

Senator Stephanie Pitcher proposes the following substitute bill:

COMPETENCY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This bill amends provisions related to a defendant's competency to stand trial.

Highlighted Provisions:

This bill:

▶ establishes a process by which a court may order the ongoing administration of antipsychotic medication for the purpose of maintaining a defendant's competency to stand trial; and

▶ makes a technical correction.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-15-6, as last amended by Laws of Utah 2023, Chapters 171, 330

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

Section 1. Section **77-15-6** is amended to read:



26 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**
27 **hearings -- Notice to prosecuting attorneys.**

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

31 (b) (i) Except as provided in Subsection (1)(b)(ii), the court may recommend but may
32 not order placement of a defendant who is found incompetent to proceed.

33 (ii) The court may order that the defendant be placed in a secure setting rather than a
34 nonsecure setting.

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

37 (d) Restoration treatment shall be of sufficient scope and duration to:

38 (i) restore the defendant to competency; or

39 (ii) determine whether the defendant can be restored to competency in the foreseeable
40 future.

41 (e) A defendant who a court determines is incompetent to proceed may not be held for
42 restoration treatment longer than:

43 (i) the time reasonably necessary to determine that the defendant cannot become
44 competent to stand trial in the foreseeable future; and

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

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

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

50 (ii) an additional forensic evaluator, if requested by a party and paid for by the
51 requesting party.

52 (b) A forensic evaluator shall complete a progress toward competency evaluation and
53 submit a report within 90 days after the day on which the forensic evaluator receives the
54 commitment order from the department.

55 (c) The report shall:

56 (i) assess whether the defendant is exhibiting false or exaggerated physical or

57 psychological symptoms;

58 (ii) describe any diagnostic instruments, methods, and observations used by the
59 evaluator to make the determination;

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

61 (iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated
62 symptoms on the defendant's competency to stand trial;

63 (v) assess the facility's or program's capacity to provide appropriate restoration
64 treatment for the defendant;

65 (vi) assess the nature of restoration treatment provided to the defendant;

66 (vii) assess what progress the defendant has made toward competency restoration, with
67 respect to the factors identified by the court in its initial order;

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

71 (ix) assess the likelihood of restoration to competency, the amount of time estimated to
72 achieve competency, or the amount of time estimated to determine whether restoration to
73 competency may be achieved[-]; and

74 (x) include a statement by the facility's treating physician regarding:

75 (A) whether the defendant is taking any antipsychotic medication as prescribed;

76 (B) whether ongoing administration of antipsychotic medication is necessary to
77 maintain the defendant's competency to stand trial;

78 (C) whether antipsychotic medication is substantially likely to maintain the defendant's
79 competency to stand trial;

80 (D) whether antipsychotic medication is substantially unlikely to produce side effects
81 which would significantly interfere with the defendant's ability to assist in the defendant's
82 defense;

83 (E) that no less intrusive means are available, and whether any of those means have
84 been attempted to render the defendant competent; and

85 (F) whether antipsychotic medication is medically appropriate and in the defendant's
86 best medical interest in light of the defendant's medical condition.

87 (3) (a) The court on its own motion or upon motion by either party or the department

88 may appoint an additional forensic evaluator to conduct a progress toward competency
89 evaluation.

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

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

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

97 (c) Following the hearing, the court shall determine by a preponderance of evidence
98 whether the defendant [~~is~~]:

99 (i) is competent to stand trial;

100 (ii) is competent, but requires the ongoing administration of antipsychotic medication
101 in order to maintain the defendant's competency to stand trial;

102 [~~(ii)~~] (iii) is incompetent to proceed, with a substantial probability that the defendant
103 may become competent in the foreseeable future; or

104 [~~(iii)~~] (iv) is incompetent to proceed, without a substantial probability that the
105 defendant may become competent in the foreseeable future.

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

108 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
109 charges; [~~and~~]

110 (ii) order that the defendant be returned to the placement and status that the defendant
111 was in at the time when the petition for the adjudication of competency was filed or raised by
112 the court, unless the court determines that placement of the defendant in a less restrictive
113 environment is more appropriate[-];

114 (iii) order the ongoing administration of antipsychotic medication to the defendant for
115 the purpose of maintaining the defendant's competency to stand trial, if the court finds that the
116 administration of antipsychotic medication is necessary to maintain the defendant's competency
117 to stand trial under Subsection (4)(c)(ii); and

118 (iv) require the agency ~~H→~~ , ~~jail~~, ~~←H~~ or ~~H→~~ [~~jail~~] ~~prison~~ ~~←H~~ with custody over the
118a defendant to report to the court any

119 noncompliance with the court's orders under this Subsection (5) within 48 hours of the
120 noncompliance.

121 (b) If the court determines that the defendant is incompetent to proceed with a
122 substantial probability that the defendant may become competent in the foreseeable future, the
123 court may order that the defendant remain committed to the department or the department's
124 designee for the purpose of restoration treatment.

125 (c) (i) If the court determines that the defendant is incompetent to proceed without a
126 substantial probability that the defendant may become competent in the foreseeable future, the
127 court shall order the defendant released from commitment to the department, unless the
128 prosecutor or another individual informs the court that civil commitment proceedings pursuant
129 to Title 26B, Chapter 5, Health Care - Substance Use and Mental Health, or Title 26B, Chapter
130 6, Part 4, Division of Services for People with Disabilities, will be initiated.

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

135 (iii) The court may order the defendant to remain committed to the department until the
136 civil commitment proceedings conclude.

137 (iv) If the defendant is civilly committed and admitted to a secure setting, the
138 department shall provide notice to the court that adjudicated the defendant incompetent to
139 proceed and to the prosecution agency that prosecuted the case at least 60 days before any
140 proposed release of the committed individual from the secure setting.

141 (6) (a) At any time following the court's order under Subsection (5)(a)(iii), the
142 defendant, the prosecuting attorney, the department, the treating physician, or the agency, jail,
143 or prison with custody over the defendant, may notify the court of the need to review the
144 medication order under Subsection (5)(a)(iii) for continued appropriateness and feasibility.

145 (b) The court shall set the matter for a hearing if the notification under Subsection
146 (6)(a) establishes good cause to review the matter.

147 [~~(6)~~] (7) If a court, under Subsection (5)(b), extends a defendant's commitment, the
148 court shall schedule a competency review hearing for the earlier of:

149 (a) the department's best estimate of when the defendant may be restored to

150 competency; or

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

153 [~~(7)~~] (8) Unless the defendant is charged with a crime listed in Subsection [~~(8)~~] (9), if a
154 defendant is incompetent to proceed by the day of the competency review hearing that follows
155 the extension of a defendant's commitment, the court shall:

156 (a) order the defendant be:

157 (i) released or temporarily detained pending civil commitment proceedings as
158 described in Subsection (5)(c); and

159 (ii) terminate the defendant's commitment to the department for restoration treatment;

160 or

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

165 [~~(8)~~] (9) If the defendant is charged with aggravated murder, murder, attempted
166 murder, manslaughter, or a first degree felony and the court determines that the defendant is
167 making reasonable progress towards restoration of competency at the time of the hearing held
168 pursuant to Subsection [~~(6)~~] (7), the court may extend the commitment for a period not to
169 exceed nine months for the purpose of restoration treatment, with a mandatory review hearing
170 at the end of the nine-month period.

171 [~~(9)~~] (10) Unless the defendant is charged with aggravated murder or murder, if, at the
172 nine-month review hearing described in Subsection [~~(8)~~] (9), the court determines that the
173 defendant is incompetent to proceed, the court shall:

174 (a) (i) order the defendant be released or temporarily detained pending civil
175 commitment proceedings as provided in Subsection (5)(c); and

176 (ii) terminate the defendant's commitment to the department for restoration treatment;

177 or

178 (b) if the forensic evaluator reports to the court that there is a substantial probability
179 that restoration treatment will bring the defendant to competency to stand trial in the
180 foreseeable future, extend the defendant's commitment for restoration treatment for up to 135

181 additional days.

182 ~~[(10)]~~ (11) If the defendant is charged with aggravated murder or murder and the court
183 determines that the defendant is making reasonable progress towards restoration of competency
184 at the time of the nine-month review hearing described in Subsection ~~[(8)]~~ (9), the court may
185 extend the commitment for a period not to exceed 24 months for the purpose of restoration
186 treatment.

187 ~~[(11)]~~ (12) If the court extends the defendant's commitment term under Subsection
188 ~~[(10)]~~ (11), the court shall hold a hearing no less frequently than at 12-month intervals
189 following the extension for the purpose of determining the defendant's competency status.

190 ~~[(12)]~~ (13) If, at the end of the 24-month commitment period described in Subsection
191 ~~[(10)]~~ (11), the court determines that the defendant is incompetent to proceed, the court shall:

192 (a) (i) order the defendant be released or temporarily detained pending civil
193 commitment proceedings as provided in Subsection (5)(c); and

194 (ii) terminate the defendant's commitment to the department for restoration treatment;
195 or

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

200 ~~[(13)]~~ (14) (a) Neither release from a pretrial incompetency commitment under the
201 provisions of this section nor civil commitment requires dismissal of criminal charges.

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

204 ~~[(14)]~~ (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5,
205 Health Care - Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of
206 Services for People with Disabilities, may still be adjudicated competent to stand trial under
207 this chapter.

208 ~~[(15)]~~ (16) (a) The remedy for a violation of the time periods specified in this section,
209 other than those specified in Subsection (5)(c), ~~[(7)]~~ (8), ~~[(9)]~~ (10), or ~~[(12)]~~ (13), shall be a
210 motion to compel the hearing, or mandamus, but not release from detention or dismissal of the
211 criminal charges.

212 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), [(7)]
213 (8), [(9)] (9), or [(12)] (13), or is not dismissal of the criminal charges.

214 [(16)] (17) In cases in which the treatment of the defendant is precluded by court order
215 for a period of time, that time period may not be considered in computing time limitations
216 under this section.

217 [(17)] (18) (a) If, at any time, the defendant becomes competent to stand trial while the
218 defendant is committed to the department, the clinical director of the Utah State Hospital, the
219 department, or the department's designee shall certify that fact to the court.

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

221 (i) within 15 working days after the day on which the court receives the certification
222 described in Subsection [(17)(a)] (18)(a); or

223 (ii) within 30 working days after the day on which the court receives the certification
224 described in Subsection [(17)(a)] (18)(a), if the court determines that more than 15 working
225 days are necessary for good cause related to the defendant's competency.

226 [(18)] (19) The court may order a hearing at any time on the court's own motion or
227 upon recommendations of the clinical director of the Utah State Hospital or other facility or the
228 department.

229 [(19)] (20) Notice of a hearing on competency to stand trial shall be given to the
230 prosecuting attorney and all counsel of record.

231 Section 2. **Effective date.**

232 This bill takes effect on May 1, 2024.