

**Senator Ronald M. Winterton** proposes the following substitute bill:

**COMPETENCY TO STAND TRIAL AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Casey Snider**

Senate Sponsor: Ronald M. Winterton

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ 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, if the release occurred more than a year before the petition is filed; and

- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a coordination clause.

**Utah Code Sections Affected:**

AMENDS:



26 77-15-5, as last amended by Laws of Utah 2018, Chapter 147

27 Utah Code Sections Affected by Coordination Clause:

28 77-15-5, Utah Code Annotated 1953



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

31 Section 1. Section 77-15-5 is amended to read:

32 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**  
33 **defendant -- Scope of examination and report.**

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

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

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

- 39 (a) shall inform the court in which criminal proceedings are pending of the petition, if  
40 the petition is not filed in the court in which criminal proceedings are pending;
- 41 (b) shall review the allegations of incompetency;
- 42 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of  
43 the petition, if the court finds the petition is not clearly sufficient on its face;
- 44 (d) shall hold a hearing, if the petition is opposed by either party;
- 45 (e) may not order an examination of the defendant or order a hearing on the mental  
46 condition of the defendant unless the court finds that the allegations in the petition raise a bona  
47 fide doubt as to the defendant's competency to stand trial; and

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

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

- 51 (A) the most severe charge against the defendant is a misdemeanor; or
- 52 (B) the defendant is charged with a felony but is not charged with a capital felony, and  
53 the court determines, based upon the allegations in the petition, that a second competency  
54 evaluation is not necessary;

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

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

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

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

62 (A) select the additional forensic evaluator; and

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

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

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

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

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

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

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

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

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

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

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

- 88 (iv) communicate facts, events, and states of mind;
- 89 (v) understand the range of possible penalties associated with the charges or allegations
- 90 against the defendant;
- 91 (vi) engage in reasoned choice of legal strategies and options;
- 92 (vii) understand the adversarial nature of the proceedings against the defendant;
- 93 (viii) manifest behavior sufficient to allow the court to proceed; and
- 94 (ix) testify relevantly, if applicable;
- 95 (b) the impact of the mental disorder or intellectual disability, if any, on the nature and
- 96 quality of the defendant's relationship with counsel;
- 97 (c) if psychoactive medication is currently being administered:
- 98 (i) whether the medication is necessary to maintain the defendant's competency; and
- 99 (ii) whether the medication may have an effect on the defendant's demeanor, affect, and
- 100 ability to participate in the proceedings; and
- 101 (d) whether the defendant is exhibiting false or exaggerated physical or psychological
- 102 symptoms relevant to the defendant's capacity to stand trial.
- 103 (6) If the forensic evaluator's opinion is that the defendant is incompetent to proceed,
- 104 the forensic evaluator shall indicate in the report to the court:
- 105 (a) the factors that contribute to the defendant's incompetency, including the nature of
- 106 the defendant's mental disorder or intellectual or developmental disability, if any, and its
- 107 relationship to the factors contributing to the defendant's incompetency; and
- 108 (b) whether there is a substantial probability that restoration treatment may, in the
- 109 foreseeable future, bring the defendant to competency to stand trial, or that the defendant
- 110 cannot become competent to stand trial in the foreseeable future.
- 111 (7) (a) A forensic evaluator shall provide an initial report to the court and the
- 112 prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report
- 113 shall inform the court of the examiner's opinion concerning the competency of the defendant to
- 114 stand trial.
- 115 (b) (i) If the forensic evaluator is unable to complete the report in the time specified in
- 116 Subsection (7)(a), the forensic evaluator shall give written notice to the court.
- 117 (ii) A forensic evaluator who provides the notice described in Subsection (7)(b)(i) shall
- 118 receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day on

119 which the forensic evaluator received the court's order to conduct a competency evaluation and  
120 file a report.

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

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

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

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

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

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

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

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

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

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

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

149 (c) The court may call any forensic evaluator to testify at the hearing who is not called

150 by the parties. If the court calls a forensic evaluator, counsel for the parties may cross-examine  
151 the forensic evaluator.

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

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

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

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

164 (a) the petition;

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

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

168 (d) subject to Subsection (14), whether the defendant was found incompetent to  
169 proceed in a criminal action unrelated to the charged offense for which the petition is filed;

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

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

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

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

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

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

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

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

- 181 (iv) be sent by the court to the department; and  
 182 (b) the prosecuting attorney shall provide to the department:  
 183 (i) the charging document and probable cause statement, if any;  
 184 (ii) arrest or incident reports prepared by law enforcement and pertaining to the  
 185 charged offense; and  
 186 (iii) additional supporting documents.

187 (14) The court may not find the defendant incompetent to proceed based solely on a  
 188 court having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6 in  
 189 an unrelated criminal action, if the court in the unrelated criminal action ordered the release  
 190 more than one year before the day on which the petition described in Subsection (12)(a) is  
 191 filed.

192 [~~(14)~~] (15) The court may make any reasonable order to ensure compliance with this  
 193 section.

194 [~~(15)~~] (16) Failure to comply with this section does not result in the dismissal of  
 195 criminal charges.

196 Section 2. **Coordinating H.B. 380 with H.B. 330 -- Substantive and technical**  
 197 **amendments.**

198 If this H.B. 380 and H.B. 330, Civil Commitment Amendments, both pass and become  
 199 law, it is the intent of the Legislature that the Office of Legislative Research and General  
 200 Counsel shall prepare the Utah Code database for publication by amending  
 201 Subsection 77-15-5(12) in this H.B. 380 to read:

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

204 (a) the petition;

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

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

208 (d) subject to Subsection (14), whether the defendant was found incompetent to  
 209 proceed in a criminal action unrelated to the charged offense for which the petition is filed;

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

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

212            (g) the materials on which the forensic evaluator's report is based; and  
213            (h) any other relevant evidence or consideration bearing on the competency of the  
214 defendant."