

CIVIL COMMITMENT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Michael S. Kennedy

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
 - 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

30 77-15-5, as last amended by Laws of Utah 2018, Chapter 147

31 77-15-6, as last amended by Laws of Utah 2018, Chapter 147

32

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

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

35 **77-15-2. Definitions.**

36 As used in this chapter:

37 (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to
38 determine if an individual is competent to stand trial.

39 (2) "Competent to stand trial" means that a defendant has:

40 (a) a rational and factual understanding of the criminal proceedings against the
41 defendant and of the punishment specified for the offense charged; and

42 (b) the ability to consult with the defendant's legal counsel with a reasonable degree of
43 rational understanding in order to assist in the defense.

44 (3) "Department" means the Department of Health and Human Services.

45 (4) "Forensic evaluator" means a licensed mental health professional who [is]:

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

47 (b) is trained and qualified by the department to conduct a competency evaluation, a
48 restoration screening, and a progress toward competency evaluation[-], based on knowledge,
49 experience, or education relating to:

50 (i) intellectual functioning or psychopathology; and

51 (ii) the legal system and the rights of a defendant in a criminal trial; and

52 (c) if under contract with the department, demonstrates ongoing education and training
53 relating to forensic mental health in accordance with rules established by the department in
54 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

55 (5) "Incompetent to proceed" means that a defendant is not competent to stand trial[-]
56 as a result of:

57 (a) mental illness; or

58 (b) intellectual disability.

59 (6) "Intellectual disability" means an intellectual disability as defined in the current
60 edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
61 American Psychiatric Association.

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

63 ~~[(6)]~~ (8) "Petition" means a petition to request a court to determine whether a defendant
64 is competent to stand trial.

65 ~~[(7)]~~ (9) "Progress toward competency evaluation" means an evaluation to determine
66 whether an individual who is receiving restoration treatment is:

67 (a) competent to stand trial;

68 (b) incompetent to proceed but has a substantial probability of becoming competent to
69 stand trial in the foreseeable future; or

70 (c) incompetent to proceed and does not have a substantial probability of becoming
71 competent to stand trial in the foreseeable future.

72 ~~[(8) "Restoration screening" means an assessment of an individual determined to be~~
73 ~~incompetent to stand trial for the purpose of determining the appropriate placement and~~
74 ~~restoration treatment for the individual.]~~

75 ~~[(9)]~~ (10) "Restoration treatment" means training and treatment that is:

76 (a) provided to an individual who is incompetent to proceed;

77 (b) tailored to the individual's particular impairment to competency; and

78 (c) limited to the purpose of restoring the individual to competency.

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

80 **77-15-3.5. Incompetent to proceed in misdemeanor cases.**

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

84 (2) If the most severe charge against a defendant is a misdemeanor and the defendant is
85 adjudicated by a court as incompetent to proceed:

86 (a) the department shall provide restoration treatment to the defendant; and

87 (b) the court may refer the defendant to pretrial diversion services, upon agreement of
88 the prosecution and defense counsel.

89 (3) Unless the prosecutor or another individual indicates that civil commitment
90 proceedings will be initiated under Subsection 77-15-6(5)(c), a court shall release a defendant
91 who is incompetent to proceed if:

92 (a) the most severe charge against the defendant is [~~no more severe than~~] a class B
93 misdemeanor;

94 (b) more than 60 days have passed after the day on which the court adjudicated the
95 defendant incompetent to proceed; and

96 (c) the defendant [~~has not been~~] is not restored to competency.

97 (4) The department shall provide restoration treatment to the defendant within the
98 timeframe described in Subsection (3)(b).

99 [~~(4)~~] (5) [A] The court may, but is not required to, dismiss the charges against a
100 defendant who was released under Subsection (3).

101 Section 3. Section 77-15-5 is amended to read:

102 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of**
103 **defendant -- Scope of examination and report.**

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

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

107 (b) the court raises the issue of the defendant's competency under Section 77-15-4.

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

109 (a) shall inform the court in which criminal proceedings are pending of the petition, if
110 the petition is not filed in the court in which criminal proceedings are pending;

111 (b) shall review the allegations of incompetency;

112 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of
113 the petition, if the court finds the petition is not clearly sufficient on its face;

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

115 (e) may not order an examination of the defendant or order a hearing on the mental
116 condition of the defendant unless the court finds that the allegations in the petition raise a bona
117 fide doubt as to the defendant's competency to stand trial~~[-and].~~

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

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

124 ~~[(A) the most severe charge against the defendant is a misdemeanor, or]~~

125 ~~[(B) the defendant is charged with a felony but is not charged with a capital felony, and~~
126 ~~the court determines, based upon the allegations in the petition, that a second competency~~
127 ~~evaluation is not necessary;]~~

128 ~~[(ii) the department to have the defendant evaluated by two forensic evaluators, if:]~~

129 ~~[(A) the defendant is charged with a capital felony, or]~~

130 ~~[(B) the defendant is charged with a felony but is not charged with a capital felony, and~~
131 ~~the court determines, based upon the allegations in the petition, that a second competency~~
132 ~~evaluation is necessary; and]~~

133 ~~[(iii) the defendant to be evaluated by an additional forensic evaluator, if requested by a~~
134 ~~party, who shall:]~~

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

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

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

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

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

142 competency evaluations.

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

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

147 (A) select the additional forensic evaluator; and

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

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

152 ~~[(3)]~~ (4) (a) If the petition or other information sufficiently raises concerns that the
153 defendant may have ~~[intellectual or developmental disabilities]~~ an intellectual disability, at
154 least one forensic evaluator who is experienced in ~~[intellectual or developmental disability]~~
155 assessments of intellectual disabilities shall conduct a competency evaluation.

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

161 (c) For purposes of a competency evaluation, a ~~[court may order that custodians]~~
162 custodian of mental health records pertaining to the defendant ~~[provide those records to a~~
163 ~~forensic evaluator without the need for consent of the defendant.],~~ including the defendant's
164 prior mental health evaluations or records relating to the defendant's substance use disorder,
165 may provide the records to:

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

168 (ii) a forensic evaluator by court order.

169 (d) A court order under Subsection (4)(c) shall include a protective order that expires

170 180 days after the day on which:

171 (i) the defendant is found guilty;

172 (ii) the defendant enters a guilty plea;

173 (iii) the court sentences the defendant; or

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

175 (e) (i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f), the

176 court shall order the forensic evaluator to destroy all records subject to the protective order

177 within the 180 day period described in Subsection (4)(d).

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

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

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

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

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

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

190 ~~[(4)]~~ (5) Pending a competency evaluation, unless the court or the department directs
191 otherwise, the defendant shall be retained in the same custody or status that the defendant was
192 in at the time the examination was ordered.

193 ~~[(5)]~~ (6) In the conduct of a competency evaluation~~[, a progress toward competency~~
194 ~~evaluation,~~] and in a report to the court, a forensic evaluator shall consider and address, in
195 addition to any other factors determined to be relevant by the forensic evaluator:

196 (a) (i) the impact of the defendant's mental illness or intellectual disability on the
197 defendant's present ability to:

198 [(i)] (A) rationally and factually understand the criminal proceedings against the
199 defendant; and

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

202 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator
203 shall consider, as applicable:

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

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

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

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

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

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

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

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

213 ~~[(b) the impact of the mental disorder or intellectual disability, if any, on the nature and~~
214 ~~quality of the defendant's relationship with counsel;]~~

215 ~~[(c) if psychoactive medication is currently being administered:]~~

216 ~~[(i) whether the medication is necessary to maintain the defendant's competency; and]~~

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

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

221 [(6)] (7) [~~If the forensic evaluator's opinion is~~] Upon a determination that the defendant
222 is incompetent to proceed, the forensic evaluator shall indicate in the report to the court:

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

226 incompetency; ~~and~~

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

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

230 (ii) the defendant cannot become competent to stand trial in the foreseeable future~~[-];~~

231 (c) whether the defendant would benefit from restoration treatment; and

232 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or
233 (7)(c), an explanation of the reason for the determination and a summary of the treatment
234 provided to the defendant in the past.

235 ~~[(7)]~~ (8) (a) A forensic evaluator shall provide an initial report to the court and the
236 prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report
237 shall inform the court of the examiner's opinion concerning the competency of the defendant to
238 stand trial.

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

241 (ii) A forensic evaluator who provides the notice described in Subsection ~~[(7)(b)(i)]~~
242 (8)(b)(i) shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after
243 the day on which the forensic evaluator received the court's order to conduct a competency
244 evaluation and file a report.

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

247 (iv) Upon receipt of an extension described in Subsection ~~[(7)(b)(iii)]~~ (8)(b)(iii), the
248 forensic evaluator shall file the report as soon as reasonably possible.

249 ~~[(8)]~~ (9) Any written report submitted by a forensic evaluator shall:

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

251 (b) describe the procedures, techniques, and tests used in the examination and the
252 purpose or purposes for each, the time spent by the forensic evaluator with the defendant for
253 purposes of the examination, and the compensation to be paid to the evaluator for the report;

254 (c) state the forensic evaluator's clinical observations, findings, and opinions on each
255 [~~issue referred for examination by the court, and indicate specifically those issues, if any, on~~
256 ~~which the forensic evaluator could not give an opinion~~] factor described in Subsection (6); and

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

259 [~~(9)~~] (10) (a) Any statement made by the defendant in the course of any competency
260 examination, whether the examination is with or without the consent of the defendant, any
261 testimony by a forensic evaluator based upon the statement, and any other fruits of the
262 statement may not be admitted in evidence against the defendant in any criminal proceeding
263 except on an issue respecting mental condition on which the defendant has introduced
264 evidence[~~— The evidence may be admitted, however, where~~], unless the evidence is relevant to
265 a determination of the defendant's competency.

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

268 [~~(10)~~] (11) (a) Upon receipt of the forensic evaluators' reports, the court shall set a date
269 for a competency hearing. The hearing shall be held not less than [~~5~~] five and not more than 15
270 days after the day on which the court received the forensic evaluators' reports, unless for good
271 cause the court sets a later date.

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

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

277 (d) (i) If the forensic evaluators are in conflict as to the competency of the defendant,
278 all forensic evaluators should be called to testify at the hearing if reasonably available.

279 (ii) A conflict in the opinions of the forensic evaluators does not require the
280 appointment of an additional forensic evaluator unless the court [~~determines the appointment to~~
281 ~~be necessary~~] finds good cause for the appointment.

282 ~~[(11)]~~ (12) (a) (i) A defendant shall be presumed competent to stand trial unless the
283 court, by a preponderance of the evidence, finds the defendant incompetent to proceed.

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

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

288 ~~[(12)]~~ (13) In determining the defendant's competency to stand trial, the court shall
289 consider the totality of the circumstances, which may include the testimony of lay witnesses,
290 ~~[in addition to the forensic evaluator's report, testimony, and studies]~~ the forensic evaluator's
291 testimony and report, the materials on which the report is based, and any other relevant
292 considerations.

293 ~~[(13)]~~ (14) If the court finds the defendant incompetent to proceed:

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

295 (i) include findings addressing each of the factors in Subsection ~~[(5)(a)]~~ (6)(a);

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

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

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

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

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

304 (ii) arrest or incident reports prepared by law enforcement and pertaining to the
305 charged offense; and

306 (iii) additional supporting documents.

307 ~~[(14)]~~ (15) The court may make any reasonable order to ensure compliance with this
308 section.

309 ~~[(15)]~~ (16) Failure to comply with this section does not result in the dismissal of

310 criminal charges.

311 Section 4. Section **77-15-6** is amended to read:

312 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**
313 **hearings -- Notice to prosecuting attorneys.**

314 (1) (a) Except as provided in Subsection (5), if after a hearing a court finds a defendant
315 to be incompetent to proceed, the court shall order the defendant committed to the department
316 for restoration treatment.

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

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

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

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

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

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

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

329 (i) the time reasonably necessary to determine ~~[whether there is a substantial~~
330 ~~probability that the defendant will become competent to stand trial in the foreseeable future, or]~~
331 that the defendant cannot become competent to stand trial in the foreseeable future; and

332 (ii) the maximum period of incarceration that the defendant could receive if the
333 defendant were convicted of the most severe offense of the offenses charged.

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

336 (i) a forensic evaluator, designated by the department; and

337 (ii) an additional forensic evaluator, if requested by a party and paid for by the

338 requesting party.

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

346 (c) The report shall:

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

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

351 (iii) describe the defendant's current mental illness or intellectual disability, if any;

352 [~~(iii)~~] (iv) state the forensic evaluator's opinion as to the effect of any false or
353 exaggerated symptoms on the defendant's competency to stand trial;

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

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

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

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

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

364 [~~(viii)~~] (ix) assess the likelihood of restoration to competency, the amount of time
365 estimated to achieve competency, or the amount of time estimated to determine whether

366 restoration to competency may be achieved.

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

370 (b) If the court appoints an additional forensic evaluator upon motion of a party, that
371 party shall pay the costs of the additional forensic evaluator.

372 (4) (a) Within 15 days after the day on which the court receives the forensic evaluator's
373 report of the progress toward competency evaluation, the court shall hold a hearing to review
374 the defendant's competency.

375 (b) At the hearing, the burden of proving that the defendant is competent to stand trial
376 is on the proponent of competency.

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

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

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

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

384 (5) (a) If at any time the court determines that the defendant is competent to stand trial,
385 the court shall:

386 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
387 charges; and

388 (ii) order that the defendant be returned to the placement and status that the defendant
389 was in at the time when the petition for the adjudication of competency was filed or raised by
390 the court, unless the court determines that ~~[a different]~~ placement of the defendant in a less
391 restrictive environment is more appropriate.

392 (b) If the court determines that the defendant is ~~[not competent]~~ incompetent to
393 proceed ~~[but that there is]~~ with a substantial probability that the defendant may become

394 competent in the foreseeable future, the court may order that the defendant remain committed
395 to the department or the department's designee for the purpose of restoration treatment.

396 (c) (i) If the court determines that the defendant is incompetent to proceed [~~and that~~
397 ~~there is not~~] without a substantial probability that the defendant may become competent in the
398 foreseeable future, the court shall order the defendant released from commitment to the
399 department, unless the prosecutor or another individual informs the court that civil
400 commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with
401 Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be
402 initiated.

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

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

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

413 (6) If a court, under Subsection (5)(b), extends a defendant's commitment, the court
414 shall schedule a competency review hearing for the earlier of:

415 (a) the department's best estimate of when the defendant may be restored to
416 competency; or

417 (b) three months after the day on which the court determined under Subsection (5)(b)
418 to extend the defendant's commitment.

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

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

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

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

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

432 (8) If the defendant ~~[has been]~~ is charged with aggravated murder, murder, attempted
433 murder, manslaughter, or a first degree felony and the court determines that the defendant is
434 making reasonable progress towards restoration of competency at the time of the hearing held
435 pursuant to Subsection (6), the court may extend the commitment for a period not to exceed [9]
436 nine months for the purpose of restoration treatment, with a mandatory review hearing at the
437 end of the ~~[9-month]~~ nine-month period.

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

441 (a) (i) ~~order the defendant[; except for a defendant charged with aggravated murder or~~
442 ~~murder, to be:~~(i) ~~released; or(ii)]~~ be released or temporarily detained pending civil
443 commitment proceedings [under the same terms] as provided in Subsection (5)(c); and

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

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

450 (10) If the defendant [~~has been~~] is charged with aggravated murder or murder and the
451 court determines that the defendant is making reasonable progress towards restoration of
452 competency at the time of the [~~9-month~~] nine-month review hearing described in Subsection
453 (8), the court may extend the commitment for a period not to exceed 24 months for the purpose
454 of restoration treatment.

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

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

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

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

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

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

472 (b) The court may retain jurisdiction over the criminal case and may order periodic
473 reviews.

474 (14) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services
475 for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health
476 Act, may still be adjudicated competent to stand trial under this chapter.

477 (15) (a) The remedy for a violation of the time periods specified in this section, other

478 than those specified in Subsection (5)(c), (7), (9), or (12), shall be a motion to compel the
479 hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

480 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7),
481 (9), or (12), or is not dismissal of the criminal charges.

482 (16) In cases in which the treatment of the defendant is precluded by court order for a
483 period of time, that time period may not be considered in computing time limitations under this
484 section.

485 (17) (a) ~~[At any time that]~~ If, at any time, the defendant becomes competent to stand
486 trial while the defendant is committed to the department, the clinical director of the ~~[hospital]~~
487 Utah State Hospital, the department, or the department's designee shall certify that fact to the
488 court.

489 (b) The court shall conduct a competency review hearing:

490 (i) within 15 working days after the day on which the court receives the certification
491 described in Subsection (17)(a); or

492 (ii) within 30 working days after the day on which the court receives the certification
493 described in Subsection (17)(a), if the court determines that more than 15 working days are
494 necessary for good cause related to the defendant's competency.

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

498 (19) Notice of a hearing on competency to stand trial shall be given to the prosecuting
499 attorney and all counsel of record. ~~[If the hearing is held in the county where the defendant is~~
500 ~~confined, notice shall also be given to the prosecuting attorney for that county.]~~