

1                                   **SERVICE FOR PEOPLE WITH**  
2                                   **DISABILITIES**

3                                   2000 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: David L. Hogue**

6 AN ACT RELATING TO HUMAN SERVICES; MODIFYING CERTAIN DEFINITIONS AND  
7 PROVISIONS GOVERNING THE RESPONSIBILITY AND AUTHORITY OF THE DIVISION  
8 OF SERVICES FOR PEOPLE WITH DISABILITIES; FORMALIZING THE MEDICAID  
9 REQUIREMENT THAT PERSONS WITH DISABILITIES CAN MAKE A CHOICE OF  
10 SERVICES; AND MAKING TECHNICAL CORRECTIONS.

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13           **62A-5-101**, as last amended by Chapter 332, Laws of Utah 1996

14           **62A-5-103**, as last amended by Chapter 332, Laws of Utah 1996

15           **62A-5-104**, as last amended by Chapter 104, Laws of Utah 1992

16           **62A-5-105**, as last amended by Chapter 179, Laws of Utah 1996

17           **62A-5-109**, as last amended by Chapter 258, Laws of Utah 1995

18           **62A-5-201**, as last amended by Chapter 179, Laws of Utah 1996

19           **62A-5-207**, as last amended by Chapter 104, Laws of Utah 1992

20           **62A-5-208**, as last amended by Chapter 207, Laws of Utah 1991

21           **62A-5-301**, as last amended by Chapter 248, Laws of Utah 1996

22           **62A-5-303**, as last amended by Chapter 243, Laws of Utah 1996

23           **62A-5-304**, as last amended by Chapter 207, Laws of Utah 1991

24           **62A-5-306**, as last amended by Chapter 132, Laws of Utah 1993

25           **62A-5-307**, as last amended by Chapter 132, Laws of Utah 1993

26           **62A-5-308**, as last amended by Chapter 132, Laws of Utah 1993

27           **62A-5-309**, as last amended by Chapter 132, Laws of Utah 1993

- 28           **62A-5-311**, as last amended by Chapter 132, Laws of Utah 1993
- 29           **62A-5-312**, as last amended by Chapter 132, Laws of Utah 1993
- 30           **62A-5-313**, as last amended by Chapter 207, Laws of Utah 1991
- 31           **62A-5-314**, as last amended by Chapter 132, Laws of Utah 1993
- 32           **62A-5-315**, as enacted by Chapter 1, Laws of Utah 1988
- 33           **62A-5-316**, as enacted by Chapter 1, Laws of Utah 1988
- 34           **62A-5-317**, as enacted by Chapter 1, Laws of Utah 1988
- 35           **62A-5-318**, as enacted by Chapter 132, Laws of Utah 1993
- 36           **62A-5-402**, as last amended by Chapter 332, Laws of Utah 1996
- 37           **62A-5-403**, as last amended by Chapters 179 and 318, Laws of Utah 1996
- 38           **62A-5a-103**, as last amended by Chapter 276, Laws of Utah 1997
- 39           **62A-6-101**, as last amended by Chapter 108, Laws of Utah 1997
- 40           **62A-6-102**, as enacted by Chapter 1, Laws of Utah 1988
- 41           **62A-6-103**, as enacted by Chapter 1, Laws of Utah 1988
- 42           **62A-6-105**, as enacted by Chapter 1, Laws of Utah 1988
- 43           **62A-6-107**, as enacted by Chapter 1, Laws of Utah 1988
- 44           **62A-6-108**, as enacted by Chapter 1, Laws of Utah 1988
- 45           **62A-6-110**, as enacted by Chapter 1, Laws of Utah 1988

46 ENACTS:

- 47           **62A-5-501**, Utah Code Annotated 1953
- 48           **62A-5-502**, Utah Code Annotated 1953

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

50           Section 1. Section **62A-5-101** is amended to read:

51           **62A-5-101. Definitions.**

52           As used in this chapter:

- 53           (1) "Board" means the Board of Services for People with Disabilities established in
- 54           accordance with Section 62A-1-105.
- 55           (2) "Developmental center" means the Utah State Developmental Center, established in
- 56           accordance with Part 2 of this chapter.
- 57           (3) "Director" means the director of the Division of Services for People with Disabilities.
- 58           (4) (a) "Disability" means a severe, chronic disability that:

- 59 (i) is attributable to a mental or physical impairment or a combination of mental and
- 60 physical impairments;
- 61 (ii) is likely to continue indefinitely;
- 62 (iii) results in a substantial functional limitation in three or more of the following areas of
- 63 major life activity:
  - 64 (A) self-care;
  - 65 (B) receptive and expressive language;
  - 66 (C) learning;
  - 67 (D) mobility;
  - 68 (E) self-direction;
  - 69 (F) capacity for independent living; or
  - 70 (G) economic self-sufficiency; and
- 71 (iv) requires a combination or sequence of special interdisciplinary or generic care,
- 72 treatment, or other services that may continue throughout life and must be individually planned
- 73 and coordinated.
- 74 (b) For purposes of this chapter mental illness alone does not constitute a "disability."
- 75 (5) "Division" means the Division of Services for People with Disabilities.
- 76 (6) "Mental retardation" means a significant, subaverage general intellectual functioning,
- 77 existing concurrently with deficits in adaptive behavior, and manifested during the developmental
- 78 period as defined in the current edition of the Diagnostic and Statistical Manual of Mental
- 79 Disorders, published by the American Psychiatric Association.
- 80 (7) "Mental retardation facility" means a residential facility for persons with mental
- 81 retardation, that receives state or federal funds under Title XIX of the federal Social Security Act,
- 82 for the purpose of serving the population of mentally retarded persons in this state.
- 83 ~~[(8) "Approved provider" means a person who has been approved by the division to~~
- 84 ~~provide home-based services and who has agreed to be compensated by voucher under Part 4.]~~
- 85 ~~[(9) "Voucher" means a document that:]~~
- 86 ~~[(a) is issued by the division to a person with a disability or to his parent or guardian;]~~
- 87 ~~[(b) describes the services and supports that may be received with the voucher;]~~
- 88 ~~[(c) lists approved providers;]~~
- 89 ~~[(d) may be used by a person with a disability or his parent or guardian to purchase~~

90 services and supports from an approved provider;]  
91 [~~(e) includes a maximum dollar value;~~]  
92 [~~(f) states the period of time within which the voucher must be used by the person with a~~  
93 ~~disability or his parent or guardian to purchase services and supports; and]~~  
94 [~~(g) is redeemable by an approved provider for payment by the division up to the dollar~~  
95 ~~value of the voucher.]~~

96 Section 2. Section **62A-5-103** is amended to read:

97 **62A-5-103. Responsibility and authority of division.**

98 The division has the authority and responsibility to:

99 (1) plan, develop, and manage an array of services and supports for persons with  
100 disabilities and their families throughout the state[. ~~Those services and supports may include, but~~  
101 ~~are not limited to]~~ including any or all of the following services:

102 [~~(a) residential services and supports;~~]

103 [~~(b) day training services and supports, including work activity, sheltered employment, and~~  
104 ~~supported employment;~~]

105 [~~(c) personal attendant care;~~]

106 [~~(d) apartment follow-along;~~]

107 [~~(e) supervised apartment living;~~]

108 [~~(f) respite care;~~]

109 [~~(g) specialized foster care;~~]

110 [~~(h) community skills training;~~]

111 [~~(i) transportation;~~]

112 [~~(j) assessment;~~]

113 [~~(k) family support;~~]

114 [~~(l) service coordination services, except as limited by Part 4; and]~~

115 [~~(m) home-based services, provided in accordance with Part 4;]~~

116 (a) community living services and supports;

117 (b) supported employment and other day services and supports;

118 (c) family support, including respite care;

119 (d) personal assistant services;

120 (e) community skills training;

- 121           (f) transportation;  
122           (g) assessment and service planning;  
123           (h) support coordination;  
124           (i) intermediate care services; and  
125           (j) housing assistance;  
126           (2) establish either directly or by contract with private, nonprofit organizations, programs  
127 of outreach, information and referral, prevention, technical assistance, and public awareness, in  
128 an effort to enhance the quality of life for persons with disabilities in this state;  
129           (3) supervise the programs and facilities operated by or under contract with the division;  
130           (4) (a) cooperate with other state, governmental, and private agencies that provide services  
131 to persons with disabilities; and  
132           (b) ensure that the constitutionally protected liberty interests of persons with disabilities  
133 are not deprived without due process procedures designed to minimize the risk of error when those  
134 persons are admitted to any structured residential mental retardation facility, including the  
135 developmental center and facilities within the community such as intermediate care facilities for  
136 [~~the mentally retarded~~] persons with mental retardation. Those services shall include initial and  
137 periodic reviews to determine the constitutional appropriateness of the placement. The  
138 constitutional due process review process required by this subsection, with regard to intermediate  
139 care facilities for [~~the mentally retarded~~] persons with mental retardation, does not necessitate  
140 commitment to the division;  
141           (5) contract for services and supports for persons with disabilities;  
142           (6) approve and monitor approved providers;  
143           (7) act as a fiscal agent to receive and disburse funds;  
144           (8) establish standards and rules for the administration and operation of programs operated  
145 by or under contract with the division;  
146           (9) approve and monitor division programs to insure compliance with the board's policies  
147 and standards;  
148           (10) establish standards and rules necessary to fulfill the division's responsibilities under  
149 Parts 2 and 3 of this chapter with regard to mental retardation facilities;  
150           (11) establish and collect fair and equitable fees for services provided by the division, and  
151 account for those funds;

152 (12) establish rules governing the admission, transfer, and discharge of persons with  
153 disabilities to mental retardation facilities, in accordance with state law, with regard to facilities  
154 and programs operated by or under contract with the division, and with regard to facilities and  
155 programs that serve persons committed to the division under Part 3;

156 (13) manage funds for a person residing in a facility operated by the division, upon request  
157 of [~~a parent or~~] the person or the person's guardian, or under administrative or court order; and

158 (14) fulfill the responsibilities described in Chapter 5a.

159 Section 3. Section **62A-5-104** is amended to read:

160 **62A-5-104. Director -- Qualifications -- Responsibilities.**

161 (1) The director of the division shall be appointed by the executive director with the  
162 concurrence of the board.

163 (2) The director shall have a bachelor's degree from an accredited university or college,  
164 be experienced in administration, and be knowledgeable in developmental disabilities, particularly  
165 mental retardation, and other disabilities.

166 (3) The director is the administrative head of the division.

167 (4) The director shall appoint the superintendent of the developmental center and the  
168 necessary and appropriate administrators for other facilities operated by the division with the  
169 concurrence of the executive director and the board.

170 Section 4. Section **62A-5-105** is amended to read:

171 **62A-5-105. Board -- Membership -- Responsibilities.**

172 (1) At least one member of the board, established in accordance with Sections 62A-1-105  
173 and 62A-1-107, shall be a person whose life or family is directly affected by a disability, and at  
174 least one other board member shall be a person with a [~~disability~~] developmental disability and  
175 who is eligible for or receives division services.

176 (2) The board shall report annually to the governor. The executive director shall mediate  
177 any differences which arise between the policies of the board and those of any other policy board  
178 in the department.

179 (3) The board shall review rules necessary to carry out the purposes of this part, comment  
180 on existing programs and services to persons with disabilities, recommend new program areas to  
181 the director, and establish policies for the assessment and collection of fees.

182 (4) The board has the power and responsibility to set policy for the division, the

183 developmental center, and for other programs and facilities operated by or under contract with the  
184 division.

185 Section 5. Section **62A-5-109** is amended to read:

186 **62A-5-109. Parent liable for cost and support of minor -- Guardian liable for costs.**

187 (1) Parents of a person under 18 years old who receives services or support from the  
188 division, who are financially responsible, are liable for the cost of the actual care and maintenance  
189 of that person and for the support of the child in accordance with Title 78, Chapter 45, Uniform  
190 Civil Liability for Support Act, and Title 62A, Chapter 11, [~~Public Support of Children Act until~~  
191 ~~he reaches 18 years of age~~] Recovery Services.

192 (2) A guardian of a person who receives services or support from the division is liable for  
193 the cost of actual care and maintenance of that person, regardless of [his] the person's age, where  
194 funds are available in the guardianship estate established on [his] the person's behalf for that  
195 purpose. However, if the person who receives services is a beneficiary of a trust created in  
196 accordance with Section 62A-5-110, or if the guardianship estate meets the requirements of a trust  
197 described in that section, the trust income prior to distribution to the beneficiary, and the trust  
198 principal are not subject to payment for services or support for that person.

199 (3) If, at the time a person who receives services or support from the division is discharged  
200 from [~~a facility or program owned or operated by or under contract with~~] services of the division,  
201 or after the death and burial of a resident of the developmental center, there remains in the custody  
202 of the division or the superintendent any money paid by a parent or guardian for the support or  
203 maintenance of that person, it shall be repaid upon demand.

204 Section 6. Section **62A-5-201** is amended to read:

205 **62A-5-201. Utah State Developmental Center.**

206 (1) The facility for persons with mental retardation located in American Fork City, Utah  
207 County, shall be known as the "Utah State Developmental Center."

208 (2) Within appropriations authorized by the Legislature, the role and function of the  
209 developmental center is to:

210 (a) provide [~~care~~] comprehensive residential, services, and [~~treatment~~] support to persons  
211 described in Subsection (3); and

212 (b) provide the following services and supports to persons with disabilities who do not  
213 reside at the developmental center:

- 214           ~~[(i) psychiatric testing;]~~  
215           ~~[(ii)]~~ (i) specialized medical and dental treatment and evaluation;  
216           ~~[(iii) family and client special]~~  
217           (ii) crisis intervention;  
218           ~~[(iv) crisis management;]~~  
219           ~~[(v)]~~ (iii) professional services, such as occupational therapy, physical therapy, speech  
220 therapy, [and] audiology, and psychology services; and  
221           ~~[(vi)]~~ (iv) professional ~~[services]~~ supports, such as education, evaluation, and consultation,  
222 for families, public organizations, providers of home and community ~~[and family support]~~ based  
223 services, and courts.
- 224           (3) Within appropriations authorized by the Legislature, notwithstanding the provisions  
225 of Part 3 of this chapter, after October 1, 1997, only the following persons may be residents of, be  
226 admitted to, or receive care, services, or treatment at the developmental center:
- 227           (a) persons with mental retardation;  
228           (b) persons who receive services and supports under Subsection (2)(b); and  
229           (c) persons who require at least one of the following services from the developmental  
230 center:
- 231           (i) continuous medical care;  
232           (ii) intervention for conduct that is dangerous to self or others; or  
233           (iii) temporary residential assessment and evaluation.
- 234           (4) The division ~~[shall, in its discretion, place residents]~~ may transfer persons from the  
235 developmental center into appropriate less restrictive placements and shall determine each year the  
236 number to be placed based upon the individual assessed needs of the ~~[residents]~~ persons. The  
237 division shall confer with parents and guardians to ensure the most appropriate placement for each  
238 ~~[resident]~~ person.
- 239           (5) Within appropriations authorized by the Legislature, notwithstanding the provisions  
240 of Subsection (3) and Part 3 of this chapter, after June 30, 1996, a person who is under 18 years  
241 of age may be a resident of, admitted to, or receive care, services, or treatment at the  
242 developmental center only if the director certifies in writing that the developmental center is the  
243 most appropriate placement for that person. This restriction does not apply to persons who receive  
244 services and supports under Subsection (2)(b).



245 Section 7. Section **62A-5-207** is amended to read:

246 **62A-5-207. Superintendent -- Qualifications.**

247 The superintendent of the developmental center, appointed in accordance with Subsection  
248 62A-5-104(4), shall have a bachelor's degree from an accredited university or college, be  
249 experienced in administration, and be knowledgeable in developmental disabilities [~~and~~],  
250 particularly mental retardation.

251 Section 8. Section **62A-5-208** is amended to read:

252 **62A-5-208. Powers and duties of superintendent.**

253 The chief administrative officer of the developmental center is the superintendent, [~~and has~~  
254 ~~the following powers and duties~~] who shall:

255 (1) [~~to~~] manage the developmental center and administer the division's rules governing the  
256 developmental center;

257 (2) [~~to~~] hire, control, and remove all employees, and to fix their compensation according  
258 to state law; and

259 (3) with the approval of the division, [~~to~~] make any expenditures necessary in the  
260 performance of his duties.

261 Section 9. Section **62A-5-301** is amended to read:

262 **62A-5-301. Definitions.**

263 As used in this part:

264 (1) "Designated mental retardation professional" means:

265 (a) a psychologist licensed under Title 58, Chapter 25a, who has either one year of  
266 specialized training in diagnostic work with persons with mental retardation or one year of clinical  
267 experience with persons with mental retardation and who has been designated by the division as  
268 specially qualified, by training and experience, in the [~~treatment~~] assessment of mental retardation;  
269 or

270 (b) a clinical or certified social worker licensed under Title 58, Chapter 60, Mental Health  
271 Professional Practice Act, who has two years of clinical experience with persons with mental  
272 retardation and who has been designated by the division as specially qualified, by training and  
273 experience, in [~~the treatment of~~] working with people with mental retardation.

274 (2) "Licensed physician" means an individual licensed to practice medicine under Section  
275 58-67-301, Utah Medical Practice Act, Section 58-68-301, Utah Osteopathic Medical Practice Act,

276 or a medical officer of the United States Government while in this state in the performance of  
277 official duties.

278 (3) "Mental retardation facility" means a residential facility for persons with mental  
279 retardation, that receives state or federal funds under Title XIX of the federal Social Security Act,  
280 for the purpose of serving the population of mentally retarded persons in this state.

281 [~~(4)~~ "Resident" means an individual under observation, care, or treatment in a mental  
282 retardation facility.]

283 [~~(5)~~ (4) "Review committee" means a committee established under Section 62A-5-303  
284 to review and approve or disapprove voluntary commitments to the division and admissions to  
285 mental retardation facilities in accordance with this part.

286 Section 10. Section **62A-5-303** is amended to read:

287 **62A-5-303. Admission committee -- Voluntary commitment.**

288 (1) (a) The division shall appoint a review committee of designated mental retardation  
289 professionals and others with relevant training and experience to four-year terms to review and  
290 approve or disapprove voluntary, adult commitments to the division under Section 62A-5-307.

291 (b) Notwithstanding the requirements of Subsection (1)(a), the division shall, at the time  
292 of appointment or reappointment, adjust the length of terms to ensure that the terms of committee  
293 members are staggered so that approximately half of the committee is appointed every two years.

294 (c) When a vacancy occurs in the membership for any reason, the replacement shall be  
295 appointed for the unexpired term.

296 (2) (a) Members shall receive no compensation or benefits for their services, but may  
297 receive per diem and expenses incurred in the performance of the member's official duties at the  
298 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

299 (b) Members may decline to receive per diem and expenses for their service.

300 (3) The review committee shall determine whether there is clear and convincing evidence  
301 that:

302 (a) the individual to be committed has mental retardation;

303 (b) because of that mental retardation, one or more of the following conditions exist:

304 (i) the individual poses an immediate danger of physical injury to self or others;

305 (ii) the individual lacks the capacity to provide the basic necessities of life, such as food,  
306 clothing, or shelter; or

307 (iii) the individual is in immediate need of [~~habilitation, rehabilitation, care, or treatment~~]  
308 specialized services and supports to minimize the effects of the condition which poses a threat of  
309 serious physical or psychological injury to the individual, and the individual lacks the capacity to  
310 engage in a rational decision-making process concerning the need for [~~habilitation, rehabilitation,~~  
311 ~~care, or treatment~~] specialized services and supports, as evidenced by an inability to weigh the  
312 possible costs and benefits of the [~~care or treatment~~] services and the alternatives [~~to it~~];

313 (c) there is no appropriate, less restrictive alternative reasonably available as certified by  
314 the division; and

315 (d) the facility or program in which the individual is to be committed can provide the  
316 individual with [~~treatment, care, habilitation, or rehabilitation~~] the specialized services and  
317 supports that [~~is~~] are adequate and appropriate to the individual's condition and needs.

318 Section 11. Section **62A-5-304** is amended to read:

319 **62A-5-304. Limited admission of persons convicted of felony offenses.**

320 A person with mental retardation who has been convicted of a felony, or if a minor, of a  
321 crime that would constitute a felony if committed by an adult, may not be admitted to a mental  
322 retardation facility unless it is determined by the division, in accordance with the provisions of this  
323 part and other state law, that the person may benefit from [~~treatment in~~] services of that facility.

324 Section 12. Section **62A-5-306** is amended to read:

325 **62A-5-306. Application -- Affidavit.**

326 An application by or on behalf of an individual 18 years of age or older for whom voluntary  
327 commitment to the division is sought under Section 62A-5-307 shall:

328 (1) be in the form prescribed by the division; and

329 (2) be accompanied by an affidavit of a physician, or designated mental retardation  
330 professional stating:

331 (a) that the physician or designated mental retardation professional has completed  
332 diagnostic testing of the individual within the last three months;

333 (b) the diagnosis of the individual and the date of that diagnosis;

334 (c) that in the opinion of the physician or designated mental retardation professional the  
335 individual has mental retardation;

336 (d) one or more of the conditions described in Subsection 62A-5-303[(2)](3) exist; and

337 (e) if the individual is over the age of 18, and seeks voluntary commitment, that in the

338 physician or designated mental retardation professional's opinion the individual has the mental  
339 capacity for informed consent.

340 Section 13. Section **62A-5-307** is amended to read:

341 **62A-5-307. Voluntary commitment.**

342 The director of the division, or [his] the director's designee, may commit to the division,  
343 for observation, diagnosis, care, and treatment any individual 18 years of age or older, who:

- 344 (1) has mental retardation or has symptoms of mental retardation;
- 345 (2) files a voluntary application for commitment that includes an affidavit in compliance  
346 with Section 62A-5-306;
- 347 (3) has not been coerced into submitting the application; and
- 348 (4) has been reviewed and approved by the division's review committee.

349 Section 14. Section **62A-5-308** is amended to read:

350 **62A-5-308. Commitment -- Persons under age 18.**

351 Beginning July 1, 1993, the director of the division or [his] the director's designee, may  
352 commit an individual under 18 years of age who has mental retardation or symptoms of mental  
353 retardation, to the division for observation, diagnosis, care, and treatment if that commitment is  
354 based on:

- 355 (1) involuntary commitment under the provisions of Section 62A-5-312. Proceedings for  
356 involuntary commitment of an individual under 18 years of age may be commenced by filing a  
357 written petition with the juvenile court under Section 62A-5-312. The juvenile court has  
358 jurisdiction to proceed in the same manner and with the same authority as the district court; or
- 359 (2) an emergency commitment in accordance with the provisions of Section 62A-5-311.

360 Section 15. Section **62A-5-309** is amended to read:

361 **62A-5-309. Commitment -- Person 18 years or older.**

362 Beginning July 1, 1993, the director or [his] the director's designee may commit to the  
363 division an individual 18 years of age or older who has mental retardation, for observation,  
364 diagnosis, care, and treatment if that commitment is based on:

- 365 (1) involuntary commitment under the provisions of Section 62A-5-312;
- 366 (2) voluntary commitment under the provisions of Section 62A-5-307; or
- 367 (3) temporary emergency commitment under the provisions of Section 62A-5-311.

368 Section 16. Section **62A-5-311** is amended to read:

369 **62A-5-311. Temporary emergency commitment -- Observation and evaluation.**

370 (1) The director of the division or [his] the director's designee may temporarily commit  
371 an individual to the division and therefore, as a matter of course, to a mental retardation facility  
372 for observation and evaluation upon:

373 (a) written application by a responsible person who has reason to know that the individual  
374 is in need of commitment, stating:

375 (i) a belief that the individual has mental retardation and is likely to cause serious injury  
376 to self or others if not immediately committed;

377 (ii) personal knowledge of the individual's condition; and

378 (iii) the circumstances supporting that belief;

379 (b) certification by a licensed physician or designated mental retardation professional  
380 stating that the physician or designated mental retardation professional:

381 (i) has examined the individual within a three-day period immediately preceding the  
382 certification; and

383 (ii) is of the opinion that the individual has mental retardation, and that because of the  
384 individual's mental retardation is likely to injure self or others if not immediately committed.

385 (2) If the individual in need of commitment is not placed in the custody of the director or  
386 [his] the director's designee by the person submitting the application, the director or [his] the  
387 director's designee may certify, either in writing or orally, that the individual is in need of  
388 immediate [commitment] services to prevent injury to self or others.

389 (3) Upon receipt of the application required by Subsection (1)(a) and the certifications  
390 required by Subsection (1)(b) and Subsection (2), a peace officer may take the individual named  
391 in the application and certificates into custody, and may transport the individual to a designated  
392 mental retardation facility.

393 (4) (a) An individual committed under this section may be held for a maximum of 24  
394 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the  
395 individual shall be released unless proceedings for involuntary commitment have been commenced  
396 under Section 62A-5-312.

397 (b) After proceedings for involuntary commitment have been commenced the individual  
398 shall be released unless:

399 (i) the individual has made voluntary application for commitment in accordance with

400 Section 62A-5-307; or

401 (ii) an order of detention is issued in accordance with Section 62A-5-312.

402 (5) If an individual is committed to the division under this section on the application of  
403 any person other than the individual's legal guardian, spouse, parent, or next of kin, the director  
404 or [his] the director's designee shall immediately give notice of the commitment to the individual's  
405 legal guardian, spouse, parent, or next of kin, if known.

406 Section 17. Section **62A-5-312** is amended to read:

407 **62A-5-312. Involuntary commitment -- Procedures -- Necessary findings**

408 **-- Periodic review.**

409 (1) Any responsible person who has reason to know that an individual is in need of  
410 commitment, who has a belief that the individual has mental retardation, and who has personal  
411 knowledge of the conditions and circumstances supporting that belief, may commence proceedings  
412 for involuntary commitment by filing a written petition with the district court, or if the subject of  
413 the petition is less than 18 years of age with the juvenile court, of the county in which the  
414 individual to be committed is physically located at the time the petition is filed. The application  
415 shall be accompanied by:

416 (a) a certificate of a licensed physician or a designated mental retardation professional,  
417 stating that within a seven-day period immediately preceding the certification, the physician or  
418 designated mental retardation professional examined the individual and believes that the individual  
419 [~~is mentally retarded~~] has mental retardation and is in need of involuntary commitment; or

420 (b) a written statement by the petitioner stating that the individual was requested but  
421 refused to submit to an examination for mental retardation by a licensed physician or designated  
422 mental retardation professional, and that the individual refuses to voluntarily go to the division or  
423 a mental retardation facility recommended by the division for treatment. That statement shall be  
424 under oath and set forth the facts on which it is based.

425 (2) Before issuing a detention order, the court may require the petitioner to consult with  
426 personnel at the division or at a mental retardation facility and may direct a designated mental  
427 retardation professional to interview the petitioner and the individual to be committed, to  
428 determine the existing facts, and to report them to the court.

429 (3) The court may issue a detention order and may direct a peace officer to immediately  
430 take the individual to a mental retardation facility to be detained for purposes of an examination

431 if the court finds from the petition, from other statements under oath, or from reports of physicians  
432 or designated mental retardation professionals that there is a reasonable basis to believe that the  
433 individual to be committed:

434 (a) poses an immediate danger of physical injury to self or others;

435 (b) requires involuntary commitment pending examination and hearing;

436 (c) the individual was requested but refused to submit to an examination by a licensed  
437 physician or designated mental retardation professional; or

438 (d) the individual refused to voluntarily go to the division or to a mental retardation facility  
439 recommended by the division.

440 (4) (a) If the court issues a detention order based on an application that did not include a  
441 certification by a designated mental retardation professional or physician in accordance with  
442 Subsection (1)(a), the director or [his] the director's designee shall within 24 hours after issuance  
443 of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual,  
444 report the results of the examination to the court and inform the court:

445 (i) whether the director or [his] the director's designee believes that the individual [is  
446 mentally-retarded] has mental retardation;

447 (ii) whether the individual is capable of giving informed consent and has agreed to  
448 voluntary admission under Section 62A-5-307; and

449 (iii) whether appropriate [~~treatment programs~~] services and supports are available and  
450 acceptable without court proceedings.

451 (b) If the report of the director or [his] the director's designee is based on an oral report of  
452 the examiner, the examiner shall immediately send the results of the examination in writing to the  
453 clerk of the court.

454 (5) Immediately after an individual is involuntarily committed under a detention order or  
455 under Section 62A-5-311, the director or [his] the director's designee shall inform the individual,  
456 orally and in writing, of [his] the individual's right to communicate with an attorney. If an  
457 individual desires to communicate with an attorney, the director or [his] the director's designee  
458 shall take immediate steps to assist the individual in contacting and communicating with an  
459 attorney.

460 (6) (a) Immediately after commencement of proceedings for involuntary commitment, the  
461 court shall give notice of commencement of the proceedings to:

- 462 (i) the individual to be committed;
- 463 (ii) the applicant;
- 464 (iii) any legal guardian of the individual;
- 465 (iv) adult members of the individual's immediate family;
- 466 (v) legal counsel of the individual to be committed, if any;
- 467 (vi) the division; and
- 468 (vii) any other person to whom the individual requests, or the court designates, notice to
- 469 be given.

470 (b) If an individual cannot or refuses to disclose the identity of persons to be notified, the  
471 extent of notice shall be determined by the court.

472 (7) That notice shall:

- 473 (a) set forth the allegations of the petition and all supporting facts;
- 474 (b) be accompanied by a copy of any detention order issued under Subsection (3); and
- 475 (c) state that a hearing will be held within the time provided by law, and give the time and
- 476 place for that hearing.

477 (8) The court may transfer the case and the custody of the individual to be committed to  
478 any other district court within the state, if:

479 (a) there are no appropriate facilities for persons with mental retardation within the judicial  
480 district; and

481 (b) the transfer will not be adverse to the interests of the individual.

482 (9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order  
483 or commitment under a detention order, the court shall appoint two designated mental retardation  
484 professionals to examine the individual. If requested by the individual's counsel, the court shall  
485 appoint a reasonably available, qualified person designated by counsel to be one of the examining  
486 designated mental retardation professionals. The examinations shall be conducted:

- 487 (i) separately;
- 488 (ii) at the home of the individual to be committed, a hospital, a facility for person's with  
489 mental retardation, or any other suitable place not likely to have a harmful effect on the individual;
- 490 and
- 491 (iii) within a reasonable period of time after appointment of the examiners by the court.

492 (b) The court shall set a time for a hearing to be held within [~~10~~] ten court days of the



493 appointment of the examiners. However, the court may immediately terminate the proceedings  
494 and dismiss the application if, prior to the hearing date, the examiners, the director, or [his] the  
495 director's designee informs the court that:

- 496 (i) the individual [is] does not [~~mentally retarded~~] have mental retardation;
- 497 (ii) the individual has agreed to voluntary commitment under Section 62A-5-307; or
- 498 (iii) treatment programs are available and acceptable without court proceedings.

499 (10) (a) Each individual has the right to be represented by counsel at the commitment  
500 hearing and in all preliminary proceedings. If neither the individual nor others provide counsel,  
501 the court shall appoint counsel and allow sufficient time for counsel to consult with the individual  
502 prior to any hearing.

503 (b) If the individual is indigent, the county in which the individual was physically located  
504 when taken into custody shall pay reasonable attorneys' fees as determined by the court.

505 (11) The division or a designated mental retardation professional in charge of the  
506 individual's care shall provide all documented information on the individual to be committed and  
507 to the court at the time of the hearing. The individual's attorney shall have access to all  
508 documented information on the individual at the time of and prior to the hearing.

509 (12) (a) The court shall provide an opportunity to the individual, the petitioner, and all  
510 other persons to whom notice is required to be given to appear at the hearing, to testify, and to  
511 present and cross-examine witnesses.

512 (b) The court may, in its discretion:

- 513 (i) receive the testimony of any other person;
- 514 (ii) allow a waiver of the right to appear only for good cause shown;
- 515 (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and
- 516 (iv) upon motion of counsel, require the testimony of each examiner to be given out of the  
517 presence of any other examiner.

518 (c) The hearing shall be conducted in as informal a manner as may be consistent with  
519 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the  
520 individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record.  
521 A verbatim record of the proceedings shall be maintained.

522 (13) The court may order commitment if, upon completion of the hearing and  
523 consideration of the record, it finds by clear and convincing evidence that all of the following

524 conditions are met:

525 (a) the individual to be committed [~~is mentally retarded~~] has mental retardation;

526 (b) because of the individual's mental retardation one or more of the following conditions  
527 exist:

528 (i) the individual poses an immediate danger of physical injury to self or others;

529 (ii) the individual lacks the capacity to provide the basic necessities of life, such as food,  
530 clothing, or shelter; or

531 (iii) the individual is in immediate need of [~~habilitation, rehabilitation, care, or treatment~~]  
532 specialized services and supports to minimize the effects of the condition which poses a threat of  
533 serious physical or psychological injury to the individual, and the individual lacks the capacity to  
534 engage in a rational decision-making process concerning the need for [~~habilitation, rehabilitation,~~  
535 ~~care, or treatment~~] services, as evidenced by an inability to weigh the possible costs and benefits  
536 of the [~~care or treatment~~] services and the alternatives [~~to it~~];

537 (c) there is no appropriate, less restrictive alternative reasonably available; and

538 (d) the division or the mental retardation facility recommended by the division in which  
539 the individual is to be committed can provide the individual with [~~treatment, care, habilitation, or~~  
540 ~~rehabilitation that is~~] services and supports that are adequate and appropriate to the individual's  
541 condition and needs.

542 (14) In the absence of any of the required findings by the court, described in Subsection  
543 (13), the court shall dismiss the proceedings.

544 (15) (a) The order of commitment shall designate the period for which the individual will  
545 be committed. An initial commitment may not exceed six months. Before the end of the initial  
546 commitment period, the administrator of the facility for persons with mental retardation shall  
547 commence a review hearing on behalf of the individual.

548 (b) At the conclusion of the review hearing, the court may issue an order of commitment  
549 for up to a one-year period.

550 (16) An individual committed under this part has the right to a rehearing, upon filing a  
551 petition with the court within 30 days after entry of the court's order. If the petition for rehearing  
552 alleges error or mistake in the court's findings, the court shall appoint one impartial licensed  
553 physician and two impartial designated mental retardation professionals who have not previously  
554 been involved in the case to examine the individual. The rehearing shall, in all other respects, be

555 conducted in accordance with this part.

556 (17) (a) The court shall maintain a current list of all individuals under its orders of  
557 commitment. That list shall be reviewed in order to determine those [patients] persons who have  
558 been under an order of commitment for the designated period.

559 (b) At least two weeks prior to the expiration of the designated period of any commitment  
560 order still in effect, the court that entered the original order shall inform the director of the division  
561 of the impending expiration of the designated commitment period.

562 (c) The staff of the division shall immediately:

563 (i) reexamine the reasons upon which the order of commitment was based and report the  
564 results of the examination to the court;

565 (ii) discharge the [resident] person from involuntary commitment if the conditions  
566 justifying commitment no longer exist; and

567 (iii) immediately inform the court of any discharge.

568 (d) If the director of the division reports to the court that the conditions justifying  
569 commitment no longer exist, and the administrator of the mental retardation facility does not  
570 discharge the individual at the end of the designated period, the court shall order the immediate  
571 discharge of the individual, unless involuntary commitment proceedings are again commenced in  
572 accordance with this section.

573 (e) If the director of the division, or [his] the director's designee reports to the court that  
574 the conditions designated in Subsection (13) still exist, the court may extend the commitment order  
575 for up to one year. At the end of any extension, the individual must be reexamined in accordance  
576 with this section, or discharged.

577 (18) When a resident is discharged under this subsection, the division shall provide any  
578 further support services available and required to meet the [resident's] person's needs.

579 Section 18. Section **62A-5-313** is amended to read:

580 **62A-5-313. Transfer -- Procedures.**

581 (1) The director of the division, or [his] the director's designee, may place an involuntarily  
582 committed [resident] person in appropriate care or treatment outside the mental retardation facility.  
583 During that placement, the order of commitment shall remain in effect, until the [resident] person  
584 is discharged or the order is terminated.

585 (2) If the [resident, or his] person, or the person's parent or guardian, objects to a proposed

586 placement under this section, [he] the person, parent, or guardian may appeal the decision to the  
587 executive director or [his] the director's designee. Those appeals shall be conducted in accordance  
588 with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.  
589 If an objection is made, the proposed placement may not take effect until the committee holds that  
590 hearing and the executive director makes a final decision on the placement.

591 Section 19. Section **62A-5-314** is amended to read:

592 **62A-5-314. Release of person voluntarily committed -- Exceptions.**

593 A person who has been voluntarily committed who requests release, or whose release is  
594 requested in writing by [his] the person's legal guardian, parent, spouse, or adult next of kin, shall  
595 be immediately released except that:

596 (1) if the person is 18 years of age or older and was voluntarily admitted on [his] that  
597 person's own application, the release shall be conditioned upon the agreement of the [resident]  
598 person; and

599 (2) if the director or [his] the director's designee[;] believes that release of a [resident]  
600 person, committed under Section 62A-5-307, 62A-5-308, or 62A-5-309 would pose an immediate  
601 danger of physical injury to self or others, release of that [resident] person may be postponed for  
602 up to 48 hours, excluding Saturdays, Sundays, and legal holidays. Within that time period, the  
603 director or [his] the director's designee may initiate involuntary commitment proceedings in the  
604 district or juvenile court. The director or [his] the director's designee shall give the [resident]  
605 person immediate written notice of postponement of release and the reasons for that postponement.

606 Section 20. Section **62A-5-315** is amended to read:

607 **62A-5-315. Petition for reexamination.**

608 (1) A [resident] person committed under Section 62A-5-312, or [his] that person's parent,  
609 spouse, legal guardian, relative, or attorney, may file a petition for reexamination with the district  
610 court of the county in which the [resident] person is domiciled or detained.

611 (2) Upon receipt of that petition, the court shall conduct proceedings under Section  
612 62A-5-312. If the petition is filed sooner than six months after the issuance of an order of  
613 indeterminate involuntary commitment, the court may delay commencing proceedings until that  
614 six-month period has ended, unless good cause for holding a hearing before the end of that  
615 six-month period exists.

616 Section 21. Section **62A-5-316** is amended to read:

617 **62A-5-316. Temporary detention.**

618 Pending removal to a mental retardation facility, an individual taken into custody or  
619 ordered to be committed under this part may be detained in [~~his or her~~] the person's home, or in  
620 some other suitable facility. The individual shall not, however, be detained in a nonmedical  
621 facility used for detention of individuals charged with or convicted of penal offenses, except in a  
622 situation of extreme emergency. The division shall take reasonable measures, as may be necessary,  
623 to assure proper care of an individual temporarily detained under this part.

624 Section 22. Section **62A-5-317** is amended to read:

625 **62A-5-317. Authority to transfer resident.**

626 (1) The administrator of a mental retardation facility, or [~~his~~] the administrator's designee,  
627 may transfer or authorize the transfer of a [~~resident~~] person to another mental retardation facility  
628 if, before the transfer, the administrator conducts a careful evaluation of the [~~resident and his~~  
629 treatment] person and the person's service needs, and determines that a transfer would be in the  
630 best interest of that [~~resident~~] person. If a [~~resident~~] person is transferred, the administrator shall  
631 give immediate notice of the transfer to the [~~resident's~~] person's spouse, guardian, or parent[~~, or~~  
632 ~~advocate appointed under Section 62A-5-303~~] or, if none of those persons are known, to the  
633 [~~resident's~~] person's nearest known relative.

634 (2) If a [~~resident, or his~~] person, or the person's parent or guardian, objects to a proposed  
635 transfer under this section, the administrator shall conduct a hearing on the objection before a  
636 committee composed of persons selected by the administrator. That committee shall hear all  
637 evidence and make a recommendation to the administrator concerning the proposed transfer. The  
638 transfer may not take effect until the committee holds that hearing and the administrator renders  
639 a final decision on the proposed transfer.

640 Section 23. Section **62A-5-318** is amended to read:

641 **62A-5-318. Involuntary treatment with medication -- Committee -- Findings.**

642 (1) If, after commitment, a [~~resident~~] person elects to refuse treatment with medication,  
643 the director, the administrator of the facility for persons with mental retardation, or a designee,  
644 shall submit documentation regarding the [~~resident's~~] person's proposed treatment to a committee  
645 composed of:

646 (a) a licensed physician experienced in treating persons with mental retardation and related  
647 disabilities, who is not directly involved in the [~~resident's~~] person's treatment or diagnosis, and who

648 is not biased toward any one facility;

649 (b) a psychologist who is a designated mental retardation professional who is not directly  
650 involved in the resident's treatment or diagnosis; and

651 (c) another designated mental retardation professional of the facility for persons with  
652 mental retardation, or a designee.

653 (2) Based upon the court's finding, under Subsection 62A-5-312(13), that the [resident]  
654 person lacks the ability to engage in a rational decision-making process regarding the need for  
655 [~~habilitation, rehabilitation, care, or treatment~~] specialized services and supports, as demonstrated  
656 by evidence of inability to weigh the possible costs and benefits of treatment, the committee may  
657 authorize involuntary treatment with medication if it determines that:

658 (a) the proposed treatment is in the medical best interest of the [resident] person, taking  
659 into account the possible side effects as well as the potential benefits of the medication; and

660 (b) the proposed treatment is in accordance with prevailing standards of accepted medical  
661 practice.

662 (3) In making the determination described in Subsection (2), the committee shall consider  
663 the [resident's] person's general history and present condition, the specific need for medication and  
664 its possible side effects, and any previous reaction to the same or comparable medication.

665 (4) Any authorization of involuntary treatment under this section shall be periodically  
666 reviewed in accordance with rules promulgated by the division.

667 Section 24. Section ~~62A-5-402~~ is amended to read:

668 **~~62A-5-402. Scope of services -- Principles.~~**

669 [~~(1) (a) To enable a person with a disability and his family to select services and supports  
670 that best suit their needs and preferences, the division shall, within appropriations from the  
671 Legislature, provide services and supports under this part by giving vouchers or direct financial  
672 assistance to the parent or guardian of a person with a disability who resides at home.]~~

673 [~~(b) The dollar value of a voucher or direct financial assistance is determined by the  
674 division based on appropriations from the Legislature and the needs of the person with a  
675 disability.]~~

676 [~~(c) In determining whether to provide either a voucher or direct financial assistance to the  
677 family, the division shall consider:]~~

678 [~~(i) the family's preference; and]~~

679 ~~[(ii) the availability of qualified providers in the area where the family resides.]~~

680 ~~[(d) If the division provides direct financial assistance, it may require the family to account~~  
681 ~~for the use of that financial assistance.]~~

682 ~~[(e) When the division provides a voucher or direct financial assistance, the division shall~~  
683 ~~tell the person with a disability or his parent or guardian how long the voucher or direct financial~~  
684 ~~assistance is intended to provide services and supports before the next voucher or direct financial~~  
685 ~~assistance is issued.]~~

686 ~~[(f) Except for eligibility determination services directly connected to the provision of the~~  
687 ~~voucher or direct financial assistance, service coordination is not provided under this part by the~~  
688 ~~division unless the person with a disability or his parent or guardian uses the voucher or direct~~  
689 ~~financial assistance to purchase such services.]~~

690 ~~[(g) A voucher may only be redeemed with a qualified provider.]~~

691 ~~[(2)]~~ The following principles shall be used as the basis for supporting families who care  
692 for family members with disabilities:

693 ~~[(a)]~~ (1) all children, regardless of disability, should reside in a family-like environment;

694 ~~[(b)]~~ (2) families should receive the support they need to care for their children at home;

695 ~~[(c)]~~ (3) services should focus on the person with a disability but should also consider the  
696 entire family;

697 ~~[(d)]~~ (4) services should be sensitive to the unique needs, preferences, and strengths of  
698 individual families; and

699 ~~[(e)]~~ (5) services should complement and reinforce existing sources of help and support  
700 that are available to each family.

701 Section 25. Section **62A-5-403** is amended to read:

702 **62A-5-403. Services for persons under 11 years of age.**

703 (1) Except as provided in Subsection (2), after June 30, 1996, the division may not provide  
704 residential services to persons with disabilities who are under 11 years of age.

705 (2) The prohibition of Subsection (1) does not include residential services that are  
706 provided:

707 (a) for persons in the custody of the Division of Child and Family Services;

708 (b) under a plan for home-based services, including respite and temporary residential care  
709 or services provided by a professional parent under contract with the division; or

710 (c) after a written finding by the director that out-of-home residential placement is the most  
711 appropriate way to meet the needs of the person with disabilities and [his] the person's family.

712 Section 26. Section **62A-5-501** is enacted to read:

713 **Part 5. Portability Between Home and Community-based Services and Services in an**  
714 **Intermediate Care Facility for Persons with Mental Retardation**

715 **62A-5-501. Definitions.**

716 As used in this part:

717 (1) "Annual open enrollment period" means a defined period of time each year during  
718 which all eligible persons will be informed of the service venues that might be available to them  
719 and within which those persons will be invited to declare their interest in either continuing in their  
720 current residential services or making a change of venues.

721 (2) "Home and community-based waiver services" means the array of services and  
722 supports defined by Utah's "Home and Community-Based Services Waiver for Individuals with  
723 Mental Retardation and Other Developmental Disabilities."

724 (3) "Intermediate care facility for persons with mental retardation" means a licensed  
725 state-operated or privately operated residential center that meets and maintains the standards for  
726 that designation as defined by Title XIX of the Social Security Act.

727 (4) "Portability" means the physical transfer of eligible persons between intermediate care  
728 facilities for persons with mental retardation and home and community-based waiver services.

729 Section 27. Section **62A-5-502** is enacted to read:

730 **62A-5-502. Division duties.**

731 (1) The division shall apply this part to assure reasonable and appropriate choice of  
732 services and service providers by persons who qualify for and receive residential services funded  
733 under Title XIX of the Social Security Act.

734 (2) The division director shall:

735 (a) coordinate with the director of the Division of Health Care Financing in the planning  
736 and execution of an annual open enrollment period for all persons receiving residential services  
737 either through the home and community-based services waiver for individuals with mental  
738 retardation and other developmental disabilities or through an intermediate care facility for persons  
739 with mental retardation, including Utah State Developmental Center; and

740 (b) assure that the actual transfer of individuals between home and community-based



741 services and intermediate care services remain within the boundaries of the established residential  
742 service budgets of the Division of Services for People with Disabilities and the Division of Health  
743 Care Financing or within appropriations made by the Legislature for the purpose of increasing  
744 portability.

745 (3) The division shall continue to provide for appropriate choice of services and service  
746 providers by persons who receive division services and their guardians, and to seek to  
747 accommodate requests for changes in services or service providers regardless of whether the  
748 request is made within or beyond the time frame of the annual open enrollment period.

749 Section 28. Section **62A-5a-103** is amended to read:

750 **62A-5a-103. Coordinating Council for Persons with Disabilities -- Creation --**  
751 **Membership -- Expenses.**

752 (1) There is created the Coordinating Council for Persons with Disabilities.

753 (2) The council shall consist of:

754 (a) the director of the Division of Services for People with Disabilities within the  
755 Department of Human Services, or [his] the director's designee;

756 (b) the director of family health services programs, appointed under Section 26-10-3, or  
757 [his] the director's designee;

758 (c) the executive director of the Utah State Office of Rehabilitation, or [his] the executive  
759 director's designee;

760 (d) the state director of special education, or [his] the director's designee;

761 (e) the director of the Division of Health Care Financing within the Department of Health,  
762 or [his] the director's designee;

763 (f) the director of the Division of Mental Health within the Department of Human  
764 Services, or [his] the director's designee;

765 (g) the superintendent of Schools for the Deaf and Blind, or [his] the superintendent's  
766 designee; and

767 (h) a person with a disability, a family member of a person with a disability, or an advocate  
768 for persons with disabilities, appointed by the members listed in Subsections (2)(a) through (g).

769 (3) (a) The council shall annually elect a chair from its membership.

770 (b) Five members of the council are a quorum.

771 (4) (a) State government officer and employee members who do not receive salary, per

772 diem, or expenses from their agency for their service may receive per diem and expenses incurred  
773 in the performance of their official duties from the council at the rates established by the Division  
774 of Finance under Sections 63A-3-106 and 63A-3-107.

775 (b) State government officer and employee members may decline to receive per diem and  
776 expenses for their service.

777 Section 29. Section **62A-6-101** is amended to read:

778 **62A-6-101. Definitions.**

779 As used in this chapter:

780 (1) "Informed consent" means consent that is voluntary and based on an understanding by  
781 the person to be sterilized of the nature and consequences of sterilization, the reasonably  
782 foreseeable risks and benefits of sterilization, and the available alternative methods of  
783 contraception.

784 (2) "Institutionalized" means residing in the Utah State Developmental Center, the Utah  
785 State Hospital, a residential facility for persons with [~~a disability~~] disabilities as defined in Sections  
786 10-9-605 and 17-27-605, a group home for [~~disabled~~] persons with disabilities, a nursing home,  
787 or a foster care home or facility.

788 (3) "Sterilization" means any medical procedure, treatment, or operation rendering an  
789 individual permanently incapable of procreation.

790 Section 30. Section **62A-6-102** is amended to read:

791 **62A-6-102. Sterilization of persons 18 years of age or older.**

792 (1) It is lawful for a physician to sterilize a person who is 18 years of age or older and who  
793 has the capacity to give informed consent.

794 (2) It is unlawful for a physician to sterilize a person who is 18 years of age or older and  
795 who is institutionalized, unless:

796 (a) the physician, through careful examination and counseling, ensures that the person is  
797 capable of giving informed consent and that no undue influence or coercion to consent has been  
798 placed on that person by nature of the fact that [~~he~~] the person is institutionalized; or

799 (b) the person is not capable of giving informed consent, a petition has been filed in  
800 accordance with Section 62A-6-107, and an order authorizing the sterilization has been entered  
801 by a court of competent jurisdiction.

802 (3) It is unlawful for a physician to sterilize a person who is 18 years of age or older and

803 who is not capable of giving informed consent unless a petition has been filed in accordance with  
804 Section 62A-6-107 and an order authorizing sterilization has been entered by a court of competent  
805 jurisdiction.

806 Section 31. Section **62A-6-103** is amended to read:

807 **62A-6-103. Sterilization of persons under 18 years of age.**

808 It is unlawful for a physician to sterilize a person who is under 18 years of age unless:

809 (1) the person is married or otherwise emancipated and the physician, through careful  
810 examination and counseling, ensures that the person is capable of giving informed consent. If that  
811 person is institutionalized, the physician shall also ensure that no undue influence or coercion to  
812 consent has been placed on the person by nature of the fact that [he] the person is institutionalized;  
813 or

814 (2) a petition has been filed in accordance with Section 62A-6-107, and an order  
815 authorizing sterilization has been entered by a court of competent jurisdiction.

816 Section 32. Section **62A-6-105** is amended to read:

817 **62A-6-105. Persons who may give informed consent.**

818 For purposes of this chapter, the following persons may give informed consent to  
819 sterilization:

820 (1) a person who is the subject of sterilization, if [he] the person is capable of giving  
821 informed consent; and

822 (2) a person appointed by the court to give informed consent on behalf of a subject of  
823 sterilization who is incapable of giving informed consent.

824 Section 33. Section **62A-6-107** is amended to read:

825 **62A-6-107. Petition for order authorizing sterilization.**

826 A petition for an order authorizing sterilization may be filed by a person who desires  
827 sterilization, or by [his] the person's parent, spouse, guardian, custodian, or other interested party.  
828 The court shall adjudicate the petition for sterilization in accordance with Section 62A-6-108.

829 Section 34. Section **62A-6-108** is amended to read:

830 **62A-6-108. Factors to be considered by court -- Evaluations -- Interview -- Findings**  
831 **of fact.**

832 (1) If the court finds that the subject of sterilization is not capable of giving informed  
833 consent, the court shall consider, but not by way of limitation, the following factors concerning that

834 person:

835 (a) the nature and degree of [his] the person's mental impairment, and the likelihood that  
836 the condition is permanent;

837 (b) the level of [his] the person's understanding regarding the concepts of reproduction and  
838 contraception, and whether [his] the person's ability to understand those concepts is likely to  
839 improve;

840 (c) [his] the person's capability for procreation or reproduction. It is a rebuttable  
841 presumption that the ability to procreate and reproduce exists in a person of normal physical  
842 development;

843 (d) the potentially injurious physical and psychological effects from sterilization,  
844 pregnancy, childbirth, and parenthood;

845 (e) the alternative methods of birth control presently available including, but not limited  
846 to, drugs, intrauterine devices, education and training, and the feasibility of one or more of those  
847 methods as an alternative to sterilization;

848 (f) the likelihood that [~~he~~] the person will engage in sexual activity or could be sexually  
849 abused or exploited;

850 (g) the method of sterilization that is medically advisable, and least intrusive and  
851 destructive of [his] the person's rights to bodily and psychological integrity;

852 (h) the advisability of postponing sterilization until a later date; and

853 (i) the likelihood that [~~he could~~] the person could, with appropriate supports, adequately  
854 care and provide for a child.

855 (2) The court may require that independent medical, psychological, and social evaluations  
856 of the subject of sterilization be made prior to ruling on a petition for sterilization. The court may  
857 appoint experts to perform those examinations and evaluations and may require the petitioner, to  
858 the extent of the petitioner's ability, to bear the costs incurred.

859 (3) The court shall interview the subject of sterilization to determine [his] the person's  
860 understanding of and desire for sterilization. The expressed preference of the person shall be made  
861 a part of the record, and shall be considered by the court in rendering its decision. The court is not  
862 bound by the expressed preference of the subject of sterilization; however, if the person expresses  
863 a preference not to be sterilized, the court shall deny the petition unless the petitioner proves  
864 beyond a reasonable doubt that the person will suffer serious physical or psychological injury if

865 the petition is denied.

866 (4) When adjudicating a petition for sterilization the court shall determine, on the basis  
867 of all the evidence, what decision regarding sterilization would have been made by the subject of  
868 sterilization, if [he] the person were capable of giving informed consent to sterilization. The  
869 decision regarding sterilization shall be in the best interest of the person to be sterilized.

870 (5) If the court grants a petition for sterilization, it shall make appropriate findings of fact  
871 in support of its order.

872 Section 35. Section **62A-6-110** is amended to read:

873 **62A-6-110. Notice of hearing -- Service.**

874 A copy of the petition and notice of the hearing shall be served personally on the person  
875 to be sterilized not less than 20 days before the hearing date. The notice shall state the date, time,  
876 and place of the hearing, and shall specifically state that the hearing is to adjudicate either a  
877 petition for declaration of capacity to give informed consent to sterilization or a petition for  
878 sterilization. Notice shall be served on that person's parents, spouse, guardian, or custodian and  
879 on [his] the person's attorney by the clerk of the court, by certified mail, not less than ten days  
880 before the hearing date.

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**Legislative Review Note**  
**as of 1-28-00 9:01 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**