

HB0330S01 compared with HB0330

~~text~~ shows text that was in HB0330 but was deleted in HB0330S01.

inserted text shows text that was not in HB0330 but was inserted into HB0330S01.

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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: _____

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

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- commitment of an incompetent defendant for restoration treatment; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

77-15-2. Definitions.

As used in this chapter:

~~{ (1) "Brain injury" means the same as that term is defined in Section 62A-5-101.~~

{ ~~{(1)}~~{(2)} "Competency evaluation" means an evaluation conducted by a forensic evaluator to determine if an individual is competent to stand trial.

~~{(2)}~~{(3)} "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)}~~{(4)} "Department" means the Department of Health and Human Services.

~~{(4)}~~{(5)} "Forensic evaluator" means a licensed mental health professional who [is]:

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

(b) is trained and qualified by the department to conduct a competency evaluation, a restoration screening, and a progress toward competency evaluation[~~;~~], based on knowledge,

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experience, or education relating to:

- (i) intellectual functioning or ~~{similar conditions or }~~ psychopathology; and
- (ii) the legal system and the rights of a defendant in a criminal trial; and
- (c) if under contract with the department, demonstrates ongoing education and training

relating to forensic mental health in accordance with rules established by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~{(5)}{ (6)}~~ "Incompetent to proceed" means that a defendant is not competent to stand trial[.] as a result of:

- (a) mental illness; or
- (b) intellectual disability{,}
- ~~{c} brain injury; or~~
- ~~(d) a related condition.~~

~~(7){6}~~ "Intellectual disability" means ~~{a disorder with onset during an individual's period of development that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains.~~

~~(8){an intellectual disability as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.~~

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

~~{(6)}{ (9){8}~~ "Petition" means a petition to request a court to determine whether a defendant is competent to stand trial.

~~{(7)}{ (10){9}~~ "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.

~~{ (11) "Related condition" means the same as that term is defined in Section 80-1-102.~~

~~{ (8) "Restoration screening" means 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.]~~

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~~(9)~~ ~~(12)~~ 10 "Restoration treatment" means training and treatment that is:

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

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

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

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

(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 or another individual indicates that civil commitment proceedings will be initiated 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) restoration treatment has been provided to the defendant; and

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

(4) [~~A~~] The court may, but is not required to, dismiss the charges against a defendant who was released under Subsection (3).

Section 3. 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 court in which criminal proceedings are pending shall stay all criminal proceedings, if:

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

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(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;

(b) shall review the allegations of incompetency;

(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;

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

(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~~[-and]~~.

~~[(f) if]~~

~~—~~ (3) (a) If the court finds that [the allegations raise] there is a bona fide doubt as to the defendant's competency to stand trial, the court shall order[:] the department to have one or two forensic evaluators complete a competency evaluation for the defendant in accordance with Subsection (3)(b) and provide a report to the court regarding the competency of the defendant to stand trial.

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

~~[(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, if requested by a party, who shall:]~~

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

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

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

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

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

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

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

(A) select the additional forensic evaluator; and

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

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

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

(b) The petitioner or other party, as directed by the court or requested by the department, shall provide to the forensic evaluator nonmedical 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, and 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] custodian of mental health records pertaining to the defendant [provide those records to a forensic evaluator without the need for consent of the defendant], including the defendant's prior mental health evaluations or records relating to the defendant's substance use disorder, may provide the records to:

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

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(ii) a forensic evaluator by court order.

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

(i) the defendant is found guilty;

(ii) the defendant enters a guilty plea;

(iii) the court sentences the defendant; or

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

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

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

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

(i) the court finds the defendant incompetent to proceed without a substantial probability that the defendant will become competent in the foreseeable future;

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

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

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

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

~~[(5)]~~ (6) 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) (i) the impact of the defendant's mental illness~~[-]~~ or intellectual disability~~[-]~~, ~~related condition, or brain injury~~ on the ~~[-]~~ defendant's present ability to:

~~[(+)]~~ (A) rationally and factually understand the criminal proceedings against the

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defendant; and

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

~~(b) in making the determinations described in Subsection (6)(a), the forensic evaluator may consider:~~

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

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

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

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

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

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

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

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

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

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

~~[(6)] (7) [If the forensic evaluator's opinion is] Upon a determination that the defendant is incompetent to proceed, the forensic evaluator shall indicate in the report to the court:~~

~~(a) the factors that contribute to the defendant's incompetency, including the nature of the defendant's mental [~~disorder or intellectual or developmental disability~~] illness, ~~or~~ intellectual disability, ~~related condition, or brain injury~~, if any, and its relationship to the factors contributing to the defendant's incompetency; [~~and~~]~~

~~(b) whether there is a substantial probability that:~~

~~(i) restoration treatment may[~~, in the foreseeable future,~~] bring the defendant to competency to stand trial[~~, or that~~] in the foreseeable future; or~~

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- (ii) the defendant cannot become competent to stand trial in the foreseeable future[-];
- (c) whether the defendant would benefit from restoration treatment; and
- (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c), an explanation of the reason for the determination and a summary of the treatment provided to the defendant in the past.

~~[(7)]~~ (8) (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.

(b) (i) If the forensic evaluator is unable to complete the report in the time specified in Subsection ~~[(7)(a)]~~ (8)(a), the forensic evaluator shall give written notice to the court.

(ii) A forensic evaluator who provides the notice described in Subsection ~~[(7)(b)(i)]~~ (8)(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 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)]~~ (8)(b)(iii), the forensic evaluator shall file the report as soon as reasonably possible.

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

- (a) identify the 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, the time spent by the forensic evaluator with the defendant for purposes of the examination, and the compensation to be paid by the evaluator for the report;

(c) state the 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 forensic evaluator could not give an opinion]~~ factor described in Subsection (6); and

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

~~[(9)]~~ (10) (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

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testimony by 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]~~, unless the evidence is relevant to a determination of the defendant's competency.

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

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

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

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

(d) (i) 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.

(ii) 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]~~ finds good cause for the appointment.

~~[(11)]~~ (12) (a) (i) A defendant shall be presumed competent to stand trial unless the court, by a preponderance of the evidence, finds the defendant incompetent to proceed.

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

(b) An adjudication of 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.

~~[(12)]~~ (13) 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 forensic evaluator's report, testimony, and studies]~~ the forensic evaluator's testimony and report, the materials on which the report is based, and any other relevant

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considerations.

~~[(13)]~~ (14) If the court finds the defendant incompetent to 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 Subsection ~~[(5)(a)]~~ (6)(a);

(ii) include a transportation order, if necessary;

(iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant, 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.

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

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

Section 4. 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 a court finds a defendant to be incompetent to proceed, the court shall order the defendant committed to the department for restoration treatment.

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

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

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

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

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

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

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

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

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

(c) The report shall:

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

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

(iii) describe the defendant's current mental illness ~~[(.) or intellectual disability, (related condition, or brain injury.)]~~ if any;

~~[(iii)]~~ (iv) state the forensic evaluator's opinion as to the effect of any false or

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exaggerated symptoms on the defendant's competency to stand trial;

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

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

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

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

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

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

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

(b) 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) (a) 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.

(b) At the hearing, the burden of proving that the defendant is ~~[competent]~~ incompetent to stand trial is on the proponent of ~~[competency]~~ incompetency.

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

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

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

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

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(5) (a) If at any time the court 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 or raised by the court, unless the court determines that [~~a different~~] placement of the defendant in a less restrictive environment is more appropriate.

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

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

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

(iv) If the defendant is civilly committed and admitted to a secure setting, the department shall [~~notify~~] provide notice to the court that adjudicated the defendant incompetent to proceed and to the prosecution agency that prosecuted the case at least [~~10~~] 60 days before any proposed release of the committed individual from the secure setting.

(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:

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

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

(i) released~~[-; or { }]~~

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

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

(b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment up to 45 additional days.

(8) If the defendant ~~[has been]~~ is 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 extend the commitment for a period not to exceed ~~[9]~~ nine months for the purpose of restoration treatment, with a mandatory review hearing at the end of the ~~[9-month]~~ nine-month period.

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

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

~~[(i)]~~ released; or { }

~~[(ii)]~~ {be released or} temporarily detained pending civil commitment proceedings

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~~[under the same terms]~~ as provided in Subsection (5)(c); and

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

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

(10) If the defendant ~~[has been]~~ is 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 ~~[9-month]~~ nine-month review hearing described in Subsection (8), the court may extend the commitment for a period not to exceed 24 months for the purpose of restoration treatment.

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

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

(a) (i) order the defendant ~~[to be: (i) released; or (ii)]~~ be released or
~~(i) released; or~~
~~(ii)~~ temporarily detained pending civil commitment proceedings ~~[under the same terms]~~ as provided in Subsection (5)(c); and

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

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

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

(b) The court may retain jurisdiction over the criminal case and may order periodic

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reviews.

(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.

(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), 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 is not dismissal of the criminal charges.

(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.

(17) (a) ~~[At any time that]~~ If, at any time, the defendant becomes competent to stand trial while the defendant is committed to the department, the clinical director of the ~~[hospital]~~ Utah State Hospital, 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 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 working days are necessary for good cause related to the defendant's competency.

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

(19) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney and all counsel of record. ~~[·] 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.]~~ [and all counsel of record.]