# 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:
<ul> <li>establishes a process by which a court may order the ongoing administration of</li> </ul>
antipsychotic medication for the purpose of maintaining a defendant's competency to stand
trial; and
<ul> <li>makes a technical correction.</li> </ul>
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 <b>77-15-6</b> is amended to read:
77-15-6 . Commitment on finding of incompetency to stand trial Subsequent
hearings Notice to prosecuting attorneys.
(1) (a) Except as provided in Subsection (5), if after a hearing a court finds a defendant
to be incompetent to proceed, the court shall order the defendant committed to the
department for restoration treatment.
(b) (i) Except as provided in Subsection (1)(b)(ii), the court may recommend but may
not order placement of a defendant who is found incompetent to proceed.

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29		(ii) The court may order that the defendant be placed in a secure setting rather than a
30		nonsecure setting.
31	(c)	Following restoration screening, the department's designee shall designate and
32		inform the court of the specific placement and restoration treatment program for the
33		defendant.
34	(d)	Restoration treatment shall be of sufficient scope and duration to:
35		(i) restore the defendant to competency; or
36		(ii) determine whether the defendant can be restored to competency in the foreseeable
37		future.
38	(e)	A defendant who a court determines is incompetent to proceed may not be held for
39		restoration treatment longer than:
40		(i) the time reasonably necessary to determine that the defendant cannot become
41		competent to stand trial in the foreseeable future; and
42		(ii) the maximum period of incarceration that the defendant could receive if the
43		defendant were convicted of the most severe offense of the offenses charged.
44	(2) (a)	A defendant who is receiving restoration treatment shall receive a progress
45	tov	vard competency evaluation, by:
46		(i) a forensic evaluator, designated by the department; and
47		(ii) an additional forensic evaluator, if requested by a party and paid for by the
48		requesting party.
49	(b)	A forensic evaluator shall complete a progress toward competency evaluation and
50		submit a report within 90 days after the day on which the forensic evaluator receives
51		the commitment order from the department.
52	(c)	The report shall:
53		(i) assess whether the defendant is exhibiting false or exaggerated physical or
54		psychological symptoms;
55		(ii) describe any diagnostic instruments, methods, and observations used by the
56		evaluator to make the determination;
57		(iii) describe the defendant's current mental illness or intellectual disability, if any;
58		(iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated
59		symptoms on the defendant's competency to stand trial;
60		(v) assess the facility's or program's capacity to provide appropriate restoration
61		treatment for the defendant;
62		(vi) assess the nature of restoration treatment provided to the defendant;

63	(vii) assess what progress the defendant has made toward competency restoration,
64	with respect to the factors identified by the court in its initial order;
65	(viii) assess whether the defendant can reasonably be restored to competency in the
66	foreseeable future given the restoration treatment currently being provided and the
67	facility's or program's capacity to provide appropriate restoration treatment for the
68	defendant; [ <del>and</del> ]
69	(ix) assess the likelihood of restoration to competency, the amount of time estimated
70	to achieve competency, or the amount of time estimated to determine whether
71	restoration to competency may be achieved[-] ; and
72	(x) include a statement by the facility's treating physician regarding:
73	(A) whether the defendant is taking any antipsychotic medication as prescribed;
74	(B) whether ongoing administration of antipsychotic medication is necessary to
75	maintain the defendant's competency to stand trial;
76	(C) whether antipsychotic medication is substantially likely to maintain the
77	defendant's competency to stand trial;
78	(D) whether antipsychotic medication is substantially unlikely to produce side
79	effects which would significantly interfere with the defendant's ability to assist
80	in the defendant's defense;
81	(E) that no less intrusive means are available, and whether any of those means
82	have been attempted to render the defendant competent; and
83	(F) whether antipsychotic medication is medically appropriate and in the
84	defendant's best medical interest in light of the defendant's medical condition.
85	(3) (a) The court on its own motion or upon motion by either party or the department
86	may appoint an additional forensic evaluator to conduct a progress toward
87	competency evaluation.
88	(b) If the court appoints an additional forensic evaluator upon motion of a party, that
89	party shall pay the costs of the additional forensic evaluator.
90	(4) (a) Within 15 days after the day on which the court receives the forensic evaluator's
91	report of the progress toward competency evaluation, the court shall hold a hearing to
92	review the defendant's competency.
93	(b) At the hearing, the burden of proving that the defendant is competent to stand trial is
94	on the proponent of competency.
95	(c) Following the hearing, the court shall determine by a preponderance of evidence
96	whether the defendant[-is]:

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97	(i) <u>is</u> competent to stand trial;
98	(ii) is competent, but requires the ongoing administration of antipsychotic medication
99	in order to maintain the defendant's competency to stand trial;
100	[(iii)] (iii) is incompetent to proceed, with a substantial probability that the defendant
101	may become competent in the foreseeable future; or
102	[(iii)] (iv) is incompetent to proceed, without a substantial probability that the
103	defendant may become competent in the foreseeable future.
104	(5) (a) If at any time the court determines that the defendant is competent to stand trial,
105	the court shall:
106	(i) proceed with the trial or other procedures as may be necessary to adjudicate the
107	charges; [and]
108	(ii) order that the defendant be returned to the placement and status that the defendant
109	was in at the time when the petition for the adjudication of competency was filed
110	or raised by the court, unless the court determines that placement of the defendant
111	in a less restrictive environment is more appropriate[-] :
112	(iii) order the ongoing administration of antipsychotic medication to the defendant for
113	the purpose of maintaining the defendant's competency to stand trial, if the court
114	finds that the administration of antipsychotic medication is necessary to maintain
115	the defendant's competency to stand trial under Subsection (4)(c)(ii); and
116	(iv) require the agency, jail, or prison with custody over the defendant to report to the
117	court any noncompliance with the court's orders under this Subsection (5) within
118	48 hours of the noncompliance.
119	(b) If the court determines that the defendant is incompetent to proceed with a
120	substantial probability that the defendant may become competent in the foreseeable
121	future, the court may order that the defendant remain committed to the department or
122	the department's designee for the purpose of restoration treatment.
123	(c) (i) If the court determines that the defendant is incompetent to proceed without a
124	substantial probability that the defendant may become competent in the
125	foreseeable future, the court shall order the defendant released from commitment
126	to the department, unless the prosecutor or another individual informs the court
127	that civil commitment proceedings pursuant to Title 26B, Chapter 5, Health Care -
128	Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of
129	Services for People with Disabilities, will be initiated.
130	(ii) The commitment proceedings must be initiated by a petition filed within seven

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131	days after the day on which the court makes the determination described in
131	Subsection $[(4)(c)(iii)]$ (4)(c)(iv), unless the court finds that there is good cause to
132	delay the initiation of the civil commitment proceedings.
133	(iii) The court may order the defendant to remain committed to the department until
135	the civil commitment proceedings conclude.
136	(iv) If the defendant is civilly committed and admitted to a secure setting, the
137	department shall provide notice to the court that adjudicated the defendant
138	incompetent to proceed and to the prosecution agency that prosecuted the case at
139	least 60 days before any proposed release of the committed individual from the
140	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
143	agency, jail, or prison with custody over the defendant, may notify the court of the
144	need to review the medication order under Subsection (5)(a)(iii) for continued
145	appropriateness and feasibility.
146	(b) The court shall set the matter for a hearing if the notification under Subsection (6)(a)
147	establishes good cause to review the matter.
148	[(6)] (7) If a court, under Subsection (5)(b), extends a defendant's commitment, the court
149	shall schedule a competency review hearing for the earlier of:
150	(a) the department's best estimate of when the defendant may be restored to competency;
151	or
152	(b) three months after the day on which the court determined under Subsection (5)(b) to
153	extend the defendant's commitment.
154	[(7)] (8) Unless the defendant is charged with a crime listed in Subsection $[(8)]$ (9), if a
155	defendant is incompetent to proceed by the day of the competency review hearing that
156	follows the extension of a defendant's commitment, the court shall:
157	(a) order the defendant be:
158	(i) released or temporarily detained pending civil commitment proceedings as
159	described in Subsection (5)(c); and
160	(ii) terminate the defendant's commitment to the department for restoration treatment;
161	or
162	(b) if the forensic evaluator reports to the court that there is a substantial probability that
163	restoration treatment will bring the defendant to competency to stand trial in the
164	foreseeable future, extend the defendant's commitment for restoration treatment up to

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165	45 additional days.
166	[(8)] (9) If the defendant is charged with aggravated murder, murder, attempted murder,
167	manslaughter, or a first degree felony and the court determines that the defendant is
168	making reasonable progress towards restoration of competency at the time of the hearing
169	held pursuant to Subsection [(6)] (7), the court may extend the commitment for a period
170	not to exceed nine months for the purpose of restoration treatment, with a mandatory
171	review hearing at the end of the nine-month period.
172	[(9)] (10) Unless the defendant is charged with aggravated murder or murder, if, at the
173	nine-month review hearing described in Subsection [ $(8)$ ] (9), the court determines that
174	the defendant is incompetent to proceed, the court shall:
175	(a) (i) order the defendant be released or temporarily detained pending civil
176	commitment proceedings as provided in Subsection (5)(c); and
177	(ii) terminate the defendant's commitment to the department for restoration treatment;
178	or
179	(b) if the forensic evaluator reports to the court that there is a substantial probability that
180	restoration treatment will bring the defendant to competency to stand trial in the
181	foreseeable future, extend the defendant's commitment for restoration treatment for
182	up to 135 additional days.
183	[(10)] (11) If the defendant is charged with aggravated murder or murder and the court
184	determines that the defendant is making reasonable progress towards restoration of
185	competency at the time of the nine-month review hearing described in Subsection [ $(8)$ ]
186	(9), the court may extend the commitment for a period not to exceed 24 months for the
187	purpose of restoration treatment.
188	[(11)] (12) If the court extends the defendant's commitment term under Subsection $[(10)]$ (11),
189	the court shall hold a hearing no less frequently than at 12-month intervals following the
190	extension for the purpose of determining the defendant's competency status.
191	[(12)] (13) If, at the end of the 24-month commitment period described in Subsection $[(10)]$
192	(11), the court determines that the defendant is incompetent to proceed, the court shall:
193	(a) (i) order the defendant be released or temporarily detained pending civil
194	commitment proceedings as provided in Subsection (5)(c); and
195	(ii) terminate the defendant's commitment to the department for restoration treatment;
196	or
197	(b) if the forensic evaluator reports to the court that there is a substantial probability that
198	restoration treatment will bring the defendant to competency to stand trial in the

199	foreseeable future, extend the defendant's commitment for restoration treatment for
200	up to 12 additional months.
201	[(13)] (14) (a) Neither release from a pretrial incompetency commitment under the
202	provisions of this section nor civil commitment requires dismissal of criminal charges.
203	(b) The court may retain jurisdiction over the criminal case and may order periodic
204	reviews.
205	[(14)] (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5, Health
206	Care - Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of
207	Services for People with Disabilities, may still be adjudicated competent to stand trial
208	under this chapter.
209	[(15)] (16) (a) The remedy for a violation of the time periods specified in this section,
210	other than those specified in Subsection (5)(c), $[(7)]$ (8), $[(9)]$ (10), or $[(12)]$ (13), shall
211	be a motion to compel the hearing, or mandamus, but not release from detention or
212	dismissal of the criminal charges.
213	(b) The remedy for a violation of the time periods specified in Subsection $(5)(c)$ , $[(7)]$ (8),
214	[(9)] (9), or $[(12)]$ (13), or is not dismissal of the criminal charges.
215	[(16)] (17) In cases in which the treatment of the defendant is precluded by court order for a
216	period of time, that time period may not be considered in computing time limitations
217	under this section.
218	[(17)] (18) (a) If, at any time, the defendant becomes competent to stand trial while the
219	defendant is committed to the department, the clinical director of the Utah State
220	Hospital, the department, or the department's designee shall certify that fact to the
221	court.
222	(b) The court shall conduct a competency review hearing:
223	(i) within 15 working days after the day on which the court receives the certification
224	described in Subsection $[(17)(a)]$ (18)(a); or
225	(ii) within 30 working days after the day on which the court receives the certification
226	described in Subsection [ $(17)(a)$ ] (18)(a), if the court determines that more than 15
227	working days are necessary for good cause related to the defendant's competency.
228	[(18)] (19) The court may order a hearing at any time on the court's own motion or upon
229	recommendations of the clinical director of the Utah State Hospital or other facility or
230	the department.
231	[(19)] (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting
232	attorney and all counsel of record.

- 233 Section 2. Effective date.
- 234 This bill takes effect on May 1, 2024.