





DEFINITIONS

UCA 77-15-2: A person is incompetent to proceed if he is suffering from a mental disorder or mental retardation resulting either in: 1) his inability to have a rational and factual understanding of the proceedings against him or of the punishment specified for the offense charged; or 2) his inability to consult with his counsel and to participate in the proceedings against him with a reasonable degree of rational understanding.

UCA 76-2-305(4)(a): "Mental Illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury or a residual effect of a physical or mental disease and includes, but is not limited to, mental retardation.

UCA 76-2-305(4)(b): "Mental Illness" does not mean an abnormality manifested primarily by repeated criminal conduct.

UCA 76-2-305(5): "Mental Retardation" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to age 22.

Statutory NCP Time	Classification of Charge(s)	Total Possible NCP Time
90 Days	F1, F2, F3, Mis A, Mis B, Mis C	90 Days
*Additional 90 Days	F1, F2, F3, Mis A, Mis B	180 Days
1 Year	F1, F2, F3, Mis A	1 1/2 Years
18 Months	F1, Agg Murder, Murder, Attempted Murder	3 Years
	Manslaughter	
36 Months	Agg Murder, Murder	6 Years
*Additional time requires court notification		

Time Frame for Examiner Reports

UCA 77-15-5(6)

The experts examining the defendant 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. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel.

Hearing to Determine Competency

UCA 77-15-5(9)

When the report is received the court shall set a date for a mental hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

Burden of Proof

UCA 77-15-5(10)

A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing. An adjudication of incompetency to proceed shall not operate an adjudication of incompetency to give informed consent for medication treatments or for any other purpose, unless specifically set forth in the court order.

Order Finding Defendant Incompetent

UCA 77-15-5(11)

If the court finds the defendant incompetent to stand trial, its order shall contain findings addressing each of the factors in Subsection (4)(a). The order which the court sends to the facility where the defendant is committed for assessing his progress toward competency shall be provided contemporaneously with the transportation and commitment order of the defendant.

The order finding the defendant incompetent shall be accompanied by: (i) copies of the reports of the experts filed with the court pursuant to the order of examination; (ii) copies of any psychiatric, psychological or social work reports submitted to the court; and (iii) 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.

36-Month Review Hearing

UCA 77-15-6(12)

A defendant who has not been restored to competency at the expiration of the additional 36-month commitment period ordered pursuant to Subsection (10) shall be ordered released or temporarily detained pending civil commitment proceeding under the same terms as provided in Subsection (5)(c).

NOTES

UCA 77-15-6(13): In no event may the maximum period of detention under this section exceed the maximum period of incarceration which the defendant could receive if he were convicted of the charged offense.

UCA 77-15-6(14): Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and order periodic reviews to assess the defendant's competency to stand trial.

UCA 77-15-6(15): A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, may still be adjudicated competent to stand trial under this chapter.

UCA 77-15-6(18): At any time that the defendant becomes competent to stand trial, the clinical director of the hospital or other facility or the executive director of the Department of Human Services shall certify that fact to the court. The court shall conduct a hearing within 15 working days of the receipt of the clinical director's or executive director's report, unless the court enlarges the time for good cause.

UCA 77-15-6(19): The court may order a hearing or rehearing at any time on its own motion or upon recommendations of the clinical director of the hospital or other facility or the executive director of the Department of Human Services.

