

1                                   **MENTAL HEALTH AND CORRECTIONS LAW**

2   **AMENDMENTS**

3   2000 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Robert F. Montgomery**

6 AN ACT RELATING TO THE HUMAN SERVICES CODE AND THE CODE OF CRIMINAL  
7 PROCEDURE; AMENDING PROVISIONS RELATING TO THE MEMBERSHIP OF THE  
8 MENTAL HEALTH AND CORRECTIONS ADVISORY COUNCIL; AND CHANGING THE  
9 CRITERIA, PROCESS, AND AUTHORITY FOR TRANSFER OF MENTALLY ILL  
10 PRISONERS TO AND FROM THE STATE HOSPITAL AND THE STATE PRISON.

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

12 AMENDS:

13                   **62A-12-204.5**, as last amended by Chapter 243, Laws of Utah 1996

14                   **77-15-1**, as enacted by Chapter 15, Laws of Utah 1980

15                   **77-16a-202**, as enacted by Chapter 171, Laws of Utah 1992

16                   **77-16a-203**, as enacted by Chapter 171, Laws of Utah 1992

17                   **77-16a-204**, as enacted by Chapter 171, Laws of Utah 1992

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

19                   Section 1. Section **62A-12-204.5** is amended to read:

20                   **62A-12-204.5. Mental Health and Corrections Advisory Council -- Establishment**  
21 **and purpose -- Admission of person in custody of Department of Corrections to state hospital**  
22 **-- Funding.**

23                   (1) There is established the Mental Health and Corrections Advisory Council composed  
24 of the following members:

25                   (a) the director or his [designee] appointee;

26                   (b) the superintendent or his [designee] appointee;

27                   (c) the executive director of the Department of Corrections, or his [designee] appointee;

28 (d) a member of the Board of Pardons and Parole or its appointee; ~~[and]~~

29 (e) the attorney general, or his appointee;

30 § ~~[(f) a member of the Judicial Council, as selected by that council;~~

31 ~~— (g) (f) § the director of the Division of Services for People with Disabilities, or his appointee;~~

32 § ~~[(f)] (g) § a representative from a local mental health authority or an organization, excluding the~~  
 33 ~~state hospital that provides mental health services under contract with the Division of Mental~~  
 34 ~~Health or a local mental health authority, as appointed by the director of the division; and~~

35 ~~[(e)] § [(f)] (h) § other [members] persons as [designated] appointed by the members described in~~  
 36 ~~Subsections (3)(a) through [(d)] (h).~~

37 (2) (a) (i) Members who are not government employees shall receive no compensation or  
 38 benefits for their services, but may receive per diem and expenses incurred in the performance of  
 39 the member's official duties at the rates established by the Division of Finance under Sections  
 40 63A-3-106 and 63A-3-107.

41 (ii) Members may decline to receive per diem and expenses for their service.

42 (b) (i) State government officer and employee members who do not receive salary, per  
 43 diem, or expenses from their agency for their service may receive per diem and expenses incurred  
 44 in the performance of their official duties from the council at the rates established by the Division  
 45 of Finance under Sections 63A-3-106 and 63A-3-107.

46 (ii) State government officer and employee members may decline to receive per diem and  
 47 expenses for their service.

48 (3) The purpose of the Mental Health and Corrections Advisory Council is to:

49 (a) advise the director regarding admissions to the state hospital of persons in the custody  
 50 of the Department of Corrections;

51 (b) develop policies for coordination between the division and the Department of  
 52 Corrections; and

53 (c) advise the executive director of the Department of Corrections regarding issues of care  
 54 for persons in the custody of the Department of Corrections who are mentally ill.

55 (4) The executive director of the Department of Corrections may request the director to  
 56 admit a person who is in the custody of the Department of Corrections to the state hospital~~[-];~~ if  
 57 the clinical director of mental health within the Department of Corrections finds that the inmate  
 58 has mentally deteriorated to the point that admission to the state hospital is necessary to ensure

59 adequate mental health treatment. In determining whether that ~~[person]~~ inmate should be placed  
60 in the state hospital, the director of the division shall consider:

- 61 (a) the mental health treatment needs of the ~~[person]~~ inmate;  
62 (b) the treatment programs available at the state hospital; and  
63 (c) whether the ~~[person to be admitted]~~ inmate meets the requirements of Subsection  
64 62A-12-209(2)~~]; and~~.

65 ~~[(d) the availability of treatment space at the state hospital.]~~

66 (5) If the director denies the admission of an inmate as requested by the clinical director  
67 of mental health within the Department of Corrections, the Board of Pardons and Parole shall  
68 determine whether the inmate will be admitted to the state hospital. The Board of Pardons and  
69 Parole shall consider:

- 70 (a) the mental health treatment needs of the inmate;  
71 (b) the treatment programs available at the state hospital; and  
72 (c) whether the inmate meets the requirements of Subsection 62A-12-209(2).

73 ~~[(5)]~~ (6) The state hospital shall receive any person in the custody of the Department of  
74 Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to  
75 Subsection (5). Any person so transferred to the state hospital shall remain in the custody of the  
76 Department of Corrections, and the state hospital shall act solely as the agent of the Department  
77 of Corrections.

78 (7) Inmates transferred to the state hospital pursuant to this section shall be transferred  
79 back to the Department of Corrections through negotiations between the director and the director  
80 of the Department of Corrections. If agreement between the director and the director of the  
81 Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final  
82 authority in determining whether a person will be transferred back to the Department of  
83 Corrections. In making that determination, that board shall consider:

- 84 (a) the mental health treatment needs of the inmate;  
85 (b) the treatment programs available at the state hospital;  
86 (c) whether the person continues to meet the requirements of Subsection 62A-12-209(2);  
87 (d) the ability of the state hospital to provide adequate treatment to the person, as well as  
88 safety and security to the public; and  
89 (e) whether, in the opinion of the director of the division, in consultation with the clinical

90 director of the state hospital, the person's treatment needs have been met.

91 ~~[(6) Beginning in fiscal year 1990, all funds necessary to treat persons at the state hospital~~  
92 ~~who are in the custody of the Department of Corrections shall be appropriated to the Department~~  
93 ~~of Corrections for use in accordance with Section 64-13-7.5.]~~

94 Section 2. Section **77-15-1** is amended to read:

95 **77-15-1. Incompetent person not to be tried for crime.**

96 No person who is incompetent to proceed shall be tried ~~[or punished]~~ for a public offense.

97 Section 3. Section **77-16a-202** is amended to read:

98 **77-16a-202. Person found guilty and mentally ill --Commitment to department.**

99 (1) In sentencing and committing a mentally ill offender to the department under  
100 Subsection 77-16a-104(3)(a), the court shall:

101 (a) sentence the offender to a term of imprisonment and order that he be committed to the  
102 department and admitted to the Utah State Hospital for care and treatment until transferred to UDC  
103 in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the  
104 Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

105 (b) sentence the offender to a term of imprisonment and order that he be committed to the  
106 department for care and treatment for no more than 18 months, or until ~~[he has reached maximum~~  
107 ~~benefit,]~~ the offender's condition has been stabilized to the point that commitment to the  
108 department and admission to the Utah State Hospital is no longer necessary to ensure adequate  
109 mental health treatment, whichever occurs first. At the expiration of that time, the court may recall  
110 the sentence and commitment, and resentence the offender. A commitment and retention of  
111 jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that  
112 specification is not included in the sentencing order, the offender shall be committed in accordance  
113 with Subsection (1)(a).

114 (2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of a  
115 mentally ill offender who has been convicted of a capital offense. In capital cases, the court shall  
116 make the findings required by this section after the capital sentencing proceeding mandated by  
117 Section 76-3-207.

118 (3) When an offender is committed to the department and admitted to the Utah State  
119 Hospital under Subsection (1)(b), the department shall provide the court with reports of the  
120 offender's mental health status every six months. Those reports shall be prepared in accordance

121 with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent  
122 examiner to assess the mental health status of the offender.

123 (4) The period of commitment to the department and admission to the Utah State Hospital,  
124 and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204  
125 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence,  
126 the administrator of the facility where the offender is located may initiate civil proceedings for  
127 involuntary commitment in accordance with Title 62A, Chapter 12 or Title 62A, Chapter 5.

128 Section 4. Section **77-16a-203** is amended to read:

129 **77-16a-203. Review of guilty and mentally ill persons committed to department --**  
130 **Recommendations for transfer.**

131 (1) The executive director shall designate a review team of at least three qualified staff  
132 members, including at least one licensed psychiatrist, to evaluate the mental condition of each  
133 mentally ill offender committed to it in accordance with Section 77-16a-202, at least once every  
134 six months. If the offender is mentally retarded, the review team shall include at least one  
135 individual who is a designated mental retardation professional, as defined in Section 62A-5-301.

136 (2) At the conclusion of its evaluation, the review team described in Subsection (1) shall  
137 make a report to the executive director regarding the offender's current mental condition, his  
138 progress since commitment, prognosis, and a recommendation regarding whether the mentally ill  
139 offender should be transferred to UDC or remain in the custody of the department.

140 (3) (a) The executive director shall notify the UDC medical administrator, and the board's  
141 mental health adviser that a mentally ill offender is eligible for transfer to UDC if the review team  
142 finds that the offender:

143 (i) is no longer mentally ill; or

144 (ii) is still mentally ill and ~~[continues]~~ may continue to be a danger to himself or others,  
145 but can be controlled if adequate care, medication, and treatment are provided~~[-and that he has~~  
146 ~~reached maximum benefit from the programs within the Department.]~~ by UDC; and

147 (iii) the offender's condition has been stabilized to the point that commitment to the  
148 department and admission to the Utah State Hospital are no longer necessary to ensure adequate  
149 mental health treatment.

150 (b) The administrator of the mental health facility where the offender is located shall  
151 provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

- 152 (i) all available clinical facts;
- 153 (ii) the diagnosis;
- 154 (iii) the course of treatment received at the mental health facility;
- 155 (iv) the prognosis for remission of symptoms;
- 156 (v) the potential for recidivism;
- 157 (vi) an estimation of the offender's dangerousness, either to himself or others; and
- 158 (vii) recommendations for future treatment.

159 Section 5. Section **77-16a-204** is amended to read:

160 **77-16a-204. UDC acceptance of transfer of guilty and mentally ill persons --**  
161 **Re-transfer from UDC to department for admission to the Utah State Hospital.**

162 (1) The UDC medical administrator shall designate a transfer team of at least three  
163 qualified staff members, including at least one licensed psychiatrist, to evaluate the  
164 recommendation made by the department's review team pursuant to Section 77-16a-203. If the  
165 offender is mentally retarded, the transfer team shall include at least one person who has expertise  
166 in testing and diagnosis of mentally retarded individuals.

167 (2) The transfer team shall concur in the recommendation if it determines that UDC can  
168 provide the mentally ill offender with [~~the level of care necessary to maintain his mental condition~~]  
169 adequate mental health treatment.

170 (3) The UDC transfer team and medical administrator shall recommend the facility in  
171 which the offender should be placed and the treatment to be provided in order for his mental  
172 condition to remain stabilized to the director of the Division of Institutional Operations, within the  
173 Department of Corrections.

174 (4) In the event that the department and UDC do not agree on the transfer of a mentally  
175 ill offender, the administrator of the mental health facility where the offender is located shall notify  
176 the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall  
177 be provided with copies of all reports and recommendations. The board's mental health adviser  
178 shall make a recommendation to the board on the transfer and the board shall issue its decision  
179 within 30 days.

180 (5) UDC shall notify the board whenever a mentally ill offender is transferred from the  
181 department to UDC.

182 (6) When a mentally ill offender sentenced under Section 77-16a-202, who has been

183 transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined  
184 that the offender's mental condition has deteriorated or that the offender has become mentally  
185 unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings  
186 and procedures described in Subsections 62A-12-204.5(4) through (6).

187 (7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall  
188 remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.

189 (8) A mentally ill offender who has been readmitted to the Utah State Hospital pursuant  
190 to Subsection (6) shall be transferred back to § ~~DOE~~ UDC § in accordance with the provisions of  
190a Section  
191 77-16a-203.

---

---

**Legislative Review Note**  
**as of 2-7-00 8:21 AM**

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

**Office of Legislative Research and General Counsel**