

1                   **AMENDMENTS REGARDING COMPETENCY TO STAND**

2                                   **TRIAL**

3   2012 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: LaVar Christensen**

6                                   Senate Sponsor: Mark B. Madsen

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the Code of Criminal Procedure regarding the procedures for  
11 determining a defendant's competency to stand trial.

12 **Highlighted Provisions:**

13           This bill:

14           ▶ modifies the hearing procedure for determining if a defendant is competent to stand  
15 trial to provide for the court's consideration of the totality of the circumstances,  
16 including testimony of lay witnesses.

17 **Money Appropriated in this Bill:**

18           None

19 **Other Special Clauses:**

20           None

21 **Utah Code Sections Affected:**

22 AMENDS:

23           **77-15-5**, as last amended by Laws of Utah 2008, Chapter 212

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

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

27           **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**  
28 **defendant -- Scope of examination and report.**

29           (1) (a) When a petition is filed pursuant to Section 77-15-3 raising the issue of the

30 defendant's competency to stand trial or when the court raises the issue of the defendant's  
31 competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay  
32 all proceedings. If the proceedings are in a court other than the district court in which the  
33 petition is filed, the district court shall notify that court of the filing of the petition.

34 (b) The district court in which the petition is filed shall pass upon the sufficiency of the  
35 allegations of incompetency. If a petition is opposed by either party, the court shall, prior to  
36 granting or denying the petition, hold a limited hearing solely for the purpose of determining  
37 the sufficiency of the petition. If the court finds that the allegations of incompetency raise a  
38 bona fide doubt as to the defendant's competency to stand trial, it shall enter an order for a  
39 hearing on the mental condition of the person who is the subject of the petition.

40 (2) (a) After the granting of a petition and prior to a full competency hearing, the court  
41 may order the Department of Human Services to examine the person and to report to the court  
42 concerning the defendant's mental condition.

43 (b) The defendant shall be examined by at least two mental health experts not involved  
44 in the current treatment of the defendant.

45 (c) If the issue is sufficiently raised in the petition or if it becomes apparent that the  
46 defendant may be incompetent due to mental retardation, at least one expert experienced in  
47 mental retardation assessment shall evaluate the defendant. Upon appointment of the experts,  
48 the petitioner or other party as directed by the court shall provide information and materials to  
49 the examiners relevant to a determination of the defendant's competency and shall provide  
50 copies of the charging document, arrest or incident reports pertaining to the charged offense,  
51 known criminal history information, and known prior mental health evaluations and treatments.

52 (d) The prosecuting and defense attorneys shall cooperate in providing the relevant  
53 information and materials to the examiners, and the court may make the necessary orders to  
54 provide the information listed in Subsection (2)(c) to the examiners. The court may provide in  
55 its order for a competency examination of a defendant that custodians of mental health records  
56 pertaining to the defendant shall provide those records to the examiners without the need for  
57 consent of the defendant or further order of the court.

58           (3) During the examination under Subsection (2), unless the court or the executive  
59 director of the department directs otherwise, the defendant shall be retained in the same  
60 custody or status he was in at the time the examination was ordered.

61           (4) The experts shall in the conduct of their examination and in their report to the court  
62 consider and address, in addition to any other factors determined to be relevant by the experts:

63           (a) the defendant's present capacity to:

64           (i) comprehend and appreciate the charges or allegations against him;

65           (ii) disclose to counsel pertinent facts, events, and states of mind;

66           (iii) comprehend and appreciate the range and nature of possible penalties, if

67 applicable, that may be imposed in the proceedings against him;

68           (iv) engage in reasoned choice of legal strategies and options;

69           (v) understand the adversary nature of the proceedings against him;

70           (vi) manifest appropriate courtroom behavior; and

71           (vii) testify relevantly, if applicable;

72           (b) the impact of the mental disorder, or mental retardation, if any, on the nature and  
73 quality of the defendant's relationship with counsel;

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

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

76           (ii) the effect of the medication, if any, on the defendant's demeanor and affect and  
77 ability to participate in the proceedings.

78           (5) If the expert's opinion is that the defendant is incompetent to proceed, the expert  
79 shall indicate in the report:

80           (a) which of the above factors contributes to the defendant's incompetency;

81           (b) the nature of the defendant's mental disorder or mental retardation and its  
82 relationship to the factors contributing to the defendant's incompetency;

83           (c) the treatment or treatments appropriate and available; and

84           (d) the defendant's capacity to give informed consent to treatment to restore  
85 competency.

86           (6) The experts examining the defendant shall provide an initial report to the court and  
87 the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The  
88 report shall inform the court of the examiner's opinion concerning the competency of the  
89 defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that  
90 additional time is needed to complete the report. If the examiner informs the court that  
91 additional time is needed, the examiner shall have up to an additional 30 days to provide the  
92 report to the court and counsel. The examiner must provide the report within 60 days from the  
93 receipt of the court's order unless, for good cause shown, the court authorizes an additional  
94 period of time to complete the examination and provide the report.

95           (7) Any written report submitted by the experts shall:

96           (a) identify the specific matters referred for evaluation;

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

99           (c) state the expert's clinical observations, findings, and opinions on each issue referred  
100 for examination by the court, and indicate specifically those issues, if any, on which the expert  
101 could not give an opinion; and

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

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

111           (b) Prior to examining the defendant, examiners should specifically advise the  
112 defendant of the limits of confidentiality as provided under Subsection (8)(a).

113           (9) When the report is received the court shall set a date for a mental hearing which

114 shall be held in not less than five and not more than 15 days, unless the court enlarges the time  
115 for good cause. Any person or organization directed by the department to conduct the  
116 examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the  
117 competency of the defendant, all experts should be called to testify at the hearing if reasonably  
118 available. The court may call any examiner to testify at the hearing who is not called by the  
119 parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

120 (10) A person shall be presumed competent unless the court, by a preponderance of the  
121 evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent  
122 of incompetency at the hearing. An adjudication of incompetency to proceed shall not operate  
123 as an adjudication of incompetency to give informed consent for medical treatment or for any  
124 other purpose, unless specifically set forth in the court order.

125 (11) In determining the defendant's competency to stand trial, the court shall consider  
126 the totality of the circumstances, which may include the testimony of lay witnesses, in addition  
127 to the expert testimony, studies, and reports provided under this section.

128 [~~(11)~~] (12) (a) If the court finds the defendant incompetent to stand trial, its order shall  
129 contain findings addressing each of the factors in Subsections (4)(a) and (b) of this section.  
130 The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where  
131 the defendant is committed or to the person who is responsible for assessing his progress  
132 toward competency shall be provided contemporaneously with the transportation and  
133 commitment order of the defendant, unless exigent circumstances require earlier commitment  
134 in which case the court shall forward the order within five working days of the order of  
135 transportation and commitment of the defendant.

136 (b) The order finding the defendant incompetent to stand trial shall be accompanied by:

137 (i) copies of the reports of the experts filed with the court pursuant to the order of  
138 examination if not provided previously;

139 (ii) copies of any of the psychiatric, psychological, or social work reports submitted to  
140 the court relative to the mental condition of the defendant; and

141 (iii) any other documents made available to the court by either the defense or the

142 prosecution, pertaining to the defendant's current or past mental condition.

143           ~~[(12)]~~ (13) (a) If the court finds it necessary to order the defendant transported prior to  
144 the completion of findings and compilation of documents required under Subsection ~~[(11)]~~  
145 (12), the transportation and commitment order delivering the defendant to the Utah State  
146 Hospital, or other mental health facility as directed by the executive director of the Department  
147 of Human Services or his designee, shall indicate that the defendant's commitment is based  
148 upon a finding of incompetency, and the mental health facility's copy of the order shall be  
149 accompanied by the reports of any experts filed with the court pursuant to the order of  
150 examination.

151           **(b)** The executive director of the Department of Human Services or his designee may  
152 refuse to accept a defendant as a patient unless he is accompanied by a transportation and  
153 commitment order which is accompanied by the reports.

154           ~~[(13)]~~ (14) Upon a finding of incompetency to stand trial by the court, the prosecuting  
155 and defense attorneys shall provide information and materials relevant to the defendant's  
156 competency to the facility where the defendant is committed or to the person responsible for  
157 assessing his progress towards competency. In addition to any other materials, the prosecuting  
158 attorney shall provide:

159           (a) copies of the charging document and supporting affidavits or other documents used  
160 in the determination of probable cause;

161           (b) arrest or incident reports prepared by a law enforcement agency pertaining to the  
162 charged offense; and

163           (c) information concerning the defendant's known criminal history.

164           ~~[(14)]~~ (15) The court may make any reasonable order to insure compliance with this  
165 section.

166           ~~[(15)]~~ (16) Failure to comply with this section shall not result in the dismissal of  
167 criminal charges.