds a defendant
313 to be incompetent to proceed, the court shall order the defendant committed to the department
314 for restoration treatment.

315 (b) (i) ~~[The]~~ Except as provided in Subsection (1)(b)(ii), the court may recommend but
316 may not order placement of [the] a defendant who is found incompetent to proceed.

317 (ii) The court may~~[-however,]~~ order that the defendant be placed in a secure setting
318 rather than a nonsecure setting.

319 (c) Following restoration screening, the department's designee shall designate and
320 inform the court of the specific placement and restoration treatment program for the defendant.

321 ~~[(c)]~~ (d) Restoration treatment shall be of sufficient scope and duration to:

322 (i) restore the ~~[individual]~~ defendant to competency; or

323 (ii) determine whether the ~~[individual]~~ defendant can be restored to competency in the
324 foreseeable future.

325 ~~[(d)]~~ (e) A defendant ~~[whom]~~ who a court determines is incompetent to proceed may
326 not be held for restoration treatment longer than:

327 (i) the time reasonably necessary to determine ~~[whether there is a substantial~~
328 ~~probability that the defendant will become competent to stand trial in the foreseeable future, or]~~

329 that the defendant cannot become competent to stand trial in the foreseeable future; and

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

332 (2) (a) A defendant who is receiving restoration treatment shall receive a progress
333 toward competency evaluation, by:

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

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

336 requesting party.

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

344 (c) The report shall:

345 (i) assess whether the defendant is exhibiting false or exaggerated physical or
346 psychological symptoms;

347 (ii) describe any diagnostic instruments, methods, and observations used by the
348 [~~examiner~~] evaluator to make the determination;

349 (iii) describe the defendant's current mental illness or intellectual disability, if any;

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

352 [~~(iv)~~] (v) assess the facility's or program's capacity to provide appropriate restoration
353 treatment for the defendant;

354 [~~(v)~~] (vi) assess the nature of restoration treatment provided to the defendant;

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

357 (viii) assess whether the defendant can reasonably be restored to competency in the
358 foreseeable future given the restoration treatment currently being provided and the facility's or
359 program's capacity to provide appropriate restoration treatment for the defendant; and

360 [~~(vii) describe the defendant's current level of intellectual or developmental disability~~
361 ~~and need for treatment, if any; and]~~

362 [~~(viii)~~] (ix) assess the likelihood of restoration to competency, the amount of time
363 estimated to achieve competency, or the amount of time estimated to determine whether
364 restoration to competency may be achieved.

365 (3) (a) The court on its own motion or upon motion by either party or the department
366 may appoint an additional forensic evaluator to conduct a progress toward competency

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 [~~competent~~] incompetent
374 to stand trial is on the proponent of [~~competency~~] incompetency.

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

398 commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with
399 Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be
400 initiated.

401 ~~(ii)~~ ~~[These]~~ The commitment proceedings must be initiated by a petition filed within
402 seven days after the day on which the court makes the determination described in Subsection
403 ~~[(4)(c)]~~ (4)(c)(iii), unless the court finds that there is good cause to delay the initiation of the
404 civil commitment proceedings.

405 (iii) The court may order the defendant to remain ~~[in the commitment of]~~ committed to
406 the department until the civil commitment proceedings conclude.

407 (iv) If the defendant is civilly committed and admitted to a secure setting, the
408 department shall ~~[notify]~~ provide notice to the court that adjudicated the defendant incompetent
409 to proceed and to the prosecution agency that prosecuted the case at least ~~[+0]~~ 60 days before
410 any proposed release of the committed individual from the secure setting.

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

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

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

417 ~~(7)~~ ~~[If]~~ Unless the defendant is charged with a crime listed in Subsection (8), if a
418 defendant is ~~[not competent]~~ incompetent to proceed by the day of the competency review
419 hearing that follows the extension of a defendant's commitment, ~~[a]~~ the court shall:

420 ~~(a)~~ ~~[except for a defendant charged with crimes listed in Subsection (8), order a~~
421 ~~defendant]~~ order the defendant be:

422 (i) released~~[-; or]~~

423 ~~[(ii)]~~ or temporarily detained pending civil commitment proceedings ~~[under the same~~
424 ~~terms]~~ as described in Subsection (5)(c); and

425 ~~[(b)]~~ (ii) terminate the defendant's commitment to the department for restoration
426 treatment~~[-]; or~~

427 (b) if the forensic evaluator reports to the court that there is a substantial probability
428 that restoration treatment will bring the defendant to competency to stand trial in the

429 foreseeable future, extend the defendant's commitment for restoration treatment up to 45
430 additional days.

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

437 (9) [~~If at the 9-month~~] Unless the defendant is charged with aggravated murder or
438 murder, if, at the nine-month review hearing described in Subsection (8), the court determines
439 that the defendant is [~~not competent~~] incompetent to proceed, the court shall:

440 (a) (i) order the defendant[~~, except for a defendant charged with aggravated murder or~~
441 ~~murder, to be:~~] be released or

442 [~~(i) released; or~~]

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

445 [~~(b)~~] (ii) terminate the defendant's commitment to the department for restoration
446 treatment[-]; or

447 (b) if the forensic evaluator reports to the court that there is a substantial probability
448 that restoration treatment will bring the defendant to competency to stand trial in the
449 foreseeable future, extend the defendant's commitment for restoration treatment for up to 135
450 additional days.

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

456 (11) If the court extends the defendant's commitment term under Subsection (10), the
457 court shall hold a hearing no less frequently than at 12-month intervals following the extension
458 for the purpose of determining the defendant's competency status.

459 (12) If, at the end of the 24-month commitment period described in Subsection (10),

460 the court determines that the defendant is [~~not competent~~] incompetent to proceed, the court
461 shall:

462 (a) (i) order the defendant [~~to be:~~] be released or

463 [~~(i) released, or~~]

464 [(~~it~~)] temporarily detained pending civil commitment proceedings [~~under the same~~
465 ~~terms~~] as provided in Subsection (5)(c); and

466 [~~(b)~~] (ii) terminate the defendant's commitment to the department for restoration
467 treatment[-]; or

468 (b) if the forensic evaluator reports to the court that there is a substantial probability
469 that restoration treatment will bring the defendant to competency to stand trial in the
470 foreseeable future, extend the defendant's commitment for restoration treatment for up to 12
471 additional months.

472 (13) (a) Neither release from a pretrial incompetency commitment under the provisions
473 of this section nor civil commitment requires dismissal of criminal charges.

474 (b) The court may retain jurisdiction over the criminal case and may order periodic
475 reviews.

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

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

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

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

487 (17) (a) [~~At any time that~~] If, at any time, the defendant becomes competent to stand
488 trial while the defendant is committed to the department, the clinical director of the [~~hospital~~]
489 Utah State Hospital, the department, or the department's designee shall certify that fact to the
490 court.

491 (b) The court shall conduct a competency review hearing:
492 (i) within 15 working days after the day on which the court receives the certification
493 described in Subsection (17)(a); or

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

497 (18) The court may order a hearing [~~or rehearing~~] at any time on [~~its~~] the court's own
498 motion or upon recommendations of the clinical director of the [~~hospital~~] Utah State Hospital
499 or other facility or the department.

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