

HB0380S02 compared with HB0380

~~text~~ shows text that was in HB0380 but was deleted in HB0380S02.

inserted text shows text that was not in HB0380 but was inserted into HB0380S02.

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Representative Christine F. Watkins proposes the following substitute bill:

COMPETENCY TO STAND TRIAL AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ limits who may file a petition of incompetency;
- ▶ requires a court to consider certain factors when determining whether a defendant is incompetent;~~;~~
- ▶ ~~prohibits a court from granting a petition of incompetency based solely on the defendant having previously been released from custody due to incompetency in an unrelated criminal action;~~ and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

Contents.

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

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

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

Section 2. 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:

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- (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or
- (b) the court raises the issue of the defendant's competency under Section 77-15-4.
- (2) The court in which the petition described in Subsection (1)(a) is filed:
 - (a) shall inform the court in which criminal proceedings are pending of the petition, if the petition is not filed in the court in which criminal proceedings are pending;
 - (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;
 - (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 the court finds that the allegations raise a bona fide doubt as to the defendant's competency to stand trial, shall order:
 - (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.
- (3) (a) If the petition or other information sufficiently raises concerns that the defendant may have intellectual or developmental disabilities, at least one forensic evaluator who is experienced in intellectual or developmental disability assessments shall conduct a

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competency evaluation.

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

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

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

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

- (a) the defendant's present ability to:
 - (i) rationally and factually understand the criminal proceedings against the defendant;
 - (ii) consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense;
 - (iii) understand the charges or allegations against the defendant;
 - (iv) communicate facts, events, and states of mind;
 - (v) understand the range of possible penalties associated with the charges or allegations against the defendant;
 - (vi) engage in reasoned choice of legal strategies and options;
 - (vii) understand the adversarial nature of the proceedings against the defendant;
 - (viii) manifest behavior sufficient to allow the court to proceed; and
 - (ix) testify relevantly, if applicable;
- (b) the impact of the mental disorder or intellectual disability, if any, on the nature and quality of the defendant's relationship with counsel;
- (c) if psychoactive medication is currently being administered:

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

(6) If the forensic evaluator's opinion is 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, if any, and its relationship to the factors contributing to the defendant's incompetency; and

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

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

(b) (i) If the forensic evaluator is unable to complete the report in the time specified in Subsection (7)(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) 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), the forensic evaluator shall file the report as soon as reasonably possible.

(8) 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;

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

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

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

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incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

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

(a) the petition;

~~{~~ ~~—~~ ~~(b) the probable cause statement for the charged offense;~~

~~†~~ ~~(~~f~~~~c~~)~~b the defendant's criminal and arrest history;

~~(~~f~~~~d~~)~~c prior mental health evaluations and treatments provided to the court by the defendant;

~~(~~f~~~~e~~)~~d ~~{~~ ~~subject to Subsection (14).~~ whether the defendant was found incompetent to proceed in a criminal action unrelated to the charged offense for which the petition is filed;

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

~~(~~f~~~~g~~)~~f the forensic evaluator's report, testimony, and studies~~[-]; and~~

~~(~~f~~~~h~~)~~g any other relevant evidence bearing on the competency of the defendant.

(13) 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);

(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) The court may not find the defendant incompetent to proceed based solely on a court having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6 in an unrelated criminal action.~~

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~~†~~ ~~††(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.