

Representative Christine F. Watkins proposes the following substitute bill:

1 **COMPETENCY TO STAND TRIAL AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Casey Snider**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses petitions to find a defendant incompetent to stand trial in criminal
10 actions.

11 **Highlighted Provisions:**

12 This bill:
13 ▶ limits who may file a petition of incompetency;
14 ▶ requires a court to consider certain factors when determining whether a defendant is
15 incompetent; and
16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 77-15-3, as last amended by Laws of Utah 2018, Chapter 147

24 77-15-5, as last amended by Laws of Utah 2018, Chapter 147



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

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

28 **77-15-3. Petition for inquiry regarding defendant or prisoner -- Filing --**

29 **Contents.**

30 (1) When a defendant charged with a public offense or serving a sentence of
31 imprisonment is incompetent to proceed, an individual described in Subsection (2)(b) may file
32 a petition in the district court of the county where the charge is pending or where the defendant
33 is confined.

34 (2) (a) The petition shall contain a certificate that it is filed in good faith and on
35 reasonable grounds to believe the defendant is incompetent to proceed. The petition shall
36 contain a recital of the facts, observations, and conversations with the defendant that have
37 formed the basis for the petition. If filed by defense counsel, the petition may not disclose
38 information in violation of the attorney-client privilege.

39 (b) The petition may be based upon knowledge or information and belief and may only
40 be filed by the defendant, [~~any person acting on behalf of the defendant, the prosecuting~~
41 ~~attorney, or any person having custody or supervision over the defendant.~~] the defendant's
42 counsel, or the prosecuting attorney.

43 Section 2. Section **77-15-5** is amended to read:

44 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**
45 **defendant -- Scope of examination and report.**

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

- 48 (a) a petition is filed under Section **77-15-3** or **77-15-3.5**; or
- 49 (b) the court raises the issue of the defendant's competency under Section **77-15-4**.

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

- 51 (a) shall inform the court in which criminal proceedings are pending of the petition, if
52 the petition is not filed in the court in which criminal proceedings are pending;
- 53 (b) shall review the allegations of incompetency;
- 54 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of
55 the petition, if the court finds the petition is not clearly sufficient on its face;
- 56 (d) shall hold a hearing, if the petition is opposed by either party;

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

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

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

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

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

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

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

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

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

74 (A) select the additional forensic evaluator; and

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

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

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

84 (c) For purposes of a competency evaluation, a court may order that custodians of
85 mental health records pertaining to the defendant provide those records to a forensic evaluator
86 without the need for consent of the defendant.

87 (d) An order for a competency evaluation may not contain an order for any other

88 inquiry into the mental state of the defendant.

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

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

95 (a) the defendant's present ability to:

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

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

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

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

101 (v) understand the range of possible penalties associated with the charges or allegations
102 against the defendant;

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

104 (vii) understand the adversarial nature of the proceedings against the defendant;

105 (viii) manifest behavior sufficient to allow the court to proceed; and

106 (ix) testify relevantly, if applicable;

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

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

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

111 (ii) whether the medication may have an effect on the defendant's demeanor, affect, and
112 ability to participate in the proceedings; and

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

115 (6) If the forensic evaluator's opinion is that the defendant is incompetent to proceed,
116 the forensic evaluator shall indicate in the report to the court:

117 (a) the factors that contribute to the defendant's incompetency, including the nature of
118 the defendant's mental disorder or intellectual or developmental disability, if any, and its

119 relationship to the factors contributing to the defendant's incompetency; and

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

123 (7) (a) A forensic evaluator shall provide an initial report to the court and the
124 prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report
125 shall inform the court of the examiner's opinion concerning the competency of the defendant to
126 stand trial.

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

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

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

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

137 (8) Any written report submitted by a forensic evaluator shall:

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

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

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

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

146 (9) (a) Any statement made by the defendant in the course of any competency
147 examination, whether the examination is with or without the consent of the defendant, any
148 testimony by a forensic evaluator based upon the statement, and any other fruits of the
149 statement may not be admitted in evidence against the defendant in any criminal proceeding

150 except on an issue respecting mental condition on which the defendant has introduced
151 evidence. The evidence may be admitted, however, where relevant to a determination of the
152 defendant's competency.

153 (b) Before examining the defendant, the forensic evaluator shall specifically advise the
154 defendant of the limits of confidentiality as provided under Subsection (9)(a).

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

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

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

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

168 (11) (a) A defendant shall be presumed competent to stand trial unless the court, by a
169 preponderance of the evidence, finds the defendant incompetent to proceed. The burden of
170 proof is upon the proponent of incompetency at the hearing.

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

174 (12) In determining the defendant's competency to stand trial, the court shall consider
175 the totality of the circumstances, [~~which may include~~] including:

176 (a) the petition;

177 (b) the defendant's criminal and arrest history;

178 (c) prior mental health evaluations and treatments provided to the court by the
179 defendant;

180 (d) whether the defendant was found incompetent to proceed in a criminal action

181 unrelated to the charged offense for which the petition is filed;

182 (e) the testimony of lay witnesses~~[, in addition to]~~, if any;

183 (f) the forensic evaluator's report, testimony, and studies[:]; and

184 (g) any other relevant evidence bearing on the competency of the defendant.

185 (13) If the court finds the defendant incompetent to proceed:

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

187 (i) include findings addressing each of the factors in Subsection (5)(a);

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

189 (iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological,

190 or social work reports submitted to the court relative to the mental condition of the defendant,

191 and any other documents made available to the court by either the defense or the prosecution,

192 pertaining to the defendant's current or past mental condition; and

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

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

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

196 (ii) arrest or incident reports prepared by law enforcement and pertaining to the

197 charged offense; and

198 (iii) additional supporting documents.

199 (14) The court may make any reasonable order to ensure compliance with this section.

200 (15) Failure to comply with this section does not result in the dismissal of criminal

201 charges.