

## Competency Process Outline

1. Defendant with mental illness
  - a. Potential issues with regard to culpability depending on condition at time of offense
    - i. Not guilty by reason of insanity
    - ii. Diminished capacity
    - iii. Utah Code Title 77 Chapter 16a Parts 1, 2, and 3
  - b. Potential issues with regard to ability to proceed to trial
    - i. Competency
    - ii. Utah Code § 77-15-1 thru §77-15-9
2. Why is competency to proceed an important issue?
  - a. *State v. Young*, 780 P.2d 1233 (Utah 1989)
    - i. Essential to the adversarial system of justice are safeguards assuring that only competent defendants are required to stand trial
    - ii. A mentally incompetent defendant can provide no defense, and proceedings against such a defendant do no comport with due process
3. When is a defendant incompetent to proceed? (Utah Code §77-15-2)
  - a. Diagnosed with mental disorder or mental retardation resulting in
    - i. Inability to have rational and factual understanding of proceedings or specified punishment OR
    - ii. Inability to consult with counsel and participate in proceedings with a reasonable degree of rational understanding
  - b. Mental illness is defined in Utah Code § 76-2-305
    - i. Mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning
    - ii. May be a congenital condition, result of an injury, or residual effect of a physical or mental disease
    - iii. Does not mean an abnormality manifested primarily by repeated criminal conduct
  - c. Standard required by United States Supreme Court in *Dusky v United States*, 362 US 402 (1960)
    - i. whether defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a factual understanding of the proceedings against him
    - ii. not enough for district judge to find that defendant is oriented to time and place and has some recollection of events
  - d. *Lafferty v. Cook*, 949 F.2d 1546 (1992)

- i. Defendant lacks requisite rational understanding if mental condition precludes him/her from perceiving accurately, interpreting, and/or responding appropriately to the world around him/her
  - ii. Circuit courts addressing competency post-*Dusky* have used sufficient contact with reality as touchstone for ascertaining existence of rational understanding
  - iii. Does mental condition interfere with defendant's ability to make decisions on the basis of a realistic evaluation of own best interests
  - iv. Issue is not whether a defendant's particular beliefs are wrong or legally unsound, but whether those beliefs are the product of a deluded view of reality that significantly prevents a defendant from consulting with his lawyer
- e. *Jacobs v. State*, 20 P.3d 382 (2001)
  - i. Fitness to stand trial is a much narrower concept than moral or social wellness, and thus the fact that a defendant is twisted and disturbed does not necessarily mean he is unfit for trial. The fact that a person is mentally ill, displays bizarre, volatile, and irrational behavior, or has a history of mental illness, does not mean that he or she is incompetent to stand trial, a defendant may be fit for trial even though his mind is otherwise unsound.
- 4. How is the competency inquiry process started? (Utah Code §77-15-3)
  - a. Whenever person charged with public offense or serving sentence of imprisonment is or becomes incompetent, petition may be filed
- 5. What must a petition for an inquiry into competency contain? (Utah Code §77-15-3)
  - a. Certificate that petition is filed in good faith and on reasonable grounds to believe defendant is incompetent to proceed
  - b. Shall contain recital of facts, observations, and conversations with defendant that have formed basis for the petition
  - c. Petition may be based upon knowledge or information and belief
- 6. Who may file a petition for inquiry into competency? (Utah Code §77-15-3)
  - a. Party alleged to be incompetent to proceed
  - b. Any person acting on that party's behalf
  - c. Prosecuting attorney
  - d. Any person having custody or supervision over the person
- 7. May the court raise the issue of competency? (Utah Code §77-15-4)
  - a. Yes, at any time
  - b. Counsel for each party shall be permitted to address issue
- 8. Is the court ever required to hold a competency hearing?
  - a. When a petition is filed (Utah Code §77-15-5)
  - b. When there is a substantial question of doubt as to a defendant's competency at the time of a guilty plea (*State v. Arguelles* 63 P.3d 731 (2003))

9. What happens to the proceedings after a competency petition is filed?
  - a. Stayed until competency issue is resolved (Utah Code §77-15-5(1)(a))
10. What if the petition for inquiry into competency is insufficient? (Utah Code §77-15-5(1)(b))
  - a. Court may hold a hearing for the limited purpose of determining the sufficiency of the petition
11. Can the other party oppose the petition? ((Utah Code §77-15-5(1)(a))
  - a. Yes
  - b. Court shall hold hearing to address opposition
12. Is the court required to order an examination of the defendant after a petition is filed? (Utah Code §77-15-5(1)(a))
  - a. Only if the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial
  - b. However, if the court makes these findings, the court is then required to order an examination of the defendant and conduct a hearing on the defendant's mental condition
13. Who examines the defendant? (Utah Code §77-15-5(2))
  - a. 2 mental health experts not involved in the current treatment of the defendant
14. Are the attorneys required to provide any information to the examiners? (Utah Code §77-15-5(1)(a))
  - a. Petitioning party, or party as directed by court, shall provide information and materials relevant to the competency determination, as well as copies of the charging document, arrest or incident reports, known criminal history information, and known prior mental health evaluations and treatments
  - b. Defense attorneys and prosecutors are to cooperate in providing relevant information and material to examiners
15. What are the examiners required to assess? (Utah Code §77-15-5(4))
  - a. Defendant's present capacity to
    - i. Comprehend and appreciate the charges or allegations
    - ii. Disclose to counsel pertinent facts, events, and states of mind
    - iii. Comprehend and appreciate the range and nature of possible penalties that may be imposed
    - iv. Engage in reasoned choice of legal strategies and options
    - v. Understand the adversary nature of the proceedings
    - vi. Manifest appropriate courtroom behavior
    - vii. Testify relevantly
  - b. Impact of the mental disorder on nature and quality of defendant's relationship with counsel
  - c. If psychoactive medication is currently being administered

- i. Whether the medication is necessary to maintain the defendant's competency
    - ii. Effect of medication, if any, on the defendant's demeanor and ability to participate in the proceedings
  - d. Whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial
  - e. If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate
    - i. Which of the above factors contributes to the defendant's incompetency
    - ii. The treatment/s appropriate and available
    - iii. Defendant's capacity to give informed consent to treatment to restore competency
    - iv. The diagnostic instruments, methods, and observations used by the expert to determine whether or not the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial and the expert's opinion as to the significance of any false or exaggerated symptoms regarding the defendant's capacity
- 16. Is a defendant who refuses to cooperate with defense counsel or wants to pursue a defense that is unlikely to succeed incompetent?
  - a. Not necessarily
  - b. *State v. Woodland*, 945 P.2d 665 (1997)
    - i. Accused has well-established right to control nature of his or her defense
    - ii. Attorney acts as an agent for client, not as a master
    - iii. Imprudent choices regarding defense do not in and of themselves constitute incompetence
    - iv. Rather than evidencing a willingness to agree with counsel, defendant need only display the ability to consult with defense in order to establish competency
- 17. When are the examiners reports due? (Utah Code §77-15-5(6))
  - a. 30 days after receipt of court's order
  - b. Unless examiner informs court in writing that additional time is needed
    - i. Extends time period by 30 days
  - c. Court can enlarge the time period beyond 60 days for good cause shown
- 18. What must the examiner's report include? (Utah Code §77-15-5(7))
  - a. Identify specific matters referred for evaluation
  - b. Describe procedures, techniques, tests used in examination
  - c. State expert's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate those issues, if any, upon which the expert could not give an opinion

- d. Identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinion
19. May statements made by the defendant during the examination be used against him/her? (Utah Code §77-15-5(8))
- a. No
  - b. Except
    - i. On an issue respecting mental condition after defendant has admitted evidence
    - ii. Where relevant to a determination of competency
20. What is the court required to do after receiving the examiners' reports? (Utah Code §77-15-5(9))
- a. Set a hearing, not less than 5 and not more than 15 days after receipt of the reports
    - i. Time may be enlarged for good cause shown
21. If the examiners' reports conflict, is the court required to appoint a third examiner?
- a. No (Utah Code §77-15-5(9))
    - i. May appoint if the court finds the appointment of an additional examiner to be necessary
22. What is the standard for determining a defendant is incompetent? (Utah Code §77-15-5(10))
- a. Preponderance of the evidence
23. Whose burden is it to establish incompetency? (Utah Code §77-15-5(10))
- a. Proponent of incompetency
24. What evidence may the court consider? (Utah Code §77-15-5(11))
- a. Testimony of examiners
  - b. Testimony of lay witnesses
  - c. Studies
  - d. Reports
25. Is the court required to consider the totality of the circumstances? (Utah Code §77-15-5(11))
- a. Yes
26. What is the court required to do if the court determines the defendant is incompetent? (Utah Code §77-15-5(12))
- a. Issue an order containing findings addressing each of the areas of the factors in Utah Code §77-15-5(4)(a) and (b)
  - b. Issue a transportation order
  - c. Issue an order committing the defendant to the custody of the Director of the Department of Human Services or a designee
  - d. Provide copies of
    - i. The examiners' reports

- ii. Copies of all records and reports submitted to the court regarding the defendant's mental condition
- 27. What are the attorneys required to provide to the facility to which the defendant is committed? (Utah Code §77-15-5(14))
  - a. Copies of charging documents and supporting affidavits or other documents used in determination of probable cause
  - b. Arrest or incident reports relating to charged offense
  - c. Information about defendant's known criminal history
- 28. Who decides where the defendant is placed? (Utah Code §77-15-6(1))
  - a. The Department of Human Services
- 29. What is the purpose of committing the defendant to the Department of Human Services? (Utah Code §77-15-6(1))
  - a. Provide treatment geared toward restoration of competency
- 30. What happens after the defendant's commitment to DHS? (Utah Code §77-15-6(2))
  - a. First report re progress toward competency is due within 90 days of defendant's arrival at facility
    - i. Examiner may provide summary report with request for additional time if needed
    - ii. Allows for additional 90 days
  - b. If defendant remains incompetent but court finds substantial probability that defendant may become competent
- 31. What is the 90-day report required to address? (Utah Code §77-15-6(2))
  - a. Whether defendant is exhibiting false or exaggerated physical or psychological symptoms
  - b. Diagnostic instruments, methods, and observations used to make the determination
  - c. Opinion as to the effect of any exaggerated symptoms on capacity to stand trial
  - d. Facility's capacity to provide appropriate treatment
  - e. Nature of treatments provided to the defendant
  - f. What progress has been made toward competency restoration with respect to the factors identified by the court
  - g. Defendant's current level of mental disorder and need for treatment, if any
  - h. Likelihood of restoration and amount of time estimate to achieve it
- 32. What does the court do after receiving the 90 day report? (Utah Code §77-15-6(4))
  - a. Hold a hearing to determine defendant's current status
  - b. Possible findings
    - i. Competent
      - 1. Case proceeds to trial
    - ii. Incompetent to stand trial with a substantial probability that the defendant may become competent in the foreseeable future

- iii. Incompetent to stand trial without a substantial probability that the defendant may become competent in the foreseeable future
      - 1. Defendant must be released from custody of DHS
      - 2. Defendant may be held for 7 days if prosecutor pursues involuntary commitment
- 33. What is the burden of proof to establish that the defendant is competent? (Utah Code §77-15-6(4))
  - a. Preponderance of the evidence
- 34. Who has the burden of proof? (Utah Code §77-15-6(4))
  - a. Proponent of competency
- 35. What happens if the court determines the defendant is still incompetent but there is a substantial probability that the defendant will become competent in the foreseeable future?
  - a. Court may order that the defendant be recommitted to DHS (Utah Code §77-15-6(5))
  - b. Court must hold another hearing one year following the recommitment (Utah Code §77-15-6(6))
- 36. What happens if the defendant has not been restored after the year of recommitment? (Utah Code §77-15-6(7) & (8))
  - a. The defendant must be released from the custody of DHS,
  - b. Unless the court determines that the defendant is making reasonable progress toward restoration of competency and the defendant has been charged with the crimes listed below, in which case the court may order that the defendant be recommitted for a period of 18 months
    - i. Aggravated murder
    - ii. Murder
    - iii. Attempted murder
    - iv. Manslaughter
    - v. First degree felony
- 37. What happens if a defendant recommitted for 18 months is not restored? (Utah Code §77-15-6(9) thru (12))
- 38.
  - a. The defendant must be released from the custody of DHS
  - b. Unless the defendant is charged with aggravated murder or murder and the court determines that the defendant is making reasonable progress toward restoration of competency, in which case the court may recommit the defendant for a period of 36 months
    - i. The court must hold status hearings at a minimum of 18 month intervals
  - c. A defendant who is not restored after the 36 month recommitment period must be released from DHS custody

39. What happens if a defendant becomes competent before the expiration of a recommitment period? (Utah Code §77-15-6(18))
- Any time a defendant becomes competent, DHS must certify that to the court
  - The court shall hold a hearing within 15 days after receipt of the certification
40. Is there a limit on how long a defendant can be in DHS custody? ((Utah Code §77-15-6(13))
- Commitment may not exceed the maximum period of incarceration allowed under the charged statutes
41. If a defendant is not restored after the maximum recommitment periods, does the underlying criminal case have to be dismissed? (Utah Code §77-15-6(14))
- No
  - Court may retain jurisdiction over the case and order periodic reviews
42. When is the trial court required to revisit competency after an initial competency hearing has been held?
- State v. Lafferty, 20 P.3d 342 (Utah 2001)
  - When a competency hearing has already been held and a defendant has been found competent to stand trial, a trial court need not suspend proceedings to conduct a second competency hearing unless it is presented with a substantial change of circumstances or with new evidence casting a serious doubt on the validity of that finding
  - Decision to conduct yet another hearing is in the sound discretion of the trial court and depends on the showing made, and the length of time elapsed from the prior psychiatric examination
  - Evidence of a defendant's irrational behavior, demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required
43. What are the standards for challenging a competency determination on appeal?
- State v. Lafferty, 20 P.3d 342 (Utah 2001)
    - Trial court's factual findings will not be overturned unless clearly erroneous
    - Appellate court gives deference to the trial court's factual findings because of its superior position to assess credibility
    - Appellant must marshal the evidence in a light most favorable to the findings of the trial court and show that evidence to be insufficient