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

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 defendan
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

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) /	psychological symptoms;
58	(ii) describe any diagnostic instruments, methods, and observations used by the
59	evaluator to make the determination;
50	(iii) describe the defendant's current mental illness or intellectual disability, if any;
51	(iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated
52	symptoms on the defendant's competency to stand trial;
63	(v) assess the facility's or program's capacity to provide appropriate restoration
54	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
59	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 compentency to stand trial;
78	(C) whether antipsychotic medication is substantially likely to maintain the defendant's
79	competency to stand trial;
30	(D) whether antipsychotic medication is substantially unlikely to produce side effects
31	which would significantly interfere with the defendant's ability to assist in the defendant's
32	defense;
33	(E) that no less intrusive means are available, and whether any of those means have
34	been attempted to render the defendant competent; and
35	(F) whether antipsychotic medication is medically appropriate and in the defendant's
36	best medical interest in light of the defendant's medical condition.
37	(3) (a) The court on its own motion or upon motion by either party or the department

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- 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 [fii) (iii) is incompetent to proceed, with a substantial probability that the defendant 103 may become competent in the foreseeable future; or [(iii)] (iv) is incompetent to proceed, without a substantial probability that the 104 105 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 the purpose of maintaining the defendant's competency to stand trial, if the court finds that the administration of antipsychotic medication is necessary to maintain the defendant's competency to stand trial under Subsection (4)(c)(ii); and
 - (iv) require the agency or jail with custody over the defendant to report to the court any

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

- (b) If the court determines that the defendant is incompetent to proceed with a substantial probability that the defendant may become competent in the foreseeable future, the court may order that the defendant remain committed to the department or the department's designee for the purpose of restoration treatment.
- (c) (i) If the court determines that the defendant is incompetent to proceed without a substantial probability that the defendant may become competent in the foreseeable future, the court shall order the defendant released from commitment to the department, unless the prosecutor or another individual informs the court that civil commitment proceedings pursuant to Title 26B, Chapter 5, Health Care Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, will be initiated.
- (ii) The commitment proceedings must be initiated by a petition filed within seven days after the day on which the court makes the determination described in Subsection [(4)(c)(iii))] (4)(c)(iv), unless the court finds that there is good cause to delay the initiation of the civil commitment proceedings.
- (iii) The court may order the defendant to remain committed to the department until the civil commitment proceedings conclude.
- (iv) If the defendant is civilly committed and admitted to a secure setting, the department shall provide notice to the court that adjudicated the defendant incompetent to proceed and to the prosecution agency that prosecuted the case at least 60 days before any proposed release of the committed individual from the secure setting.
- (6) (a) At any time following the court's order under Subsection (5)(a)(iii), the defendant, the prosecuting attorney, the department, the treating physician, or the agency, jail, or prison with custody over the defendant, may notify the court of the need to review the medication order under Subsection (5)(a)(iii) for continued appropriateness and feasibility.
- (b) The court shall set the matter for a hearing if the notification under Subsection (6)(a) establishes good cause to review the matter.
- [(6)] (7) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall schedule a competency review hearing for the earlier of:
 - (a) the department's best estimate of when the defendant may be restored to

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- 151 (b) three months after the day on which the court determined under Subsection (5)(b) to extend the defendant's commitment.
 - [(7)] (8) Unless the defendant is charged with a crime listed in Subsection [(8)] (9), if a defendant is incompetent to proceed by the day of the competency review hearing that follows the extension of a defendant's commitment, the court shall:
 - (a) order the defendant be:
 - (i) released or temporarily detained pending civil commitment proceedings as described in Subsection (5)(c); and
- 159 (ii) terminate the defendant's commitment to the department for restoration treatment; 160 or
 - (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment up to 45 additional days.
 - [(8)] (9) If the defendant is charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection [(6)] (7), the court may extend the commitment for a period not to exceed nine months for the purpose of restoration treatment, with a mandatory review hearing at the end of the nine-month period.
 - [(9)] (10) Unless the defendant is charged with aggravated murder or murder, if, at the nine-month review hearing described in Subsection [(8)] (9), the court determines that the defendant is incompetent to proceed, the court shall:
 - (a) (i) order the defendant be released or temporarily detained pending civil commitment proceedings as provided in Subsection (5)(c); and
- 176 (ii) terminate the defendant's commitment to the department for restoration treatment; 177 or
 - (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment for up to 135

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181 additional days	181	additional	days
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[(10)] (11) If the defendant is charged with aggravated murder or murder and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the nine-month review hearing described in Subsection [(8)] (9), the court may extend the commitment for a period not to exceed 24 months for the purpose of restoration treatment.

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

- [(12)] (13) If, at the end of the 24-month commitment period described in Subsection [(10)] (11), the court determines that the defendant is incompetent to proceed, the court shall:
- (a) (i) order the defendant be released or temporarily detained pending civil commitment proceedings as provided in Subsection (5)(c); and
- (ii) terminate the defendant's commitment to the department for restoration treatment; or
- (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment for up to 12 additional months.
- [(13)] (14) (a) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges.
- (b) The court may retain jurisdiction over the criminal case and may order periodic reviews.
- [(14)] (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5, Health Care Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, may still be adjudicated competent to stand trial under this chapter.
- [(15)] (16) (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), [(7)] (8), [(9)] (10), or [(12)] (13), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the 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 $[\frac{(17)(a)}{a}]$ $\underline{(18)(a)}$; 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.