

SB0139S02 compared with SB0139S01

~~deleted text~~ shows text that was in SB0139S01 but was deleted in SB0139S02.

inserted text shows text that was not in SB0139S01 but was inserted into SB0139S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Stephanie Pitcher proposes the following substitute bill:

COMPETENCY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {}Stephanie Pitcher

House Sponsor: {}_____

LONG TITLE

General Description:

This bill amends provisions related to ~~continued administration of psychotropic drugs or other medication~~a defendant's competency to stand trial.

Highlighted Provisions:

This bill:

- ▶ establishes a process by which a court may order ~~continued~~the ongoing administration of ~~psychotropic drugs or other~~antipsychotic medication ~~necessary to maintain the~~for the purpose of maintaining a defendant's competency to stand trial~~.~~; and
- ▶ makes a technical correction.

Money Appropriated in this Bill:

None

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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:

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.

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

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

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

(i) restore the defendant to competency; or

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

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

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

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

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

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- (i) a forensic evaluator, designated by the department; and
 - (ii) an additional forensic evaluator, if requested by a party and paid for by the requesting party.
- (b) A forensic evaluator shall complete a progress toward competency evaluation and submit a report within 90 days after the day on which the forensic evaluator receives the commitment order from the department.
- (c) The report shall:
- (i) assess whether the defendant is exhibiting false or exaggerated physical or psychological symptoms;
 - (ii) describe any diagnostic instruments, methods, and observations used by the evaluator to make the determination;
 - (iii) describe the defendant's current mental illness or intellectual disability, if any;
 - (iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated symptoms on the defendant's competency to stand trial;
 - (v) assess the facility's or program's capacity to provide appropriate restoration treatment for the defendant;
 - (vi) assess the nature of restoration treatment provided to the defendant;
 - (vii) assess what progress the defendant has made toward competency restoration, with respect to the factors identified by the court in its initial order;
 - (viii) assess whether the defendant can reasonably be restored to competency in the foreseeable future given the restoration treatment currently being provided and the facility's or program's capacity to provide appropriate restoration treatment for the defendant; ~~and~~
 - (ix) assess the likelihood of restoration to competency, the amount of time estimated to achieve competency, or the amount of time estimated to determine whether restoration to competency may be achieved~~[-]; and~~
 - (x) include a statement by the ~~{defendant's attending psychiatrist}~~ facility's treating physician regarding:
 - (A) whether the defendant is taking any ~~{psychotropic drugs or other}~~ antipsychotic medication as prescribed; ~~{and}~~
 - (B) whether ~~{the }~~ongoing administration of ~~{psychotropic drugs or other}~~ antipsychotic medication is necessary to maintain the defendant's

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~~competency~~ competency to stand trial ~~is~~:

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

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

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

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

(3) (a) The court on its own motion or upon motion by either party or the department may appoint an additional forensic evaluator to conduct a progress toward competency evaluation.

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

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

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

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

(i) is competent to stand trial;

(ii) is competent, but requires the ongoing administration of ~~psychotropic drugs or other~~ antipsychotic medication in order to maintain the defendant's competency to ~~proceed~~ stand trial;

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

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

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

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the court shall:

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

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

(iii) order the ongoing administration of ~~psychotropic drugs or other~~ antipsychotic medication to the defendant for the purpose of maintaining the defendant's competency to stand trial, if the ~~defendant's attending psychiatrist's statement under Subsection (2)(c)(x) concludes~~ court finds that the administration of ~~psychotropic drugs or other~~ 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

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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 competency; or

(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

(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 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

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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

(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 135 additional days.

~~[(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

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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.

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

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

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

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

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

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

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

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

Section 2. **Effective date.**

This bill takes effect on May 1, 2024.