

1 **CONSOLIDATION OF DIVISIONS OF**
2 **MENTAL HEALTH AND SUBSTANCE ABUSE**
3 2002 FIFTH SPECIAL SESSION
4 STATE OF UTAH

5 **Sponsor: Jack A. Seitz**

6 **This act modifies the Human Services Code. This act creates a new Division of Substance**
7 **Abuse and Mental Health within the Department of Human Services by combining the**
8 **Division of Substance Abuse and the Division of Mental Health. This act makes a**
9 **corresponding change to the policy boards associated with each division. This act makes**
10 **conforming changes to other statutes and makes technical changes. This act provides an**
11 **effective date.**

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

13 AMENDS:

14 **17-50-318**, as renumbered and amended by Chapter 133, Laws of Utah 2000

15 **17A-3-602**, as last amended by Chapter 291, Laws of Utah 2002

16 **17A-3-606**, as last amended by Chapter 181 and renumbered and amended by Chapter 186,
17 Laws of Utah 1990

18 **17A-3-701**, as last amended by Chapters 18 and 291, Laws of Utah 2002

19 **26-8a-601**, as last amended by Chapter 62, Laws of Utah 2000

20 **26-18-3.7**, as last amended by Chapter 1, Laws of Utah 2000

21 **26-25-1**, as last amended by Chapter 201, Laws of Utah 1996

22 **26-25-2**, as last amended by Chapter 201, Laws of Utah 1996

23 **32A-1-401**, as last amended by Chapter 341, Laws of Utah 2001

24 **41-6-44**, as last amended by Chapters 8, 54 and 106, Laws of Utah 2002

25 **51-2-1**, as last amended by Chapter 254, Laws of Utah 1998

26 **53-3-231**, as last amended by Chapters 185 and 200, Laws of Utah 2002

27 **53-10-208.1**, as enacted by Chapters 218 and 303, Laws of Utah 2000



28 **53-13-105**, as last amended by Chapter 79, Laws of Utah 2002
29 **53A-1-403**, as last amended by Chapter 318, Laws of Utah 1996
30 **53A-13-102**, as last amended by Chapter 64, Laws of Utah 1997
31 **58-17a-801**, as enacted by Chapter 247, Laws of Utah 1996
32 **58-31b-401**, as last amended by Chapter 290, Laws of Utah 2002
33 **58-67-601**, as last amended by Chapter 39, Laws of Utah 1998
34 **58-68-601**, as enacted by Chapter 248, Laws of Utah 1996
35 **58-69-601**, as enacted by Chapter 116, Laws of Utah 1996
36 **58-71-601**, as last amended by Chapter 185, Laws of Utah 2002
37 **62A-1-105**, as last amended by Chapter 69, Laws of Utah 1999
38 **62A-1-111**, as last amended by Chapter 73, Laws of Utah 2001
39 **62A-3-101**, as last amended by Chapter 254, Laws of Utah 1998
40 **62A-5a-102**, as last amended by Chapter 179, Laws of Utah 1996
41 **62A-5a-103**, as last amended by Chapter 276, Laws of Utah 1997
42 **62A-7-401**, as last amended by Chapter 13, Laws of Utah 1998
43 **62A-13-105**, as enacted by Chapter 158, Laws of Utah 1994
44 **62A-14-106**, as enacted by Chapter 69, Laws of Utah 1999
45 **63-25a-201**, as last amended by Chapter 115, Laws of Utah 2002
46 **63-38-2**, as last amended by Chapter 376, Laws of Utah 2001
47 **63-46b-1**, as last amended by Chapter 163, Laws of Utah 2002
48 **63-63a-7**, as last amended by Chapter 156, Laws of Utah 1993
49 **63-75-5**, as last amended by Chapters 27 and 276, Laws of Utah 1997
50 **64-13-7.5**, as last amended by Chapter 224, Laws of Utah 1996
51 **76-5-412**, as enacted by Chapter 35, Laws of Utah 2001
52 **76-8-311.1**, as last amended by Chapter 323, Laws of Utah 2002
53 **76-8-311.3**, as last amended by Chapters 5, 97 and 197, Laws of Utah 1999
54 **76-10-1312**, as enacted by Chapter 179, Laws of Utah 1993
55 **77-15-5**, as last amended by Chapter 162, Laws of Utah 1994
56 **77-15-6**, as last amended by Chapter 162, Laws of Utah 1994
57 **77-16a-202**, as last amended by Chapter 209, Laws of Utah 2001
58 **77-16a-204**, as last amended by Chapter 88, Laws of Utah 2002

- 59 **77-16a-302**, as enacted by Chapter 171, Laws of Utah 1992
- 60 **77-18-1**, as last amended by Chapter 35, Laws of Utah 2002
- 61 **78-3a-104**, as last amended by Chapters 200 and 283, Laws of Utah 2002
- 62 **78-3a-118**, as last amended by Chapters 22 and 140, Laws of Utah 2002
- 63 **78-3a-119**, as last amended by Chapter 213, Laws of Utah 2001
- 64 **78-3a-121**, as renumbered and amended by Chapter 365, Laws of Utah 1997
- 65 **78-3a-209**, as enacted by Chapter 1, Laws of Utah 1996
- 66 **78-3a-910**, as enacted by Chapter 1 and last amended by Chapter 318, Laws of Utah 1996

67 ENACTS:

- 68 **62A-15-101**, Utah Code Annotated 1953

69 RENUMBERS AND AMENDS:

- 70 **62A-15-102**, (Renumbered from 62A-8-101, as last amended by Chapter 106, Laws of
- 71 Utah 1999)
- 72 **62A-15-103**, (Renumbered from 62A-8-103, as last amended by Chapter 256, Laws of
- 73 Utah 2002)
- 74 **62A-15-104**, (Renumbered from 62A-8-106, as last amended by Chapter 104, Laws of
- 75 Utah 1992)
- 76 **62A-15-105**, (Renumbered from 62A-8-107, as last amended by Chapter 334, Laws of
- 77 Utah 2000)
- 78 **62A-15-106**, (Renumbered from 62A-8-108, as last amended by Chapter 242, Laws of
- 79 Utah 1988)
- 80 **62A-15-107**, (Renumbered from 62A-8-104, as last amended by Chapter 106, Laws of
- 81 Utah 1999)
- 82 **62A-15-108**, (Renumbered from 62A-8-109, as last amended by Chapter 106, Laws of
- 83 Utah 1999)
- 84 **62A-15-109**, (Renumbered from 62A-8-110.1, as enacted by Chapter 106, Laws of Utah
- 85 1999)
- 86 **62A-15-110**, (Renumbered from 62A-8-110.5, as repealed and reenacted by Chapter 106,
- 87 Laws of Utah 1999)
- 88 **62A-15-111**, (Renumbered from 62A-8-110.7, as last amended by Chapter 30, Laws of
- 89 Utah 1992)

90 **62A-15-112**, (Renumbered from 62A-8-112, as last amended by Chapter 106, Laws of
91 Utah 1999)

92 **62A-15-201**, (Renumbered from 62A-8-201, as enacted by Chapter 1, Laws of Utah 1988)

93 **62A-15-202**, (Renumbered from 62A-8-202, as last amended by Chapter 1, Laws of Utah
94 1996)

95 **62A-15-203**, (Renumbered from 62A-8-203, as enacted by Chapter 1, Laws of Utah 1988)

96 **62A-15-204**, (Renumbered from 62A-8-204, as last amended by Chapters 10 and 365,
97 Laws of Utah 1997)

98 **62A-15-301**, (Renumbered from 62A-8-501, as enacted by Chapter 194, Laws of Utah
99 1988)

100 **62A-15-401**, (Renumbered from 62A-8-103.5, as last amended by Chapter 341, Laws of
101 Utah 2001)

102 **62A-15-501**, (Renumbered from 62A-8-301, as last amended by Chapter 76, Laws of Utah
103 1988)

104 **62A-15-502**, (Renumbered from 62A-8-302, as last amended by Chapter 68, Laws of Utah
105 1997)

106 **62A-15-503**, (Renumbered from 62A-8-303, as last amended by Chapter 76, Laws of Utah
107 1988)

108 **62A-15-504**, (Renumbered from 62A-8-304, as enacted by Chapter 1, Laws of Utah 1988)

109 **62A-15-601**, (Renumbered from 62A-12-201, as enacted by Chapter 1, Laws of Utah
110 1988)

111 **62A-15-602**, (Renumbered from 62A-12-202, as last amended by Chapter 285, Laws of
112 Utah 1993)

113 **62A-15-603**, (Renumbered from 62A-12-203, as last amended by Chapter 164, Laws of
114 Utah 1996)

115 **62A-15-604**, (Renumbered from 62A-12-204, as last amended by Chapter 256, Laws of
116 Utah 2002)

117 **62A-15-605**, (Renumbered from 62A-12-204.5, as last amended by Chapter 88, Laws of
118 Utah 2002)

119 **62A-15-605.5**, (Renumbered from 62A-12-204.6, as enacted by Chapter 88, Laws of Utah
120 2002)

121 **62A-15-606**, (Renumbered from 62A-12-205, as enacted by Chapter 1, Laws of Utah
122 1988)

123 **62A-15-607**, (Renumbered from 62A-12-206, as last amended by Chapter 258, Laws of
124 Utah 1995)

125 **62A-15-608**, (Renumbered from 62A-12-207, as last amended by Chapter 285, Laws of
126 Utah 1993)

127 **62A-15-609**, (Renumbered from 62A-12-208, as last amended by Chapter 231, Laws of
128 Utah 1992)

129 **62A-15-610**, (Renumbered from 62A-12-209, as last amended by Chapter 88, Laws of
130 Utah 2002)

131 **62A-15-611**, (Renumbered from 62A-12-209.5, as last amended by Chapter 238, Laws of
132 Utah 2002)

133 **62A-15-612**, (Renumbered from 62A-12-209.6, as enacted by Chapter 234, Laws of Utah
134 1996)

135 **62A-15-613**, (Renumbered from 62A-12-210, as last amended by Chapter 104, Laws of
136 Utah 1992)

137 **62A-15-614**, (Renumbered from 62A-12-212, as last amended by Chapter 161, Laws of
138 Utah 1989)

139 **62A-15-615**, (Renumbered from 62A-12-214, as last amended by Chapter 285, Laws of
140 Utah 1993)

141 **62A-15-616**, (Renumbered from 62A-12-215, as last amended by Chapter 12, Laws of
142 Utah 1994)

143 **62A-15-617**, (Renumbered from 62A-12-216, as enacted by Chapter 1, Laws of Utah
144 1988)

145 **62A-15-618**, (Renumbered from 62A-12-217, as last amended by Chapter 227, Laws of
146 Utah 1993)

147 **62A-15-619**, (Renumbered from 62A-12-219, as enacted by Chapter 1, Laws of Utah
148 1988)

149 **62A-15-620**, (Renumbered from 62A-12-222, as last amended by Chapter 285, Laws of
150 Utah 1993)

151 **62A-15-621**, (Renumbered from 62A-12-224, as last amended by Chapter 161, Laws of

152 Utah 1989)
153 **62A-15-622**, (Renumbered from 62A-12-225, as last amended by Chapter 285, Laws of
154 Utah 1993)
155 **62A-15-623**, (Renumbered from 62A-12-226, as last amended by Chapter 1, Laws of Utah
156 1989)
157 **62A-15-624**, (Renumbered from 62A-12-227, as enacted by Chapter 1, Laws of Utah
158 1988)
159 **62A-15-625**, (Renumbered from 62A-12-228, as last amended by Chapters 20 and 352,
160 Laws of Utah 1995)
161 **62A-15-626**, (Renumbered from 62A-12-229, as last amended by Chapter 365, Laws of
162 Utah 1997)
163 **62A-15-627**, (Renumbered from 62A-12-230, as last amended by Chapter 285, Laws of
164 Utah 1993)
165 **62A-15-628**, (Renumbered from 62A-12-231, as last amended by Chapter 285, Laws of
166 Utah 1993)
167 **62A-15-629**, (Renumbered from 62A-12-232, as last amended by Chapter 141, Laws of
168 Utah 1999)
169 **62A-15-630**, (Renumbered from 62A-12-233, as enacted by Chapter 151, Laws of Utah
170 1991)
171 **62A-15-631**, (Renumbered from 62A-12-234, as last amended by Chapter 285, Laws of
172 Utah 1993)
173 **62A-15-632**, (Renumbered from 62A-12-235, as last amended by Chapter 285, Laws of
174 Utah 1993)
175 **62A-15-633**, (Renumbered from 62A-12-236, as last amended by Chapter 161, Laws of
176 Utah 1989)
177 **62A-15-634**, (Renumbered from 62A-12-237, as last amended by Chapter 285, Laws of
178 Utah 1993)
179 **62A-15-635**, (Renumbered from 62A-12-238, as last amended by Chapter 285, Laws of
180 Utah 1993)
181 **62A-15-636**, (Renumbered from 62A-12-240, as last amended by Chapter 285, Laws of
182 Utah 1993)

- 183 **62A-15-637**, (Renumbered from 62A-12-241, as last amended by Chapter 285, Laws of
184 Utah 1993)
- 185 **62A-15-638**, (Renumbered from 62A-12-242, as last amended by Chapter 227, Laws of
186 Utah 1993)
- 187 **62A-15-639**, (Renumbered from 62A-12-243, as enacted by Chapter 1, Laws of Utah
188 1988)
- 189 **62A-15-640**, (Renumbered from 62A-12-244, as last amended by Chapter 161, Laws of
190 Utah 1989)
- 191 **62A-15-641**, (Renumbered from 62A-12-245, as last amended by Chapter 285, Laws of
192 Utah 1993)
- 193 **62A-15-642**, (Renumbered from 62A-12-246, as enacted by Chapter 1, Laws of Utah
194 1988)
- 195 **62A-15-643**, (Renumbered from 62A-12-247, as last amended by Chapters 218 and 303,
196 Laws of Utah 2000)
- 197 **62A-15-644**, (Renumbered from 62A-12-248, as last amended by Chapter 285, Laws of
198 Utah 1993)
- 199 **62A-15-645**, (Renumbered from 62A-12-249, as enacted by Chapter 1, Laws of Utah
200 1988)
- 201 **62A-15-646**, (Renumbered from 62A-12-250, as enacted by Chapter 1, Laws of Utah
202 1988)
- 203 **62A-15-647**, (Renumbered from 62A-12-252, as enacted by Chapter 1, Laws of Utah
204 1988)
- 205 **62A-15-701**, (Renumbered from 62A-12-280.1, as enacted by Chapter 234, Laws of Utah
206 1996)
- 207 **62A-15-702**, (Renumbered from 62A-12-281.1, as enacted by Chapter 234, Laws of Utah
208 1996)
- 209 **62A-15-703**, (Renumbered from 62A-12-282.1, as last amended by Chapter 1, Laws of
210 Utah 2000)
- 211 **62A-15-704**, (Renumbered from 62A-12-283.1, as last amended by Chapter 13, Laws of
212 Utah 1998)
- 213 **62A-15-705**, (Renumbered from 62A-12-283.2, as enacted by Chapter 234, Laws of Utah

214 1996)
215 **62A-15-706**, (Renumbered from 62A-12-283.3, as enacted by Chapter 234, Laws of Utah
216 1996)
217 **62A-15-707**, (Renumbered from 62A-12-284, as enacted by Chapter 234, Laws of Utah
218 1996)
219 **62A-15-708**, (Renumbered from 62A-12-285, as enacted by Chapter 234, Laws of Utah
220 1996)
221 **62A-15-709**, (Renumbered from 62A-12-286, as enacted by Chapter 234, Laws of Utah
222 1996)
223 **62A-15-710**, (Renumbered from 62A-12-287, as enacted by Chapter 234, Laws of Utah
224 1996)
225 **62A-15-711**, (Renumbered from 62A-12-288, as enacted by Chapter 234, Laws of Utah
226 1996)
227 **62A-15-712**, (Renumbered from 62A-12-289, as last amended by Chapter 106, Laws of
228 Utah 1999)
229 **62A-15-713**, (Renumbered from 62A-12-289.1, as enacted by Chapter 106, Laws of Utah
230 1999)
231 **62A-15-801**, (Renumbered from 62A-12-301, as enacted by Chapter 73, Laws of Utah
232 1989)
233 **62A-15-802**, (Renumbered from 62A-12-302, as enacted by Chapter 73, Laws of Utah
234 1989)
235 **62A-15-901**, (Renumbered from 62A-12-401, as last amended by Chapter 42, Laws of
236 Utah 1994)
237 **62A-15-902**, (Renumbered from 62A-12-402, as last amended by Chapter 42, Laws of
238 Utah 1994)
239 **62A-15-1001**, (Renumbered from 62A-12-501, as enacted by Chapter 111, Laws of Utah
240 1996)
241 **62A-15-1002**, (Renumbered from 62A-12-502, as enacted by Chapter 111, Laws of Utah
242 1996)
243 **62A-15-1003**, (Renumbered from 62A-12-503, as enacted by Chapter 111, Laws of Utah
244 1996)

245 **62A-15-1004**, (Renumbered from 62A-12-504, as enacted by Chapter 111, Laws of Utah
246 1996)

247 REPEALS:

248 **62A-12-101**, as last amended by Chapter 106, Laws of Utah 1999

249 **62A-12-102**, as last amended by Chapter 256, Laws of Utah 2002

250 **62A-12-102.5**, as last amended by Chapter 106, Laws of Utah 1999

251 **62A-12-103**, as last amended by Chapter 104, Laws of Utah 1992

252 **62A-12-104**, as last amended by Chapter 30, Laws of Utah 1992

253 **62A-12-105**, as last amended by Chapter 106, Laws of Utah 1999

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

255 Section 1. Section **17-50-318** is amended to read:

256 **17-50-318. Mental health and substance abuse services.**

257 Each county shall provide mental health and substance abuse services in accordance with
258 Title 62A, Chapter [~~12, Mental Health, and substance abuse services in accordance with Title 62A,~~
259 ~~Chapter 8,]~~ 15, Substance Abuse and Mental Health Act.

260 Section 2. Section **17A-3-602** is amended to read:

261 **17A-3-602. Local mental health authorities -- Responsibilities.**

262 (1) All county legislative bodies in this state are local mental health authorities. Within
263 legislative appropriations and county matching funds required by this section, under the policy
264 direction of the state Board of Substance Abuse and Mental Health Act and the administrative
265 direction of the Division of Substance Abuse and Mental Health within the Department of Human
266 Services, local mental health authorities shall provide mental health services to persons within
267 their respective counties. Two or more counties may join to provide mental health prevention and
268 treatment services.

269 (2) The legislative bodies may establish acceptable ways of apportioning the cost of mental
270 health services. Any agreement for joint mental health services may designate the treasurer of one
271 of the participating counties as the custodian of moneys available for those joint services, and that
272 the designated treasurer, or other disbursing officer, may make payments from those moneys for
273 such purposes upon audit of the appropriate auditing officer or officers representing the
274 participating counties. The agreement may provide for:

275 (a) joint operation of services and facilities or for operation of services and facilities under

276 contract by one participating local mental health authority for other participating local mental
277 health authorities; and

278 (b) allocation of appointments of members of the mental health advisory council between
279 or among participating counties.

280 (3) (a) All county legislative bodies, as local mental health authorities, are accountable to
281 the Department of Human Services, the Department of Health, and the state with regard to the use
282 of state and federal funds received from those departments for mental health services, regardless
283 of whether the services are provided by a private contract provider.

284 (b) A local mental health authority shall comply, and require compliance by its contract
285 provider, with all directives issued by the Department of Human Services and the Department of
286 Health regarding the use and expenditure of state and federal funds received from those
287 departments for the purpose of providing mental health programs and services. The Department
288 of Human Services and Department of Health shall ensure that those directives are not duplicative
289 or conflicting, and shall consult and coordinate with local mental health authorities with regard to
290 programs and services.

291 (4) Local mental health authorities shall:

292 (a) review and evaluate mental health needs and services;

293 (b) annually prepare and submit to the division a plan for mental health funding and
294 service delivery. The plan shall include services for adults, youth, and children, including, but not
295 limited to, the following:

296 (i) inpatient care and services;

297 (ii) residential care and services;

298 (iii) outpatient care and services;

299 (iv) 24-hour crisis care and services;

300 (v) psychotropic medication management;

301 (vi) psychosocial rehabilitation including vocational training and skills development;

302 (vii) case management;

303 (viii) community supports including in-home services, housing, family support services,
304 and respite services; and

305 (ix) consultation and education services, including but not limited to, case consultation,
306 collaboration with other service agencies, public education, and public information;

- 307 (c) establish and maintain, either directly or by contract, programs licensed under Title
308 62A, Chapter 2, Licensure of Programs and Facilities;
- 309 (d) appoint directly or by contract a full-time or part-time director for mental health
310 programs and prescribe his duties;
- 311 (e) provide input and comment on new and revised policies established by the state Board
312 of Substance Abuse and Mental Health;
- 313 (f) establish and require contract providers to establish administrative, clinical, personnel,
314 financial, and management policies regarding mental health services and facilities, in accordance
315 with the policies of the state Board of Substance Abuse and Mental Health~~[, the Division of Mental~~
316 ~~Health,]~~ and state and federal law;
- 317 (g) establish mechanisms allowing for direct citizen input;
- 318 (h) annually contract with the Division of Substance Abuse and Mental Health to provide
319 mental health programs and services in accordance with the provisions of Title 62A, Chapter [12,]
320 15, Substance Abuse and Mental Health Act;
- 321 (i) comply with all applicable state and federal statutes, policies, audit requirements,
322 contract requirements, and any directives resulting from those audits and contract requirements;
- 323 (j) provide funding equal to at least 20% of the state funds that it receives to fund services
324 described in the plan; and
- 325 (k) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal
326 Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act,
327 and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local
328 Entities~~[, and Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act]~~.
- 329 (5) Before disbursing any public funds, local mental health authorities shall require that
330 all entities that receive any public funds from a local mental health authority agree in writing that:
- 331 (a) the division may examine the entity's financial records;
- 332 (b) the county auditor may examine and audit the entity's financial records; and
- 333 (c) the entity will comply with the provisions of Subsection (3)(b).
- 334 (6) Local mental health authorities may receive property, grants, gifts, supplies, materials,
335 contributions, and any benefit derived therefrom, for mental health services. If those gifts are
336 conditioned upon their use for a specified service or program, they shall be so used.
- 337 (7) (a) For purposes of this section "public funds" means the same as that term is defined

338 in Section 17A-3-603.5.

339 (b) Nothing in this section limits or prohibits an organization exempt under Section
340 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any
341 financial arrangement that is otherwise lawful for that organization.

342 Section 3. Section **17A-3-606** is amended to read:

343 **17A-3-606. Contracts for mental health services provided by local mental health**
344 **authorities.**

345 Where a local mental health authority has established a plan to provide services authorized
346 by this part, and those services meet standards fixed by rules of the board, the local mental health
347 authority may enter into a contract with the ~~[division for mental health services]~~ Division of
348 Substance Abuse and Mental Health to be furnished by that local mental health authority for an
349 agreed compensation to be paid by the division.

350 Section 4. Section **17A-3-701** is amended to read:

351 **17A-3-701. Local substance abuse authorities -- Responsibilities.**

352 (1) All county legislative bodies in this state are local substance abuse authorities. Within
353 legislative appropriations and county matching funds required by this section, and under the policy
354 direction of the state Board of Substance Abuse and Mental Health and the administrative direction
355 of the Division of Substance Abuse and Mental Health within the Department of Human Services,
356 local substance abuse authorities shall provide substance abuse services to residents of their
357 respective counties. Two or more counties may join to provide substance abuse prevention and
358 treatment services.

359 (2) The legislative bodies may establish acceptable ways of apportioning the cost of
360 substance abuse services. Any agreement for joint substance abuse services may designate the
361 treasurer of one of the participating counties as the custodian of moneys available for those joint
362 services, and that the designated treasurer, or other disbursing officer, may make payments from
363 those moneys for such purposes upon audit of the appropriate auditing officer or officers
364 representing the participating counties. The agreement may provide for joint operation of services
365 and facilities or for operation of services and facilities under contract by one participating local
366 substance abuse authority for other participating local substance abuse authorities.

367 (3) (a) All county legislative bodies, as local substance abuse authorities, are accountable
368 to the Department of Human Services, the Department of Health, and the state with regard to the

369 use of state and federal funds received from those departments for substance abuse services,
370 regardless of whether the services are provided by a private contract provider.

371 (b) A local substance abuse authority shall comply, and require compliance by its contract
372 provider, with all directives issued by the Department of Human Services and the Department of
373 Health regarding the use and expenditure of state and federal funds received from those
374 departments for the purpose of providing substance abuse programs and services. The Department
375 of Human Services and Department of Health shall ensure that those directives are not duplicative
376 or conflicting, and shall consult and coordinate with local substance abuse authorities with regard
377 to programs and services.

378 (4) Local substance abuse authorities shall:

379 (a) review and evaluate substance abuse prevention and treatment needs and services;

380 (b) annually prepare and submit a plan to the division for funding and service delivery; the
381 plan shall include, but is not limited to, primary prevention, targeted prevention, early intervention,
382 and treatment services;

383 (c) establish and maintain, either directly or by contract, programs licensed under Title
384 62A, Chapter 2, Licensure of Programs and Facilities;

385 (d) appoint directly or by contract a full or part time director for substance abuse programs,
386 and prescribe his duties;

387 (e) provide input and comment on new and revised policies established by the state Board
388 of Substance Abuse and Mental Health;

389 (f) establish and require contract providers to establish administrative, clinical, personnel,
390 financial, and management policies regarding substance abuse services and facilities, in accordance
391 with the policies of the state Board of Substance Abuse and Mental Health, and state and federal
392 law;

393 (g) establish mechanisms allowing for direct citizen input;

394 (h) annually contract with the Division of Substance Abuse and Mental Health to provide
395 substance abuse programs and services in accordance with the provisions of Title 62A, Chapter
396 [8] 15, Substance Abuse and Mental Health Act;

397 (i) comply with all applicable state and federal statutes, policies, audit requirements,
398 contract requirements, and any directives resulting from those audits and contract requirements;

399 (j) promote or establish programs for the prevention of substance abuse within the

400 community setting through community-based prevention programs;

401 (k) provide funding equal to at least 20% of the state funds that it receives to fund services
402 described in the plan;

403 (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal
404 Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act,
405 and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local
406 Entities[, ~~and Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act~~];

407 (m) for persons convicted of driving under the influence in violation of Subsection
408 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:

409 (i) a screening and assessment;

410 (ii) an educational series; and

411 (iii) substance abuse treatment; and

412 (n) utilize proceeds of the accounts described in Subsection [~~62A-8-303~~] 62A-15-503(1)
413 to supplement the cost of providing the services described in Subsection (4)(m).

414 (5) Before disbursing any public funds, local substance abuse authorities shall require that
415 all entities that receive any public funds from a local substance abuse authority agree in writing
416 that:

417 (a) the division may examine the entity's financial records;

418 (b) the county auditor may examine and audit the entity's financial records; and

419 (c) the entity will comply with the provisions of Subsection (3)(b).

420 (6) Local substance abuse authorities may receive property, grants, gifts, supplies,
421 materials, contributions, and any benefit derived therefrom, for substance abuse services. If those
422 gifts are conditioned upon their use for a specified service or program, they shall be so used.

423 (7) (a) For purposes of this section "public funds" means the same as that term is defined
424 in Section 17A-3-703.

425 (b) Nothing in this section limits or prohibits an organization exempt under Section
426 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any
427 financial arrangement that is otherwise lawful for that organization.

428 Section 5. Section **26-8a-601** is amended to read:

429 **26-8a-601. Persons and activities exempt from civil liability.**

430 (1) A licensed physician, physician's assistant, or licensed registered nurse who,

431 gratuitously and in good faith, gives oral or written instructions to an individual certified under
432 Section 26-8a-302 or a person permitted to use a fully automated external defibrillator because of
433 Section 26-8a-308 is not liable for any civil damages as a result of issuing the instructions, unless
434 the instructions given were the result of gross negligence or willful misconduct.

435 (2) An individual certified under Section 26-8a-302, during either training or after
436 certification, a licensed physician, physician's assistant, or a registered nurse who, gratuitously and
437 in good faith, provides emergency medical instructions or renders emergency medical care
438 authorized by this chapter is not liable for any civil damages as a result of any act or omission in
439 providing the emergency medical instructions or medical care, unless the act or omission is the
440 result of gross negligence or willful misconduct.

441 (3) An individual certified under Section 26-8a-302 is not subject to civil liability for
442 failure to obtain consent in rendering emergency medical services authorized by this chapter to any
443 individual who is unable to give his consent, regardless of the individual's age, where there is no
444 other person present legally authorized to consent to emergency medical care, provided that the
445 certified individual acted in good faith.

446 (4) A principal, agent, contractor, employee, or representative of an agency, organization,
447 institution, corporation, or entity of state or local government that sponsors, authorizes, supports,
448 finances, or supervises any functions of an individual certified under Section 26-8a-302 is not
449 liable for any civil damages for any act or omission in connection with such sponsorship,
450 authorization, support, finance, or supervision of the certified individual where the act or omission
451 occurs in connection with the certified individual's training or occurs outside a hospital where the
452 life of a patient is in immediate danger, unless the act or omission is inconsistent with the training
453 of the certified individual, and unless the act or omission is the result of gross negligence or willful
454 misconduct.

455 (5) A physician who gratuitously and in good faith arranges for, requests, recommends,
456 or initiates the transfer of a patient from a hospital to a critical care unit in another hospital is not
457 liable for any civil damages as a result of such transfer where:

458 (a) sound medical judgment indicates that the patient's medical condition is beyond the
459 care capability of the transferring hospital or the medical community in which that hospital is
460 located; and

461 (b) the physician has secured an agreement from the receiving facility to accept and render

462 necessary treatment to the patient.

463 (6) A person who is a registered member of the National Ski Patrol System (NSPS) or a
464 member of a ski patrol who has completed a course in winter emergency care offered by the NSPS
465 combined with CPR for medical technicians offered by the American Red Cross or American
466 Heart Association, or an equivalent course of instruction, and who in good faith renders emergency
467 care in the course of ski patrol duties is not liable for civil damages as a result of any act or
468 omission in rendering the emergency care, unless the act or omission is the result of gross
469 negligence or willful misconduct.

470 (7) An emergency medical service provider who, in good faith, transports an individual
471 against his will but at the direction of a law enforcement officer pursuant to Section [~~62A-12-232~~]
472 62A-15-629 is not liable for civil damages for transporting the individual.

473 (8) A person who is permitted to use a fully automated external defibrillator because of
474 Section 26-8a-308 is not liable for civil damages as a result of any act or omission related to the
475 use of the defibrillator in providing emergency medical care gratuitously and in good faith to a
476 person who reasonably appears to be in cardiac arrest, unless the act or omission is the result of
477 gross negligence or wilful misconduct.

478 Section 6. Section **26-18-3.7** is amended to read:

479 **26-18-3.7. Prepaid health care delivery systems.**

480 (1) (a) Before July 1, 1996, the division shall submit to the Health Care Financing
481 Administration within the United States Department of Health and Human Services, an
482 amendment to the state's freedom of choice waiver. That amendment shall provide that the
483 following persons who are eligible for services under the state plan for medical assistance, who
484 reside in Salt Lake, Utah, Davis, or Weber counties, shall enroll in the recipient's choice of a health
485 care delivery system that meets the requirements of Subsection (2):

486 (i) by July 1, 1994, 40% of eligible persons;

487 (ii) by July 1, 1995, 65% of eligible persons; and

488 (iii) by July 1, 1996, 100% of eligible persons.

489 (b) The division may not enter into any agreements with mental health providers that
490 establish a prepaid capitated delivery system for mental health services that were not in existence
491 prior to July 1, 1993, until the application of the Utah Medicaid Hospital Provider Temporary
492 Assessment Act with regard to a specialty hospital as defined in Section 26-21-2 that may be

493 engaged exclusively in rendering psychiatric or other mental health treatment is repealed.

494 (c) The following are exempt from the requirements of Subsection (1)(a):

495 (i) persons who:

496 (A) receive medical assistance for the first time after July 1, 1996;

497 (B) have a mental illness, as that term is defined in Section [~~62A-12-202~~] 62A-15-602;

498 and

499 (C) are receiving treatment for that mental illness. The division, when appropriate, shall
500 enroll these persons in a health care delivery system that meets the requirements of this section;

501 (ii) persons who are institutionalized in a facility designated by the division as a nursing
502 facility or an intermediate care facility for the mentally retarded; or

503 (iii) persons with a health condition that requires specialized medical treatment that is not
504 available from a health care delivery system that meets the requirements of this section.

505 (2) In submitting the amendment to the state's freedom of choice waiver under Subsection
506 (1), the division shall ensure that the proposed health care delivery systems have at least the
507 following characteristics, so that the system:

508 (a) is financially at risk, for a specified continuum of health care services, for a defined
509 population, and has incentives to balance the patient's need for care against the need for cost
510 control;

511 (b) follows utilization and quality controls developed by the department;

512 (c) is encouraged to promote the health of patients through primary and preventive care;

513 (d) coordinates care to avoid unnecessary duplication and services;

514 (e) conserves health care resources; and

515 (f) if permissible under the waiver, utilizes private insurance plans including health
516 maintenance organizations and other private health care delivery organizations.

517 (3) Subsection (2) does not prevent the division from contracting with other health care
518 delivery organizations if the division determines that it is advantageous to do so.

519 (4) Health care delivery systems that meet the requirements of this section may provide
520 all services otherwise available under the state plan for medical assistance, except prescribed
521 drugs.

522 (5) The division shall periodically report to the Health and Human Services Interim
523 Committee regarding the development and implementation of the amendment to the state's

524 freedom of choice waiver required under this section.

525 Section 7. Section **26-25-1** is amended to read:

526 **26-25-1. Authority to provide data on treatment and condition of persons to**
527 **designated agencies -- Immunity from liability.**

528 (1) Any person, health facility, or other organization may, without incurring liability,
529 provide the following information to the persons and entities described in Subsection (2):

530 (a) information as determined by the state registrar of vital records appointed under Title
531 26, Chapter 2, Utah Vital Statistics Act;

532 (b) interviews;

533 (c) reports;

534 (d) statements;

535 (e) memoranda; and

536 (f) other data relating to the condition and treatment of any person.

537 (2) The information described in Subsection (1) may be provided to:

538 (a) the department and local health departments;

539 (b) the Division of Substance Abuse and Mental Health within the Department of Human
540 Services;

541 (c) scientific and health care research organizations affiliated with institutions of higher
542 education;

543 (d) the Utah Medical Association or any of its allied medical societies;

544 (e) peer review committees;

545 (f) professional review organizations;

546 (g) professional societies and associations; and

547 (h) any health facility's in-house staff committee for the uses described in Subsection (3).

548 (3) The information described in Subsection (1) may be provided for the following
549 purposes:

550 (a) study, with the purpose of reducing morbidity or mortality; or

551 (b) the evaluation and improvement of hospital and health care rendered by hospitals,
552 health facilities, or health care providers.

553 (4) Any person may, without incurring liability, provide information, interviews, reports,
554 statements, memoranda, or other information relating to the ethical conduct of any health care

555 provider to peer review committees, professional societies and associations, or any in-hospital staff
556 committee to be used for purposes of intraprofessional society or association discipline.

557 (5) No liability may arise against any person or organization as a result of:

558 (a) providing information or material authorized in this section;

559 (b) releasing or publishing findings and conclusions of groups referred to in this section
560 to advance health research and health education; or

561 (c) releasing or publishing a summary of these studies in accordance with this chapter.

562 (6) As used in this chapter:

563 (a) "health care provider" has the meaning set forth in Section 78-14-3; and

564 (b) "health care facility" has the meaning set forth in Section 26-21-2.

565 Section 8. Section **26-25-2** is amended to read:

566 **26-25-2. Restrictions on use of data.**

567 The Division of Substance Abuse and Mental Health within the Department of Human
568 Services, scientific and health care research organizations affiliated with institutions of higher
569 education, the Utah Medical Association or any of its allied medical societies, peer review
570 committees, professional review organizations, professional societies and associations, or any
571 health facility's in-house staff committee may only use or publish the material received or gathered
572 under Section 26-25-1 for the purpose of advancing medical research or medical education in the
573 interest of reducing morbidity or mortality, except that a summary of studies conducted in
574 accordance with Section 26-25-1 may be released by those groups for general publication.

575 Section 9. Section **32A-1-401** is amended to read:

576 **32A-1-401. Alcohol training and education -- Revocation or suspension of licenses.**

577 (1) The commission may revoke, suspend, withhold, or not renew the license of any new
578 or renewing licensee if any of the following persons, as defined in Section [~~62A-8-103.5~~]

579 62A-15-401, fail to complete the seminar required in Section [~~62A-8-103.5~~] 62A-15-401:

580 (a) a person who manages operations at the premises of the licensee;

581 (b) a person who supervises the serving of alcoholic beverages to a customer for
582 consumption on the premises of the licensee; or

583 (c) a person who serves alcoholic beverages to a customer for consumption on the
584 premises of the licensee.

585 (2) A city, town, or county in which an establishment conducts its business may revoke,

586 suspend, withhold, or not renew the business license of the establishment if any person described
587 in Subsection (1) fails to complete the seminar required in Section [~~62A-8-103.5~~] 62A-15-401.

588 Section 10. Section ~~41-6-44~~ is amended to read:

589 **41-6-44. Driving under the influence of alcohol, drugs, or a combination of both or**
590 **with specified or unsafe blood alcohol concentration -- Measurement of blood or breath**
591 **alcohol -- Criminal punishment -- Arrest without warrant -- Penalties -- Suspension or**
592 **revocation of license.**

593 (1) As used in this section:

594 (a) "conviction" means any conviction for a violation of:

595 (i) this section;

596 (ii) alcohol, any drug, or a combination of both-related reckless driving under Subsections
597 (9) and (10);

598 (iii) Section 41-6-44.6, driving with any measurable controlled substance that is taken
599 illegally in the body;

600 (iv) local ordinances similar to this section or alcohol, any drug, or a combination of
601 both-related reckless driving adopted in compliance with Section 41-6-43;

602 (v) automobile homicide under Section 76-5-207; or

603 (vi) a violation described in Subsections (1)(a)(i) through (v), which judgment of
604 conviction is reduced under Section 76-3-402; or

605 (vii) statutes or ordinances in effect in any other state, the United States, or any district,
606 possession, or territory of the United States which would constitute a violation of this section or
607 alcohol, any drug, or a combination of both-related reckless driving if committed in this state,
608 including punishments administered under 10 U.S.C. Sec. 815;

609 (b) "educational series" means an educational series obtained at a substance abuse program
610 that is approved by the Board of Substance Abuse and Mental Health in accordance with Section
611 [~~62A-8-107~~] 62A-15-105;

612 (c) "screening and assessment" means a substance abuse addiction and dependency
613 screening and assessment obtained at a substance abuse program that is approved by the Board of
614 Substance Abuse and Mental Health in accordance with Section [~~62A-8-107~~] 62A-15-105;

615 (d) "serious bodily injury" means bodily injury that creates or causes serious permanent
616 disfigurement, protracted loss or impairment of the function of any bodily member or organ, or

617 creates a substantial risk of death;

618 (e) "substance abuse treatment" means treatment obtained at a substance abuse program
619 that is approved by the Board of Substance Abuse and Mental Health in accordance with Section
620 [~~62A-8-107~~] 62A-15-105;

621 (f) "substance abuse treatment program" means a state licensed substance abuse program;

622 (g) a violation of this section includes a violation under a local ordinance similar to this
623 section adopted in compliance with Section 41-6-43; and

624 (h) the standard of negligence is that of simple negligence, the failure to exercise that
625 degree of care that an ordinarily reasonable and prudent person exercises under like or similar
626 circumstances.

627 (2) (a) A person may not operate or be in actual physical control of a vehicle within this
628 state if the person:

629 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the person
630 has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

631 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and
632 any drug to a degree that renders the person incapable of safely operating a vehicle; or

633 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
634 operation or actual physical control.

635 (b) The fact that a person charged with violating this section is or has been legally entitled
636 to use alcohol or a drug is not a defense against any charge of violating this section.

637 (c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100
638 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol
639 per 210 liters of breath.

640 (3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty
641 of a:

642 (i) class B misdemeanor; or

643 (ii) class A misdemeanor if the person:

644 (A) has also inflicted bodily injury upon another as a proximate result of having operated
645 the vehicle in a negligent manner;

646 (B) had a passenger under 16 years of age in the vehicle at the time of the offense; or

647 (C) was 21 years of age or older and had a passenger under 18 years of age in the vehicle

648 at the time of the offense.

649 (b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony
650 if the person has also inflicted serious bodily injury upon another as a proximate result of having
651 operated the vehicle in a negligent manner.

652 (4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a
653 mandatory jail sentence of not less than 48 consecutive hours.

654 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:

655 (i) work in a compensatory-service work program for not less than 48 hours; or

656 (ii) participate in home confinement through the use of electronic monitoring in
657 accordance with Subsection (13).

658 (c) In addition to the jail sentence, compensatory-service work program, or home
659 confinement, the court shall:

660 (i) order the person to participate in a screening and assessment;

661 (ii) order the person to participate in an educational series if the court does not order
662 substance abuse treatment as described under Subsection (4)(d); and

663 (iii) impose a fine of not less than \$700.

664 (d) The court may order the person to obtain substance abuse treatment if the substance
665 abuse treatment program determines that substance abuse treatment is appropriate.

666 (e) (i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the
667 person in accordance with Subsection (14).

668 (ii) If there is admissible evidence that the person had a blood alcohol level of .16 or
669 higher, the court shall order probation for the person in accordance with Subsection (14).

670 (5) (a) If a person is convicted under Subsection (2) within ten years of a prior conviction
671 under this section, the court shall as part of any sentence impose a mandatory jail sentence of not
672 less than 240 consecutive hours.

673 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:

674 (i) work in a compensatory-service work program for not less than 240 hours; or

675 (ii) participate in home confinement through the use of electronic monitoring in
676 accordance with Subsection (13).

677 (c) In addition to the jail sentence, compensatory-service work program, or home
678 confinement, the court shall:

- 679 (i) order the person to participate in a screening and assessment;
- 680 (ii) order the person to participate in an educational series if the court does not order
681 substance abuse treatment as described under Subsection (5)(d); and
- 682 (iii) impose a fine of not less than \$800.
- 683 (d) The court may order the person to obtain substance abuse treatment if the substance
684 abuse treatment program determines that substance abuse treatment is appropriate.
- 685 (e) The court shall order probation for the person in accordance with Subsection (14).
- 686 (6) (a) A conviction for a violation of Subsection (2) is a third degree felony if it is:
- 687 (i) a third or subsequent conviction under this section within ten years of two or more prior
688 convictions; or
- 689 (ii) at any time after a conviction of:
- 690 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or
- 691 (B) a felony violation under this section that is committed after July 1, 2001.
- 692 (b) Any conviction described in this Subsection (6) which judgment of conviction is
693 reduced under Section 76-3-402 is a conviction for purposes of this section.
- 694 (c) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison
695 sentence and places the defendant on probation the court shall impose:
- 696 (i) a fine of not less than \$1,500; and
- 697 (ii) a mandatory jail sentence of not less than 1,500 hours.
- 698 (d) For Subsection (6)(a) or (c), the court shall impose an order requiring the person to
699 obtain a screening and assessment and substance abuse treatment at a substance abuse treatment
700 program providing intensive care or inpatient treatment and long-term closely supervised
701 follow-through after treatment for not less than 240 hours.
- 702 (e) In addition to the penalties required under Subsection (6)(c), if the court orders
703 probation, the probation shall be supervised probation which may include requiring the person to
704 participate in home confinement through the use of electronic monitoring in accordance with
705 Subsection (13).
- 706 (7) The mandatory portion of any sentence required under this section may not be
707 suspended and the convicted person is not eligible for parole or probation until any sentence
708 imposed under this section has been served. Probation or parole resulting from a conviction for
709 a violation under this section may not be terminated.

710 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to
711 order a convicted person to: participate in a screening and assessment; and an educational series;
712 obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance
713 abuse treatment; or do a combination of those things, apply to a conviction for a violation of
714 Section 41-6-44.6 or 41-6-45 under Subsection (9).

715 (ii) The court shall render the same order regarding screening and assessment, an
716 educational series, or substance abuse treatment in connection with a first, second, or subsequent
717 conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in
718 connection with applying respectively, the first, second, or subsequent conviction requirements of
719 Subsections (4), (5), and (6).

720 (b) The court shall notify the Driver License Division if a person fails to:

721 (i) complete all court ordered:

722 (A) screening and assessment;

723 (B) educational series;

724 (C) substance abuse treatment; and

725 (D) hours of work in compensatory-service work program; or

726 (ii) pay all fines and fees, including fees for restitution and treatment costs. Upon
727 receiving the notification, the division shall suspend the person's driving privilege in accordance
728 with Subsections 53-3-221(2) and (3).

729 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
730 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
731 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section,
732 the prosecution shall state for the record a factual basis for the plea, including whether or not there
733 had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection
734 with the violation.

735 (ii) The statement is an offer of proof of the facts that shows whether there was
736 consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the
737 violation.

738 (b) The court shall advise the defendant before accepting the plea offered under this
739 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

740 (c) The court shall notify the Driver License Division of each conviction of Section

741 41-6-44.6 or 41-6-45 entered under this Subsection (9).

742 (10) A peace officer may, without a warrant, arrest a person for a violation of this section
743 when the officer has probable cause to believe the violation has occurred, although not in his
744 presence, and if the officer has probable cause to believe that the violation was committed by the
745 person.

746 (11) (a) The Driver License Division shall:

747 (i) suspend for 90 days the operator's license of a person convicted for the first time under
748 Subsection (2);

749 (ii) revoke for one year the license of a person convicted of any subsequent offense under
750 Subsection (2) or if the person has a prior conviction as defined under Subsection (1) if the
751 violation is committed within a period of ten years from the date of the prior violation; and

752 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
753 (12).

754 (b) The Driver License Division shall subtract from any suspension or revocation period
755 the number of days for which a license was previously suspended under Section 53-3-223 or
756 53-3-231, if the previous suspension was based on the same occurrence upon which the record of
757 conviction is based.

758 (12) (a) In addition to any other penalties provided in this section, a court may order the
759 operator's license of a person who is convicted of a violation of Subsection (2) to be suspended
760 or revoked for an additional period of 90 days, 180 days, one year, or two years to remove from
761 the highways those persons who have shown they are safety hazards.

762 (b) If the court suspends or revokes the person's license under this Subsection (12)(b), the
763 court shall prepare and send to the Driver License Division an order to suspend or revoke that
764 person's driving privileges for a specified period of time.

765 (13) (a) If the court orders a person to participate in home confinement through the use of
766 electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation
767 monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

768 (b) The electronic monitoring device shall be used under conditions which require:

769 (i) the person to wear an electronic monitoring device at all times;

770 (ii) that a device be placed in the home or other specified location of the person, so that
771 the person's compliance with the court's order may be monitored; and

772 (iii) the person to pay the costs of the electronic monitoring.

773 (c) The court shall order the appropriate entity described in Subsection (13)(e) to place an
774 electronic monitoring device on the person and install electronic monitoring equipment in the
775 residence of the person or other specified location.

776 (d) The court may:

777 (i) require the person's electronic home monitoring device to include a substance abuse
778 testing instrument;

779 (ii) restrict the amount of alcohol the person may consume during the time the person is
780 subject to home confinement;

781 (iii) set specific time and location conditions that allow the person to attend school
782 educational classes, or employment and to travel directly between those activities and the person's
783 home; and

784 (iv) waive all or part of the costs associated with home confinement if the person is
785 determined to be indigent by the court.

786 (e) The electronic monitoring described in this section may either be administered directly
787 by the appropriate corrections agency, probation monitoring agency, or by contract with a private
788 provider.

789 (f) The electronic monitoring provider shall cover the costs of waivers by the court under
790 Subsection (13)(c)(iv).

791 (14) (a) If supervised probation is ordered under Section 41-6-44.6 or Subsection (4)(e)
792 or (5)(e):

793 (i) the court shall specify the period of the probation;

794 (ii) the person shall pay all of the costs of the probation; and

795 (iii) the court may order any other conditions of the probation.

796 (b) The court shall provide the probation described in this section by contract with a
797 probation monitoring agency or a private probation provider.

798 (c) The probation provider described in Subsection (14)(b) shall monitor the person's
799 compliance with all conditions of the person's sentence, conditions of probation, and court orders
800 received under this article and shall notify the court of any failure to comply with or complete that
801 sentence or those conditions or orders.

802 (d) (i) The court may waive all or part of the costs associated with probation if the person

803 is determined to be indigent by the court.

804 (ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers
805 by the court under Subsection (14)(d)(i).

806 (15) If a person is convicted of a violation of Subsection (2) and there is admissible
807 evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

808 (a) treatment as described under Subsection (4)(d), (5)(d), or (6)(d), then the court shall
809 enter the reasons on the record; and

810 (b) the following penalties, the court shall enter the reasons on the record:

811 (i) the installation of an ignition interlock system as a condition of probation for the person
812 in accordance with Section 41-6-44.7; or

813 (ii) the imposition of home confinement through the use of electronic monitoring in
814 accordance with Subsection (13).

815 Section 11. Section **51-2-1** is amended to read:

816 **51-2-1. Audits of political subdivisions, interlocal organizations, and other local**
817 **entities required.**

818 (1) (a) Each of the following entities, except as exempted under Section 51-2-8, shall cause
819 an audit to be made of its accounts by a competent certified public accountant:

820 (i) the governing board of each political subdivision;

821 (ii) the governing board of each interlocal organization having the power to tax or to
822 expend public funds;

823 (iii) the governing board of any local mental health authority established under the
824 authority of Title 62A, Chapter ~~[12]~~ 15, Substance Abuse and Mental Health Act;

825 (iv) the governing board of any substance abuse authority established under the authority
826 of Title 62A, Chapter ~~[8]~~ 15, Substance Abuse and Mental Health Act;

827 (v) the governing board of any area agency established under the authority of Title 62A,
828 Chapter 3, Aging and Adult Services;

829 (vi) the governing board of any nonprofit corporation that receives at least 50% of its funds
830 from federal, state, and local government entities through contracts; and

831 (vii) the governing board of any other entity established by a local governmental unit that
832 receives tax exempt status for bonding or taxing purposes.

833 (b) In municipalities organized under an optional form of municipal government, the

834 council shall cause the audit to be made.

835 (c) The audit shall be made at least annually.

836 (2) The auditors shall review the accounts of all officers of the entity having responsibility
837 for the care, management, collection, or disbursement of moneys belonging to it or appropriated
838 by law or otherwise acquired for its use or benefit.

839 (3) The audits shall:

840 (a) be performed and financial statements presented in accordance with generally accepted
841 auditing standards and accounting principles and procedures adopted by recognized authoritative
842 bodies; and

843 (b) conform to the uniform classification of accounts established or approved by the state
844 auditor or any other classification of accounts established by any federal government agency.

845 (4) If the political subdivision, interlocal organization, or other local entity receives federal
846 funding, the audits shall be performed in accordance with both federal and state auditing
847 requirements.

848 Section 12. Section **53-3-231** is amended to read:

849 **53-3-231. Person under 21 may not operate vehicle or motorboat with detectable**
850 **alcohol in body -- Chemical test procedures -- Temporary license -- Hearing and decision --**
851 **Suspension of license or operating privilege -- Fees -- Judicial review -- Referral to local**
852 **substance abuse authority or program.**

853 (1) (a) As used in this section:

854 (i) "Local substance abuse authority" has the same meaning as provided in Section
855 [~~62A-8-101~~] 62A-15-102.

856 (ii) "Substance abuse program" means any substance abuse program licensed by the
857 Department of Human Services or the Department of Health and approved by the local substance
858 abuse authority.

859 (b) Calculations of blood, breath, or urine alcohol concentration under this section shall
860 be made in accordance with the procedures in Subsection 41-6-44(2).

861 (2) (a) A person younger than 21 years of age may not operate or be in actual physical
862 control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol concentration
863 in his body as shown by a chemical test.

864 (b) (i) A person with a valid operator license who violates Subsection (2)(a), in addition

865 to any other applicable penalties arising out of the incident, shall have his operator license denied
866 or suspended as provided in Subsection (2)(b)(ii).

867 (ii) (A) For a first offense under Subsection (2)(a), the Driver License Division of the
868 Department of Public Safety shall deny the person's operator license if ordered or not challenged
869 under this section for a period of 90 days beginning on the 30th day after the date of the arrest
870 under Section 32A-12-209.

871 (B) For a second or subsequent offense under Subsection (2)(a), within three years of a
872 prior denial or suspension, the Driver License Division shall suspend the person's operator license
873 for a period of one year beginning on the 30th day after the date of arrest.

874 (c) (i) A person who has not been issued an operator license who violates Subsection
875 (2)(a), in addition to any other penalties arising out of the incident, shall be punished as provided
876 in Subsection (2)(c)(ii).

877 (ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle
878 and the Driver License Division may not issue the person an operator license or learner's permit.

879 (3) (a) When a peace officer has reasonable grounds to believe that a person may be
880 violating or has violated Subsection (2), the peace officer may, in connection with arresting the
881 person for a violation of Section 32A-12-209, request that the person submit to a chemical test or
882 tests to be administered in compliance with the standards under Section 41-6-44.10.

883 (b) The peace officer shall advise a person prior to the person's submission to a chemical
884 test that a test result indicating a violation of Subsection (2)(a) will result in denial or suspension
885 of the person's license to operate a motor vehicle or a refusal to issue a license.

886 (c) If the person submits to a chemical test and the test results indicate a blood, breath, or
887 urine alcohol content in violation of Subsection (2)(a), or if the officer makes a determination,
888 based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the
889 officer directing administration of the test or making the determination shall serve on the person,
890 on behalf of the Driver License Division, immediate notice of the Driver License Division's
891 intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license
892 under Subsection (2).

893 (4) When the officer serves immediate notice on behalf of the Driver License Division,
894 he shall:

895 (a) take the Utah license certificate or permit, if any, of the operator;

896 (b) issue a temporary license certificate effective for only 29 days if the driver had a valid
897 operator's license; and

898 (c) supply to the operator, in a manner specified by the division, basic information
899 regarding how to obtain a prompt hearing before the Driver License Division.

900 (5) A citation issued by the officer may, if approved as to form by the Driver License
901 Division, serve also as the temporary license certificate under Subsection (4)(b).

902 (6) As a matter of procedure, the peace officer serving the notice shall send to the Driver
903 License Division within ten calendar days after the date of arrest and service of the notice:

904 (a) the person's driver license certificate, if any;

905 (b) a copy of the citation issued for the offense;

906 (c) a signed report in a manner specified by the Driver License Division indicating the
907 chemical test results, if any; and

908 (d) any other basis for the officer's determination that the person has violated Subsection
909 (2).

910 (7) (a) (i) Upon request in a manner specified by the division, the Driver License Division
911 shall grant to the person an opportunity to be heard within 29 days after the date of arrest under
912 Section 32A-12-209.

913 (ii) The request shall be made within ten calendar days of the date of the arrest.

914 (b) A hearing, if held, shall be before the Driver License Division in the county in which
915 the arrest occurred, unless the Driver License Division and the person agree that the hearing may
916 be held in some other county.

917 (c) The hearing shall be documented and shall cover the issues of:

918 (i) whether a peace officer had reasonable grounds to believe the person was operating a
919 motor vehicle or motorboat in violation of Subsection (2)(a);

920 (ii) whether the person refused to submit to the test; and

921 (iii) the test results, if any.

922 (d) In connection with a hearing the Driver License Division or its authorized agent may
923 administer oaths and may issue subpoenas for the attendance of witnesses and the production of
924 relevant books and papers and records as defined in Section 46-4-102.

925 (e) One or more members of the Driver License Division may conduct the hearing.

926 (f) Any decision made after a hearing before any number of the members of the Driver

927 License Division is as valid as if made after a hearing before the full membership of the Driver
928 License Division.

929 (g) After the hearing, the Driver License Division shall order whether the person:

930 (i) with a valid license to operate a motor vehicle will have his license denied or not or
931 suspended or not; or

932 (ii) without a valid operator license will be refused a license under Subsection (2)(c).

933 (h) If the person for whom the hearing is held fails to appear before the Driver License
934 Division as required in the notice, the division shall order whether the person shall have his license
935 denied, suspended, or not denied or suspended, or whether an operator license will be refused or
936 not refused.

937 (8) (a) Following denial or suspension the Driver License Division shall assess against a
938 person, in addition to any fee imposed under Subsection 53-3-205(13), a fee under Section
939 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover
940 administrative costs. This fee shall be canceled if the person obtains an unappealed Driver License
941 Division hearing or court decision that the suspension was not proper.

942 (b) A person whose operator license has been denied, suspended, or postponed by the
943 Driver License Division under this section may file a petition within 30 days after the suspension
944 for a hearing on the matter which, if held, is governed by Section 53-3-224.

945 (9) After reinstatement of an operator license for a first offense under this section, a report
946 authorized under Section 53-3-104 may not contain evidence of the denial or suspension of the
947 person's operator license under this section if he has not been convicted of any other offense for
948 which the denial or suspension may be extended.

949 (10) (a) In addition to the penalties in Subsection (2), a person who violates Subsection
950 (2)(a) shall:

951 (i) obtain an assessment and recommendation for appropriate action from a substance
952 abuse program, but any associated costs shall be the person's responsibility; or

953 (ii) be referred by the Driver License Division to the local substance abuse authority for
954 an assessment and recommendation for appropriate action.

955 (b) (i) Reinstatement of the person's operator license or the right to obtain an operator
956 license is contingent upon successful completion of the action recommended by the local substance
957 abuse authority or the substance abuse program.

958 (ii) The local substance abuse authority's or the substance abuse program's recommended
959 action shall be determined by an assessment of the person's alcohol abuse and may include:

960 (A) a targeted education and prevention program;

961 (B) an early intervention program; or

962 (C) a substance abuse treatment program.

963 (iii) Successful completion of the recommended action shall be determined by standards
964 established by the Division of Substance Abuse and Mental Health.

965 (c) At the conclusion of the penalty period imposed under Subsection (2), the local
966 substance abuse authority or the substance abuse program shall notify the Driver License Division
967 of the person's status regarding completion of the recommended action.

968 (d) The local substance abuse authorities and the substance abuse programs shall cooperate
969 with the Driver License Division in:

970 (i) conducting the assessments;

971 (ii) making appropriate recommendations for action; and

972 (iii) notifying the Driver License Division about the person's status regarding completion
973 of the recommended action.

974 (e) (i) The local substance abuse authority is responsible for the cost of the assessment of
975 the person's alcohol abuse, if the assessment is conducted by the local substance abuse authority.

976 (ii) The local substance abuse authority or a substance abuse program selected by a person
977 is responsible for:

978 (A) conducting an assessment of the person's alcohol abuse; and

979 (B) for making a referral to an appropriate program on the basis of the findings of the
980 assessment.

981 (iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees
982 associated with the recommended program to which the person selected or is referred.

983 (B) The costs and fees under Subsection (10)(e)(iii)(A) shall be based on a sliding scale
984 consistent with the local substance abuse authority's policies and practices regarding fees for
985 services or determined by the substance abuse program.

986 Section 13. Section **53-10-208.1** is amended to read:

987 **53-10-208.1. Magistrates and court clerks to supply information.**

988 Every magistrate or clerk of a court responsible for court records in this state shall, within

- 989 30 days of the disposition and on forms and in the manner provided by the division, furnish the
990 division with information pertaining to:
- 991 (1) all dispositions of criminal matters, including:
- 992 (a) guilty pleas;
- 993 (b) convictions;
- 994 (c) dismissals;
- 995 (d) acquittals;
- 996 (e) pleas held in abeyance;
- 997 (f) judgments of not guilty by reason of insanity for a violation of:
- 998 (i) a felony offense;
- 999 (ii) Title 76, Chapter 5, Offenses Against the Person; or
- 1000 (iii) Title 76, Chapter 10, Part 5, Weapons;
- 1001 (g) judgments of guilty and mentally ill;
- 1002 (h) finding of mental incompetence to stand trial for a violation of:
- 1003 (i) a felony offense;
- 1004 (ii) Title 76, Chapter 5, Offenses Against the Person; or
- 1005 (iii) Title 76, Chapter 10, Part 5, Weapons; or
- 1006 (i) probations granted; and
- 1007 (2) orders of civil commitment under the terms of Section [~~62A-12-234~~] 62A-15-631;
- 1008 (3) the issuance, recall, cancellation, or modification of all warrants of arrest or
- 1009 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within
- 1010 one day of the action and in a manner provided by the division; and
- 1011 (4) protective orders issued after notice and hearing, pursuant to:
- 1012 (a) Title 30, Chapter 6, Cohabitant Abuse Act; or
- 1013 (b) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.
- 1014 Section 14. Section **53-13-105** is amended to read:
- 1015 **53-13-105. Special function officer.**
- 1016 (1) (a) "Special function officer" means a sworn and certified peace officer performing
- 1017 specialized investigations, service of legal process, security functions, or specialized ordinance,
- 1018 rule, or regulatory functions.
- 1019 (b) "Special function officer" includes:

- 1020 (i) state military police;
- 1021 (ii) constables;
- 1022 (iii) port-of-entry agents as defined in Section 72-1-102;
- 1023 (iv) authorized employees or agents of the Department of Transportation assigned to
1024 administer and enforce the provisions of Title 72, Chapter 9, Motor Carrier Safety Act;
- 1025 (v) school district security officers;
- 1026 (vi) Utah State Hospital security officers designated pursuant to Section [~~62A-12-203~~]
1027 62A-15-603;
- 1028 (vii) Utah State Developmental Center security officers designated pursuant to Subsection
1029 62A-5-206(9);
- 1030 (viii) fire arson investigators for any political subdivision of the state;
- 1031 (ix) ordinance enforcement officers employed by municipalities or counties may be special
1032 function officers;
- 1033 (x) employees of the Department of Natural Resources who have been designated to
1034 conduct supplemental enforcement functions as a collateral duty;
- 1035 (xi) railroad special agents deputized by a county sheriff under Section 17-30-2, or
1036 appointed pursuant to Section 56-1-21.5;
- 1037 (xii) auxiliary officers, as described by Section 53-13-112;
- 1038 (xiii) special agents, process servers, and investigators employed by city attorneys;
- 1039 (xiv) criminal tax investigators designated under Section 59-1-206; and
- 1040 (xv) all other persons designated by statute as having special function officer authority or
1041 limited peace officer authority.
- 1042 (2) (a) A special function officer may exercise that spectrum of peace officer authority that
1043 has been designated by statute to the employing agency, and only while on duty, and not for the
1044 purpose of general law enforcement.
- 1045 (b) If the special function officer is charged with security functions respecting facilities
1046 or property, the powers may be exercised only in connection with acts occurring on the property
1047 where the officer is employed or when required for the protection of the employer's interest,
1048 property, or employees.
- 1049 (c) A special function officer may carry firearms only while on duty, and only if authorized
1050 and under conditions specified by the officer's employer or chief administrator.

1051 (3) (a) A special function officer may not exercise the authority of a peace officer until:
1052 (i) the officer has satisfactorily completed an approved basic training program for special
1053 function officers as provided under Subsection (4); and
1054 (ii) the chief law enforcement officer or administrator has certified this fact to the director
1055 of the division.

1056 (b) City and county constables and their deputies shall certify their completion of training
1057 to the legislative governing body of the city or county they serve.

1058 (4) (a) The agency that the special function officer serves may establish and maintain a
1059 basic special function course and in-service training programs as approved by the director of the
1060 division with the advice and consent of the council.

1061 (b) The in-service training shall consist of no fewer than 40 hours per year and may be
1062 conducted by the agency's own staff or by other agencies.

1063 Section 15. Section **53A-1-403** is amended to read:

1064 **53A-1-403. Education of persons under 21 in custody of state agency --**

1065 **Establishment of coordinating council -- Advisory councils.**

1066 (1) The State Board of Education is directly responsible for the education of all persons
1067 under the age of 21 who are:

1068 (a) in the custody of the Department of Human Services;

1069 (b) in the custody of an equivalent agency of a Native American tribe recognized by the
1070 United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within
1071 the state; or

1072 (c) being held in a juvenile detention facility.

1073 (2) Subsection (1)(b) does not apply to persons taken into custody for the primary purpose
1074 of obtaining access to education programs provided for youth in custody.

1075 (3) The board shall, where feasible, contract with school districts or other appropriate
1076 agencies to provide educational, administrative, and supportive services, but the board shall retain
1077 responsibility for the programs.

1078 (4) The Legislature shall establish and maintain separate education budget categories for
1079 youth in custody who are under the jurisdiction of the following state agencies:

1080 (a) detention centers and the Divisions of Youth Corrections and Child and Family
1081 Services;

1082 (b) the Division of Substance Abuse and Mental Health; and

1083 (c) the Division of Services for People with Disabilities.

1084 (5) (a) The Department of Human Services and the State Board of Education shall appoint
1085 a coordinating council to plan, coordinate, and recommend budget, policy, and program guidelines
1086 for the education and treatment of persons in the custody of the Division of Youth Corrections and
1087 the Division of Child and Family Services.

1088 (b) The department and board may appoint similar councils for those in the custody of the
1089 Division of Substance Abuse and Mental Health or the Division of Services for People with
1090 Disabilities.

1091 (6) A school district contracting to provide services under Subsection (3) shall establish
1092 an advisory council to plan, coordinate, and review education and treatment programs for persons
1093 held in custody in the district.

1094 Section 16. Section **53A-13-102** is amended to read:

1095 **53A-13-102. Instruction on the harmful effects of alcohol, tobacco, and controlled**
1096 **substances -- Rulemaking authority -- Assistance from the Division of Substance Abuse and**
1097 **Mental Health.**

1098 (1) The State Board of Education shall adopt rules providing for instruction at each grade
1099 level on the harmful effects of alcohol, tobacco, and controlled substances upon the human body
1100 and society. The rules shall require but are not limited to instruction on the following:

1101 (a) teaching of skills needed to evaluate advertisements for, and media portrayal of,
1102 alcohol, tobacco, and controlled substances;

1103 (b) directing students towards healthy and productive alternatives to the use of alcohol,
1104 tobacco, and controlled substances; and

1105 (c) discouraging the use of alcohol, tobacco, and controlled substances.

1106 (2) At the request of the board, the Division of Substance Abuse and Mental Health shall
1107 cooperate with the board in developing programs to provide this instruction.

1108 (3) The board shall participate in efforts to enhance communication among community
1109 organizations and state agencies, and shall cooperate with those entities in efforts which are
1110 compatible with the purposes of this section.

1111 Section 17. Section **58-17a-801** is amended to read:

1112 **58-17a-801. Mentally incompetent or incapacitated pharmacist -- Division action and**

1113 **procedures.**

1114 (1) As used in this section:

1115 (a) "incapacitated person" has the same definition as in Section 75-1-201; and

1116 (b) "mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

1117 (2) If a court of competent jurisdiction determines a pharmacist is an incapacitated person,
1118 or that he is mentally ill and unable to safely engage in the practice of pharmacy, the director shall
1119 immediately suspend the license of the pharmacist upon the entry of the judgment of the court,
1120 without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act,
1121 regardless of whether an appeal from the court's ruling is pending. The director shall promptly
1122 notify the pharmacist, in writing, of the suspension.

1123 (3) (a) If the division and a majority of the board find reasonable cause to believe a
1124 pharmacist, who is not determined judicially to be an incapacitated person or to be mentally ill,
1125 is incapable of practicing pharmacy with reasonable skill regarding the safety of patients, because
1126 of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the
1127 board shall recommend that the director file a petition with the division, and cause the petition to
1128 be served upon the pharmacist with a notice of hearing on the sole issue of the capacity of the
1129 pharmacist to competently and safety engage in the practice of pharmacy.

1130 (b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b,
1131 Administrative Procedures Act, except as provided in this Subsection (3) [~~of this section~~].

1132 (4) (a) Every pharmacist who accepts the privilege of being licensed under this chapter
1133 gives consent to:

1134 (i) submitting at his own expense to an immediate mental or physical examination when
1135 directed in writing by the division, with the consent of a majority of the board, to do so; and

1136 (ii) the admissibility of the reports of the examining practitioner's testimony or
1137 examination in any proceeding regarding the license of the pharmacist, and waives all objections
1138 on the ground the reports constitute a privileged communication.

1139 (b) The examination may be ordered by the division, with the consent of a majority of the
1140 board, only upon a finding of reasonable cause to believe:

1141 (i) the pharmacist is mentally ill or incapacitated or otherwise unable to practice pharmacy
1142 with reasonable skill and safety; and

1143 (ii) immediate action by the division and the board is necessary to prevent harm to the

1144 pharmacist's patients or the general public.

1145 (c) (i) Failure of a pharmacist to submit to the examination ordered under this section is
1146 a ground for the division's immediate suspension of the pharmacist's license by written order of
1147 the director.

1148 (ii) The division may enter the order of suspension without further compliance with Title
1149 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to
1150 the examination ordered under this section was due to circumstances beyond the control of the
1151 pharmacist and was not related directly to the illness or incapacity of the pharmacist.

1152 (5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the right
1153 to a hearing to appeal the suspension within ten days after the license is suspended.

1154 (b) The hearing held under this subsection shall be conducted in accordance with Sections
1155 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the
1156 continuance of the order of suspension in order to prevent harm to the pharmacist's patients or the
1157 general public.

1158 (6) A pharmacist whose license is revoked, suspended, or in any way restricted under this
1159 section may request the division and the board to consider, at reasonable intervals, evidence
1160 presented by the pharmacist, under procedures established by division rule, regarding any change
1161 in the pharmacist's condition, to determine whether:

1162 (a) he is or is not able to safely and competently engage in the practice of pharmacy; and

1163 (b) he is qualified to have his licensure to practice under this chapter restored completely
1164 or in part.

1165 Section 18. Section **58-31b-401** is amended to read:

1166 **58-31b-401. Grounds for denial of licensure or registration and disciplinary**
1167 **proceedings.**

1168 (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license
1169 of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue
1170 a public or private reprimand to a licensee, and to issue cease and desist orders shall be in
1171 accordance with Section 58-1-401.

1172 (2) If a court of competent jurisdiction determines a nurse or health care assistant is an
1173 incapacitated person as defined in Section 75-1-201 or that he is mentally ill as defined in Section
1174 [~~62A-12-202~~] 62A-15-602, and unable to safely engage in the practice of nursing or the practice

1175 of a health care assistant, the director shall immediately suspend the license of the nurse or health
1176 care assistant upon the entry of the judgment of the court, without further proceedings under Title
1177 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's
1178 ruling is pending. The director shall promptly notify the nurse or health care assistant, in writing,
1179 of the suspension.

1180 (3) (a) If the division and the majority of the board find reasonable cause to believe a nurse
1181 or health care assistant, who is not determined judicially to be an incapacitated person or to be
1182 mentally ill, is incapable of practicing nursing or the practice of a health care assistant with
1183 reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or
1184 alcohol, or as a result of any mental or physical condition, the board shall recommend that the
1185 director file a petition with the division, and cause the petition to be served upon the nurse or
1186 health care assistant with a notice of hearing on the sole issue of the capacity of the nurse or health
1187 care assistant to competently, safely engage in the practice of nursing or the practice of a health
1188 care assistant.

1189 (b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b,
1190 Administrative Procedures Act, except as provided in Subsection (4).

1191 (4) (a) Every nurse or health care assistant who accepts the privilege of being licensed
1192 under this chapter gives consent to:

1193 (i) submitting to an immediate mental or physical examination, at the nurse's or health care
1194 assistant's expense and by a division-approved practitioner selected by the nurse or health care
1195 assistant, when directed in writing by the division and a majority of the board to do so; and

1196 (ii) the admissibility of the reports of the examining practitioner's testimony or
1197 examination, and waives all objections on the ground the reports constitute a privileged
1198 communication.

1199 (b) The examination may be ordered by the division, with the consent of a majority of the
1200 board, only upon a finding of reasonable cause to believe:

1201 (i) the nurse or health care assistant is mentally ill or incapacitated or otherwise unable to
1202 practice nursing or health care assistance with reasonable skill and safety; and

1203 (ii) immediate action by the division and the board is necessary to prevent harm to the
1204 nurse's or health care assistant's patients or the general public.

1205 (c) (i) Failure of a nurse or health care assistant to submit to the examination ordered under

1206 this section is a ground for the division's immediate suspension of the nurse's or health care
1207 assistant's license by written order of the director.

1208 (ii) The division may enter the order of suspension without further compliance with Title
1209 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to
1210 the examination ordered under this section was due to circumstances beyond the control of the
1211 nurse or health care assistant and was not related directly to the illness or incapacity of the nurse
1212 or health care assistant.

1213 (5) (a) A nurse or health care assistant whose license is suspended under Subsection (2),
1214 (3), or (4)(c) has the right to a hearing to appeal the suspension within ten days after the license
1215 is suspended.

1216 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
1217 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
1218 the continuance of the order of suspension in order to prevent harm to the nurse's or health care
1219 assistant's patients or the general public.

1220 (6) A nurse or health care assistant whose license is revoked, suspended, or in any way
1221 restricted under this section may request the division and the board to consider, at reasonable
1222 intervals, evidence presented by the nurse or health care assistant, under procedures established
1223 by division rule, regarding any change in the nurse's or health care assistant's condition, to
1224 determine whether:

1225 (a) he is or is not able to safely and competently engage in the practice of nursing or the
1226 practice of a health care assistant; and

1227 (b) he is qualified to have his license to practice under this chapter restored completely or
1228 in part.

1229 (7) Nothing in Section 63-2-206 may be construed as limiting the authority of the division
1230 to report current significant investigative information to the coordinated licensure information
1231 system for transmission to party states as required of the division by Article VII of the Nurse
1232 Licensure Compact in Section 58-31c-102.

1233 (8) For purposes of this section and Section 58-31b-402, "licensed" or "license" includes
1234 "registered" and "registration" under this chapter.

1235 Section 19. Section **58-67-601** is amended to read:

1236 **58-67-601. Mentally incompetent or incapacitated physician.**

1237 (1) As used in this section:

1238 (a) "Incapacitated person" has the same definition as in Section [~~75-5-303~~] 75-1-201.

1239 (b) "Mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

1240 (2) If a court of competent jurisdiction determines a physician is an incapacitated person
1241 or that he is mentally ill and unable to safely engage in the practice of medicine, the director shall
1242 immediately suspend the license of the physician upon the entry of the judgment of the court,
1243 without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act,
1244 regardless of whether an appeal from the court's ruling is pending. The director shall promptly
1245 notify the physician, in writing, of the suspension.

1246 (3) (a) If the division and a majority of the board find reasonable cause to believe a
1247 physician, who is not determined judicially to be an incapacitated person or to be mentally ill, is
1248 incapable of practicing medicine with reasonable skill regarding the safety of patients, because of
1249 illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the
1250 board shall recommend that the director file a petition with the division, and cause the petition to
1251 be served upon the physician with a notice of hearing on the sole issue of the capacity of the
1252 physician to competently and safely engage in the practice of medicine.

1253 (b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b,
1254 Administrative Procedures Act, except as provided in Subsection (4).

1255 (4) (a) Every physician who accepts the privilege of being licensed under this chapter gives
1256 consent to:

1257 (i) submitting at his own expense to an immediate mental or physical examination when
1258 directed in writing by the division and a majority of the board to do so; and

1259 (ii) the admissibility of the reports of the examining physician's testimony or examination,
1260 and waives all objections on the ground the reports constitute a privileged communication.

1261 (b) The examination may be ordered by the division, with the consent of a majority of the
1262 board, only upon a finding of reasonable cause to believe:

1263 (i) the physician is mentally ill or incapacitated or otherwise unable to practice medicine
1264 with reasonable skill and safety; and

1265 (ii) immediate action by the division and the board is necessary to prevent harm to the
1266 physician's patients or the general public.

1267 (c) (i) Failure of a physician to submit to the examination ordered under this section is a

1268 ground for the division's immediate suspension of the physician's license by written order of the
1269 director.

1270 (ii) The division may enter the order of suspension without further compliance with Title
1271 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to
1272 the examination ordered under this section was due to circumstances beyond the control of the
1273 physician and was not related directly to the illness or incapacity of the physician.

1274 (5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right
1275 to a hearing to appeal the suspension within ten days after the license is suspended.

1276 (b) The hearing held under this subsection shall be conducted in accordance with Sections
1277 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the
1278 continuance of the order of suspension in order to prevent harm to the physician's patients or the
1279 general public.

1280 (6) A physician whose license is revoked, suspended, or in any way restricted under this
1281 section may request the division and the board to consider, at reasonable intervals, evidence
1282 presented by the physician, under procedures established by division rule, regarding any change
1283 in the physician's condition, to determine whether:

1284 (a) he is or is not able to safely and competently engage in the practice of medicine; and

1285 (b) he is qualified to have his license to practice under this chapter restored completely or
1286 in part.

1287 Section 20. Section **58-68-601** is amended to read:

1288 **58-68-601. Mentally incompetent or incapacitated osteopathic physician.**

1289 (1) As used in this section:

1290 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

1291 (b) "Mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

1292 (2) If a court of competent jurisdiction determines an osteopathic physician and surgeon
1293 is an incapacitated person or that he is mentally ill and unable to safely engage in the practice of
1294 medicine, the director shall immediately suspend the license of the osteopathic physician and
1295 surgeon upon the entry of the judgment of the court, without further proceedings under Title 63,
1296 Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's
1297 ruling is pending. The director shall promptly notify the osteopathic physician and surgeon, in
1298 writing, of the suspension.

1299 (3) (a) If the division and a majority of the board find reasonable cause to believe an
1300 osteopathic physician and surgeon, who is not determined judicially to be an incapacitated person
1301 or to be mentally ill, is incapable of practicing osteopathic medicine with reasonable skill regarding
1302 the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any
1303 mental or physical condition, the board shall recommend that the director file a petition with the
1304 division, and cause the petition to be served upon the osteopathic physician and surgeon with a
1305 notice of hearing on the sole issue of the capacity of the osteopathic physician and surgeon to
1306 competently and safely engage in the practice of medicine.

1307 (b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b,
1308 Administrative Procedures Act, except as provided in Subsection (4).

1309 (4) (a) Every osteopathic physician and surgeon who accepts the privilege of being
1310 licensed under this chapter gives consent to:

1311 (i) submitting at his own expense to an immediate mental or physical examination when
1312 directed in writing by the division and a majority of the board to do so; and

1313 (ii) the admissibility of the reports of the examining physician's testimony or examination,
1314 and waives all objections on the ground the reports constitute a privileged communication.

1315 (b) The examination may be ordered by the division, with the consent of a majority of the
1316 board, only upon a finding of reasonable cause to believe:

1317 (i) the osteopathic physician and surgeon is mentally ill or incapacitated or otherwise
1318 unable to practice medicine with reasonable skill and safety; and

1319 (ii) immediate action by the division and the board is necessary to prevent harm to the
1320 osteopathic physician and surgeon's patients or the general public.

1321 (c) (i) Failure of an osteopathic physician and surgeon to submit to the examination
1322 ordered under this section is a ground for the division's immediate suspension of the osteopathic
1323 physician and surgeon's license by written order of the director.

1324 (ii) The division may enter the order of suspension without further compliance with Title
1325 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to
1326 the examination ordered under this section was due to circumstances beyond the control of the
1327 osteopathic physician and surgeon and was not related directly to the illness or incapacity of the
1328 osteopathic physician and surgeon.

1329 (5) (a) An osteopathic physician and surgeon whose license is suspended under Subsection

1330 (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is
1331 suspended.

1332 (b) The hearing held under this subsection shall be conducted in accordance with Sections
1333 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the
1334 continuance of the order of suspension in order to prevent harm to the osteopathic physician and
1335 surgeon's patients or the general public.

1336 (6) An osteopathic physician and surgeon whose license is revoked, suspended, or in any
1337 way restricted under this section may request the division and the board to consider, at reasonable
1338 intervals, evidence presented by the osteopathic physician and surgeon, under procedures
1339 established by division rule, regarding any change in the osteopathic physician and surgeon's
1340 condition, to determine whether:

1341 (a) he is or is not able to safely and competently engage in the practice of medicine; and

1342 (b) he is qualified to have his license to practice under this chapter restored completely or
1343 in part.

1344 Section 21. Section **58-69-601** is amended to read:

1345 **58-69-601. Mentally incompetent or incapacitated dentist or dental hygienist.**

1346 (1) As used in this section:

1347 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

1348 (b) "Mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

1349 (2) If a court of competent jurisdiction determines a dentist or dental hygienist is an
1350 incapacitated person or that he is mentally ill and unable to safely engage in the practice of
1351 dentistry or dental hygiene, the director shall immediately suspend the license of the dentist or
1352 dental hygienist upon the entry of the judgment of the court, without further proceedings under
1353 Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the
1354 court's ruling is pending. The director shall promptly notify the dentist or dental hygienist, in
1355 writing, of the suspension.

1356 (3) (a) If the division and a majority of the board find reasonable cause to believe a dentist
1357 or dental hygienist, who is not determined judicially to be an incapacitated person or to be mentally
1358 ill, is incapable of practicing dentistry or dental hygiene with reasonable skill regarding the safety
1359 of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
1360 physical condition, the board shall recommend that the director file a petition with the division,

1361 and cause the petition to be served upon the dentist or dental hygienist with a notice of hearing on
1362 the sole issue of the capacity of the dentist or dental hygienist to competently and safely engage
1363 in the practice of dentistry or dental hygiene.

1364 (b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b,
1365 Administrative Procedures Act, except as provided in Subsection (4).

1366 (4) (a) Every dentist or dental hygienist who accepts the privilege of being licensed under
1367 this chapter gives consent to:

1368 (i) submitting at his own expense to an immediate mental or physical examination when
1369 directed in writing by the division and a majority of the board to do so; and

1370 (ii) the admissibility of the reports of the examining practitioner's testimony or
1371 examination, and waives all objections on the ground the reports constitute a privileged
1372 communication.

1373 (b) The examination may be ordered by the division, with the consent of a majority of the
1374 board, only upon a finding of reasonable cause to believe:

1375 (i) the dentist or dental hygienist is mentally ill or incapacitated or otherwise unable to
1376 practice dentistry or dental hygiene with reasonable skill and safety; and

1377 (ii) immediate action by the division and the board is necessary to prevent harm to the
1378 dentist's or dental hygienist's patients or the general public.

1379 (c) (i) Failure of a dentist or dental hygienist to submit to the examination ordered under
1380 this section is a ground for the division's immediate suspension of the dentist's or dental hygienist's
1381 license by written order of the director.

1382 (ii) The division may enter the order of suspension without further compliance with Title
1383 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to
1384 the examination ordered under this section was due to circumstances beyond the control of the
1385 dentist or dental hygienist and was not related directly to the illness or incapacity of the dentist or
1386 dental hygienist.

1387 (5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or
1388 (3) has the right to a hearing to appeal the suspension within ten days after the license is
1389 suspended.

1390 (b) The hearing held under this subsection shall be conducted in accordance with Sections
1391 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the

1392 continuance of the order of suspension in order to prevent harm to the dentist's or dental hygienist's
1393 patients or the general public.

1394 (6) A dentist or dental hygienist whose license is revoked, suspended, or in any way
1395 restricted under this section may request the division and the board to consider, at reasonable
1396 intervals, evidence presented by the dentist or dental hygienist, under procedures established by
1397 division rule, regarding any change in the dentist's or dental hygienist's condition, to determine
1398 whether:

1399 (a) he is or is not able to safely and competently engage in the practice of dentistry or
1400 dental hygiene; and

1401 (b) he is qualified to have his licensure to practice under this chapter restored completely
1402 or in part.

1403 Section 22. Section **58-71-601** is amended to read:

1404 **58-71-601. Mentally incompetent or incapacitated naturopathic physician.**

1405 (1) As used in this section:

1406 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

1407 (b) "Mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

1408 (2) If a court of competent jurisdiction determines a naturopathic physician is an
1409 incapacitated person or that he is mentally ill and unable to safely engage in the practice of
1410 medicine, the director shall immediately suspend the license of the naturopathic physician upon
1411 the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b,
1412 Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending.
1413 The director shall promptly notify the naturopathic physician, in writing, of the suspension.

1414 (3) (a) If the division and a majority of the board find reasonable cause to believe a
1415 naturopathic physician, who is not determined judicially to be an incapacitated person or to be
1416 mentally ill, is incapable of practicing medicine with reasonable skill regarding the safety of
1417 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
1418 physical condition, the board shall recommend that the director file a petition with the division,
1419 and cause the petition to be served upon the naturopathic physician with a notice of hearing on the
1420 sole issue of the capacity of the naturopathic physician to competently and safely engage in the
1421 practice of medicine.

1422 (b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b,

1423 Administrative Procedures Act, except as provided in Subsection (4).

1424 (4) (a) Every naturopathic physician who accepts the privilege of being licensed under this
1425 chapter gives consent to:

1426 (i) submitting at his own expense to an immediate mental or physical examination when
1427 directed in writing by the division and a majority of the board to do so; and

1428 (ii) the admissibility of the reports of the examining physician's testimony or examination,
1429 and waives all objections on the ground the reports constitute a privileged communication.

1430 (b) The examination may be ordered by the division, with the consent of a majority of the
1431 board, only upon a finding of reasonable cause to believe:

1432 (i) the naturopathic physician is mentally ill or incapacitated or otherwise unable to
1433 practice medicine with reasonable skill and safety; and

1434 (ii) immediate action by the division and the board is necessary to prevent harm to the
1435 naturopathic physician's patients or the general public.

1436 (c) (i) Failure of a naturopathic physician to submit to the examination ordered under this
1437 section is a ground for the division's immediate suspension of the naturopathic physician's license
1438 by written order of the director.

1439 (ii) The division may enter the order of suspension without further compliance with Title
1440 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to
1441 the examination ordered under this section was due to circumstances beyond the control of the
1442 naturopathic physician and was not related directly to the illness or incapacity of the naturopathic
1443 physician.

1444 (5) (a) A naturopathic physician whose license is suspended under Subsection (2) or (3)
1445 has the right to a hearing to appeal the suspension within ten days after the license is suspended.

1446 (b) The hearing held under this subsection shall be conducted in accordance with Sections
1447 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the
1448 continuance of the order of suspension in order to prevent harm to the naturopathic physician's
1449 patients or the general public.

1450 (6) A naturopathic physician whose license is revoked, suspended, or in any way restricted
1451 under this section may request the division and the board to consider, at reasonable intervals,
1452 evidence presented by the naturopathic physician, under procedures established by division rule,
1453 regarding any change in the naturopathic physician's condition, to determine whether:

1454 (a) he is or is not able to safely and competently engage in the practice of medicine; and
1455 (b) he is qualified to have his license to practice under this chapter restored completely or
1456 in part.

1457 Section 23. Section **62A-1-105** is amended to read:

1458 **62A-1-105. Creation of boards, divisions, and offices.**

1459 (1) The following policymaking boards are created within the Department of Human
1460 Services:

- 1461 (a) the Board of Aging and Adult Services;
- 1462 (b) the Board of Child and Family Services;
- 1463 [~~(c) the Board of Mental Health;~~]
- 1464 [~~(d)~~] (c) the Board of Public Guardian Services;
- 1465 [~~(e)~~] (d) the Board of Services for People with Disabilities;
- 1466 [~~(f)~~] (e) the Board of Substance Abuse and Mental Health; and
- 1467 [~~(g)~~] (f) the Board of Youth Corrections.

1468 (2) The following divisions are created within the Department of Human Services:

- 1469 (a) the Division of Aging and Adult Services;
- 1470 (b) the Division of Child and Family Services;
- 1471 [~~(c) the Division of Mental Health;~~]
- 1472 [~~(d)~~] (c) the Division of Services for People with Disabilities;
- 1473 [~~(e)~~] (d) the Division of Substance Abuse and Mental Health; and
- 1474 [~~(f)~~] (e) the Division of Youth Corrections.

1475 (3) The following offices are created within the Department of Human Services:

- 1476 (a) the Office of Licensing;
- 1477 (b) the Office of Public Guardian; and
- 1478 (c) the Office of Recovery Services.

1479 Section 24. Section **62A-1-111** is amended to read:

1480 **62A-1-111. Department authority.**

1481 The department may, in addition to all other authority and responsibility granted to it by
1482 law:

- 1483 (1) adopt rules, not inconsistent with law, as the department may consider necessary or
1484 desirable for providing social services to the people of this state;

1485 (2) establish and manage client trust accounts in the department's institutions and
1486 community programs, at the request of the client or his legal guardian or representative, or in
1487 accordance with federal law;

1488 (3) purchase, as authorized or required by law, services that the department is responsible
1489 to provide for legally eligible persons;

1490 (4) conduct adjudicative proceedings for clients and providers in accordance with the
1491 procedures of Title 63, Chapter 46b, Administrative Procedures Act;

1492 (5) establish eligibility standards for its programs, not inconsistent with state or federal law
1493 or regulations;

1494 (6) take necessary steps, including legal action, to recover money or the monetary value
1495 of services provided to a recipient who was not eligible;

1496 (7) set and collect fees for its services;

1497 (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or
1498 limited by law;

1499 (9) acquire, manage, and dispose of any real or personal property needed or owned by the
1500 department, not inconsistent with state law;

1501 (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the
1502 proceeds thereof, may be credited to the program designated by the donor, and may be used for the
1503 purposes requested by the donor, as long as the request conforms to state and federal policy; all
1504 donated funds shall be considered private, nonlapsing funds and may be invested under guidelines
1505 established by the state treasurer;

1506 (11) accept and employ volunteer labor or services; the department is authorized to
1507 reimburse volunteers for necessary expenses, when the department considers that reimbursement
1508 to be appropriate;

1509 (12) carry out the responsibility assigned in the Workforce Services Plan by the State
1510 Council on Workforce Services;

1511 (13) carry out the responsibility assigned by Section 9-4-802 with respect to coordination
1512 of services for the homeless;

1513 (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to
1514 coordination of services for students with a disability;

1515 (15) provide training and educational opportunities for its staff;

1516 (16) collect child support payments and any other monies due to the department;
1517 (17) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for Support Act,
1518 to parents whose child lives out of the home in a department licensed or certified setting;
1519 (18) establish policy and procedures in cases where the department is given custody of a
1520 minor by the juvenile court pursuant to Section 78-3a-118; any policy and procedures shall
1521 include:
1522 (a) designation of interagency teams for each juvenile court district in the state;
1523 (b) delineation of assessment criteria and procedures;
1524 (c) minimum requirements, and timeframes, for the development and implementation of
1525 a collaborative service plan for each minor placed in department custody; and
1526 (d) provisions for submittal of the plan and periodic progress reports to the court;
1527 (19) carry out the responsibilities assigned to it by statute; and
1528 (20) examine and audit the expenditures of any public funds provided to local substance
1529 abuse authorities, local mental health authorities, local area agencies on aging, and any person,
1530 agency, or organization that contracts with or receives funds from those authorities or agencies.
1531 Those local authorities, area agencies, and any person or entity that contracts with or receives funds
1532 from those authorities or area agencies, shall provide the department with any information the
1533 department considers necessary. The department is further authorized to issue directives resulting
1534 from any examination or audit to local authorities, area agencies, and persons or entities that
1535 contract with or receive funds from those authorities with regard to any public funds. If the
1536 department determines that it is necessary to withhold funds from a local mental health authority
1537 or local substance abuse authority based on failure to comply with state or federal law, policy, or
1538 contract provisions, it may take steps necessary to ensure continuity of services. For purposes of
1539 this Subsection (20) "public funds" means the same as that term is defined in [~~Sections 62A-8-101~~
1540 ~~and 62A-12-101~~] Section 62A-15-102.

1541 Section 25. Section **62A-3-101** is amended to read:

1542 **62A-3-101. Definitions.**

1543 As used in this chapter:

1544 (1) "Adult" or "high risk adult" means a person 18 years of age or older who experiences
1545 a condition:

1546 (a) that places the person at a high risk of being unable to care for himself, as determined

1547 by assessment, because of the onset of a physical or cognitive impairment or frailty; and

1548 (b) for which the person is not eligible to receive services under Chapter 5, Services to
1549 People with Disabilities, or Chapter [12,] 15, Substance Abuse and Mental Health Act.

1550 (2) "Aging" and "aged" means a person 60 years of age or older.

1551 (3) "Area agency" means an area agency that provides services to the aged, high risk
1552 adults, or both within a planning and service area.

1553 (4) "Area agency on aging" means a public or private nonprofit agency or office designated
1554 by the division to operate within a planning and service area of the state to develop and implement
1555 a broad range of services for the aged in that area.

1556 (5) "Area agency on high risk adults" means a public or private nonprofit agency or office
1557 designated by the division to operate within a planning and service area of the state to develop and
1558 implement services for high risk adults in that area.

1559 (6) "Board" means the Board of Aging and Adult Services.

1560 (7) "Director" means the director of the Division of Aging and Adult Services.

1561 (8) "Division" means the Division of Aging and Adult Services within the department.

1562 (9) "Planning and service area" means a geographical area of the state designated by the
1563 division for purposes of planning, development, delivery, and overall administration of services
1564 for the aged or high risk adults.

1565 Section 26. Section **62A-5a-102** is amended to read:

1566 **62A-5a-102. Definitions.**

1567 As used in this chapter:

1568 (1) "Council" means the Coordinating Council for Persons with Disabilities.

1569 (2) "State agencies" means:

1570 (a) the Division of Services for People with Disabilities and the Division of Substance
1571 Abuse and Mental Health, within the Department of Human Services;

1572 (b) the Division of Health Care Financing within the Department of Health;

1573 (c) family health services programs established under Title 26, Chapter 10, Family Health
1574 Services, operated by the Department of Health;

1575 (d) the Utah State Office of Rehabilitation; and

1576 (e) special education programs operated by the State Office of Education and local school
1577 districts under Title 53A, Chapter 15, Part 3, Education of Children with Disabilities.

1578 Section 27. Section **62A-5a-103** is amended to read:

1579 **62A-5a-103. Coordinating Council for Persons with Disabilities -- Creation --**
1580 **Membership -- Expenses.**

1581 (1) There is created the Coordinating Council for Persons with Disabilities.

1582 (2) The council shall consist of:

1583 (a) the director of the Division of Services for People with Disabilities within the
1584 Department of Human Services, or his designee;

1585 (b) the director of family health services programs, appointed under Section 26-10-3, or
1586 his designee;

1587 (c) the executive director of the Utah State Office of Rehabilitation, or his designee;

1588 (d) the state director of special education, or his designee;

1589 (e) the director of the Division of Health Care Financing within the Department of Health,
1590 or his designee;

1591 (f) the director of the Division of Substance Abuse and Mental Health within the
1592 Department of Human Services, or his designee;

1593 (g) the superintendent of Schools for the Deaf and Blind, or his designee; and

1594 (h) a person with a disability, a family member of a person with a disability, or an advocate
1595 for persons with disabilities, appointed by the members listed in Subsections (2)(a) through (g).

1596 (3) (a) The council shall annually elect a chair from its membership.

1597 (b) Five members of the council are a quorum.

1598 (4) (a) State government officer and employee members who do not receive salary, per
1599 diem, or expenses from their agency for their service may receive per diem and expenses incurred
1600 in the performance of their official duties from the council at the rates established by the Division
1601 of Finance under Sections 63A-3-106 and 63A-3-107.

1602 (b) State government officer and employee members may decline to receive per diem and
1603 expenses for their service.

1604 Section 28. Section **62A-7-401** is amended to read:

1605 **62A-7-401. Juvenile Sex Offender Authority -- Purpose -- Duties -- Members -- Staff**
1606 **specialists.**

1607 (1) There is established the Utah State Juvenile Sex Offender Authority within the
1608 Department of Human Services, Division of Youth Corrections.

1609 (2) The purpose of the authority is to supervise and coordinate the efforts of law
1610 enforcement, the Divisions of Youth Corrections, Substance Abuse and Mental Health, Child and
1611 Family Services, and Services for People with Disabilities, the State Office of Education, the
1612 Juvenile Court, prosecution, and juvenile sex offender intervention and treatment specialists.

1613 (3) The authority shall:

1614 (a) coordinate and develop effective and cost-effective programs for the treatment of
1615 juveniles who sexually offend;

1616 (b) administer the development of a comprehensive continuum of juvenile sex offender
1617 services;

1618 (c) administer the development of programs to protect the communities from juvenile sex
1619 offending and offenders; and

1620 (d) by June 30, 2000, implement fully the comprehensive and detailed plan which shall
1621 include provisions for the type of services by levels of intensity, agency responsibility for services,
1622 and professional qualifications for persons delivering the services. The plan shall also include
1623 detailed outcome measures to determine program effectiveness.

1624 (4) The authority shall be comprised of:

1625 (a) the director of the Division of Youth Corrections or a designee;

1626 (b) the director of the Division of Substance Abuse and Mental Health or a designee;

1627 (c) the director of the Division of Child and Family Services or a designee;

1628 (d) the director of the Division of Services for People with Disabilities or a designee;

1629 (e) the State Superintendent of Public Instruction;

1630 (f) the juvenile court administrator or a designee;

1631 (g) a representative of the Statewide Association of Public Attorneys as designated by its
1632 director;

1633 (h) a representative of the Utah Sheriffs Association as designated by its president;

1634 (i) a representative of the Utah Police Chiefs Association as designated by its president;

1635 (j) a citizen appointed by the governor;

1636 (k) a representative of the Utah Network on Juveniles Offending Sexually (NOJOS) as
1637 designated by its director; and

1638 (l) the attorney general or a designee.

1639 (5) Staff to the authority shall be the staff specialists of the statewide juvenile sex offender

1640 supervision and treatment unit.

1641 Section 29. Section **62A-13-105** is amended to read:

1642 **62A-13-105. Department duties and powers.**

1643 (1) The department shall administer this chapter within the Division of Substance Abuse
1644 and Mental Health, created in Section [~~62A-12-102~~] 62A-15-103, and provide division staff to the
1645 committee.

1646 (2) The department may accept gifts, grants, loans, and other aid or funds from any person,
1647 association, foundation, trust, corporation, governmental agency, or other entity for the purposes
1648 set forth in this chapter.

1649 Section 30. Section **62A-14-106** is amended to read:

1650 **62A-14-106. Board of Public Guardian Services.**

1651 (1) The Board of Public Guardian Services, created in accordance with this section and
1652 Section 62A-1-105, is responsible for establishing the policy of the office in accordance with this
1653 chapter and seeing that the legislative purposes for the office are carried out.

1654 (2) The executive director shall appoint nine members to the Board of Public Guardian
1655 Services, as follows:

- 1656 (a) a member of the Board of Aging and Adult Services;
- 1657 (b) a member of the Board of Services for Persons with Disabilities;
- 1658 (c) a member of the Board of Substance Abuse and Mental Health;
- 1659 (d) a representative of the long-term care industry;
- 1660 (e) a representative of the hospital industry;
- 1661 (f) a representative of persons with disabilities;
- 1662 (g) a representative of senior citizens;
- 1663 (h) a physician; and
- 1664 (i) an attorney with experience in guardianship and conservatorship law.

1665 (3) (a) Except as provided in Subsection (3)(b), each member shall be appointed for a
1666 four-year term and eligible for one reappointment.

1667 (b) Notwithstanding Subsection (3)(a), the executive director shall, at the time of
1668 appointment or reappointment, adjust the length of terms to ensure that the terms of board
1669 members are staggered so that approximately half of the board is appointed every two years, taking
1670 into account the remaining term of board members who serve on other department boards.

1671 (c) A board member shall continue in office until the expiration of the member's term and
1672 until a successor is appointed, which may not exceed 90 days after the formal expiration of the
1673 term.

1674 (d) When a vacancy occurs in membership for any reason, the replacement shall be
1675 appointed for the unexpired term.

1676 (e) The make up of the board should reflect political and geographic diversity.

1677 (4) The board shall annually elect a chairperson from its membership. The board shall
1678 hold meetings at least once every three months. Meetings shall be held from time to time on the
1679 call of the chairperson or a majority of the board members. Five board members are necessary to
1680 constitute a quorum at any meeting and, if a quorum exists, the action of a majority of members
1681 present shall be the action of the board.

1682 (5) (a) Board members who are not government employees may not receive compensation
1683 or benefits for their services, but may receive per diem and expenses incurred in the performance
1684 of their official duties at rates established by the Division of Finance under Sections 63A-3-106
1685 and 63A-3-107.

1686 (b) Members of the board may decline to receive per diem expenses for their services.

1687 (6) The board shall:

1688 (a) establish program policy for the office;

1689 (b) establish a mechanism for systematic and regular review of existing policy and for
1690 consideration of policy changes; and

1691 (c) set fees for the office, excluding attorneys fees, in accordance with Section 63-38-3.2.
1692 Section 31. Section **62A-15-101** is enacted to read:

1693 **CHAPTER 15. SUBSTANCE ABUSE AND MENTAL HEALTH ACT**

1694 **Part 1. Division and Board of Substance Abuse and Mental Health**

1695 **62A-15-101. Title.**

1696 (1) This chapter is known as the "Substance Abuse and Mental Health Act."

1697 (2) This part is known as the "Division and Board of Substance Abuse and Mental Health."

1698 Section 32. Section **62A-15-102**, which is renumbered from Section 62A-8-101 is
1699 renumbered and amended to read:

1700 ~~[62A-8-101].~~ **62A-15-102. Definitions.**

1701 As used in this chapter:

1702 (1) "Board" means the Board of Substance Abuse and Mental Health established in
1703 accordance with ~~[Section]~~ Sections 62A-1-105 and 62A-15-106.

1704 (2) "Director" means the director of the Division of Substance Abuse and Mental Health.

1705 (3) "Division" means the Division of Substance Abuse and Mental Health established in
1706 Section ~~[62A-8-103]~~ 62A-15-103.

1707 (4) "Local mental health authority" means a county legislative body.

1708 ~~[(4)]~~ (5) "Local substance abuse authority" means a county legislative body.

1709 ~~[(5)]~~ (6) (a) "Public funds" means federal monies received from the Department of Human
1710 Services or the Department of Health, and state monies appropriated by the Legislature to the
1711 Department of Human Services, the Department of Health, a county governing body, or a local
1712 substance abuse authority, or a local mental health authority for the purposes of providing
1713 substance abuse or mental health programs or services. "Public funds" includes those federal and
1714 state monies that have been transferred by a local substance abuse authority or a local mental
1715 health authority to a private provider under an annual or otherwise ongoing contract to provide
1716 comprehensive substance abuse or mental health programs or services for the local substance abuse
1717 authority or local mental health authority. Those monies maintain the nature of "public funds"
1718 while in the possession of the private entity that has an annual or otherwise ongoing contract with
1719 a local substance abuse authority or a local mental health authority to provide comprehensive
1720 substance abuse or mental health programs or services for the local substance abuse authority or
1721 local mental health authority.

1722 (b) This definition of "public funds" does not limit or prohibit an organization exempt
1723 under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose
1724 or in any financial arrangement that is otherwise lawful for that organization.

1725 (7) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders,
1726 delusional disorders, psychotic disorders, and other mental disorders as defined by the board.

1727 Section 33. Section **62A-15-103**, which is renumbered from Section 62A-8-103 is
1728 renumbered and amended to read:

1729 ~~[62A-8-103].~~ **62A-15-103. Division -- Creation -- Responsibilities.**

1730 (1) There is created the Division of Substance Abuse and Mental Health within the
1731 department, under the administration and general supervision of the executive director, and, with
1732 regard to its programs, under the policy direction of the board. The division is the substance abuse

1733 authority and the mental health authority for this state.

1734 (2) The division shall:

1735 (a) (i) educate the general public regarding the nature and consequences of substance abuse
1736 by promoting school and community-based prevention programs;

1737 ~~[(b)]~~ (ii) render support and assistance to public schools through approved school-based
1738 substance abuse education programs aimed at prevention of substance abuse;

1739 ~~[(c)]~~ (iii) promote or establish programs for the prevention of substance abuse within the
1740 community setting through community-based prevention programs;

1741 ~~[(d) promote or establish cooperative relationships with courts, hospitals, clinics, medical
1742 and social agencies, public health authorities, law enforcement agencies, education and research
1743 organizations, and other related groups;]~~

1744 ~~[(e) provide consultation and other assistance to public and private agencies and groups;]~~

1745 ~~[(f)]~~ (iv) cooperate and assist other organizations and private treatment centers for
1746 substance abusers, by providing them with essential materials for furthering programs of
1747 prevention and rehabilitation of actual and potential substance abusers; and

1748 ~~[(g) promote or conduct research on substance abuse issues, and submit to the governor
1749 and the Legislature recommendations for changes in policy and legislation;]~~

1750 ~~[(h) receive, distribute, and provide direction over public funds for substance abuse
1751 services;]~~

1752 ~~[(i) consult and coordinate with local substance abuse authorities regarding substance
1753 abuse programs and services;]~~

1754 ~~[(j)]~~ (v) promote or establish programs for education and certification of instructors to
1755 educate persons convicted of driving under the influence of alcohol or drugs or driving with any
1756 measurable controlled substance in the body;

1757 (b) (i) collect and disseminate information pertaining to mental health; and

1758 (ii) provide direction over the state hospital including approval of its budget,
1759 administrative policy, and coordination of services with local service plans; and

1760 (c) (i) consult and coordinate with local substance abuse authorities and local mental health
1761 authorities regarding programs and services;

1762 (ii) provide consultation and other assistance to public and private agencies and groups
1763 working on substance abuse and mental health issues;

1764 (iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical
1765 and social agencies, public health authorities, law enforcement agencies, education and research
1766 organizations, and other related groups;

1767 (iv) promote or conduct research on substance abuse and mental health issues, and submit
1768 to the governor and the Legislature recommendations for changes in policy and legislation;

1769 (v) receive, distribute, and provide direction over public funds for substance abuse and
1770 mental health services;

1771 ~~[(k)]~~ (vi) monitor and evaluate programs provided by local substance abuse authorities and
1772 local mental health authorities;

1773 ~~[(l)]~~ (vii) examine expenditures of any local, state, and federal funds;

1774 ~~[(m)]~~ (viii) monitor the expenditure of public funds by:

1775 ~~[(n)]~~ (A) local substance abuse authorities; [and]

1776 (B) local mental health authorities; and

1777 ~~[(o)]~~ (C) in counties where they exist, the private contract provider that has an annual or
1778 otherwise ongoing contract to provide comprehensive substance abuse or mental health programs
1779 or services for the local substance abuse authority or local mental health authorities;

1780 ~~[(p)]~~ (ix) contract with local substance abuse authorities and local mental health authorities
1781 to provide a comprehensive continuum of services in accordance with board and division policy,
1782 contract provisions, and the local plan;

1783 ~~[(q)]~~ (x) contract with private and public entities for special statewide or nonclinical
1784 services according to board and division policy;

1785 ~~[(r)]~~ (xi) review and approve each local substance abuse authority's plan and each local
1786 mental health authority's plan in order to [assure] ensure:

1787 ~~[(s)]~~ (A) a statewide comprehensive continuum of substance abuse services; [and]

1788 (B) a statewide comprehensive continuum of mental health services; and

1789 ~~[(t)]~~ (C) appropriate expenditure of public funds;

1790 ~~[(u)]~~ (xii) review and make recommendations regarding each local substance abuse
1791 authority's contract with its provider of substance abuse programs and services [to assure] and each
1792 local mental health authority's contract with its provider of mental health programs and services
1793 to ensure compliance with state and federal law and policy;

1794 ~~[(v)]~~ (xiii) monitor and [assure] ensure compliance with board and division policy and

1795 contract requirements; and

1796 ~~[(s)]~~ (xiv) withhold funds from local substance abuse authorities, local mental health
1797 authorities, and public and private providers for contract noncompliance, failure to comply with
1798 division directives regarding the use of public funds, or for misuse of public funds or monies.

1799 (3) (a) The division may refuse to contract with and may pursue its legal remedies against
1800 any local substance abuse authority or local mental health authority that fails, or has failed, to
1801 expend public funds in accordance with state law, division policy, contract provisions, or directives
1802 issued in accordance with state law.

1803 (b) The division may withhold funds from a local substance abuse authority or local mental
1804 health authority if the authority's contract with its provider of substance abuse or mental health
1805 programs or services fails to comply with state and federal law or policy.

1806 (4) Before reissuing or renewing a contract with any local substance abuse authority or
1807 local mental health authority, the division shall review and determine whether the local substance
1808 abuse authority or local mental health authority is complying with its oversight and management
1809 responsibilities described in Sections 17A-3-601, 17A-3-603.5, 17A-3-701 and 17A-3-703.

1810 Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described
1811 in Section 17A-3-603.5 and to the responsibility and liability described in Section 17A-3-703.

1812 (5) In carrying out its duties and responsibilities, the division may not duplicate treatment
1813 or educational facilities that exist in other divisions or departments of the state, but shall work in
1814 conjunction with those divisions and departments in rendering the treatment or educational
1815 services that those divisions and departments are competent and able to provide.

1816 (6) (a) The division may accept in the name of and on behalf of the state donations, gifts,
1817 devises, or bequests of real or personal property or services to be used as specified by the donor.

1818 (b) Those donations, gifts, devises, or bequests shall be used by the division in performing
1819 its powers and duties. Any money so obtained shall be considered private nonlapsing funds and
1820 shall be deposited into an interest-bearing restricted special revenue fund to be used by the division
1821 for substance abuse or mental health services. The state treasurer may invest the fund and all
1822 interest shall remain with the fund.

1823 (7) The division shall annually review with each local substance abuse authority and each
1824 local mental health authority the authority's statutory and contract responsibilities regarding:

1825 (a) the use of public funds;

- 1826 (b) oversight responsibilities regarding public funds; and
- 1827 (c) governance of substance abuse and mental health programs and services.

1828 Section 34. Section **62A-15-104**, which is renumbered from Section 62A-8-106 is
1829 renumbered and amended to read:

1830 ~~[62A-8-106].~~ **62A-15-104. Director -- Qualifications.**

1831 (1) The director of the division shall be appointed by the executive director with the
1832 concurrence of the board.

1833 (2) The director shall have a bachelor's degree from an accredited university or college,
1834 be experienced in administration, and be knowledgeable in matters concerning substance abuse
1835 and mental health.

1836 (3) The director is the administrative head of the division.

1837 Section 35. Section **62A-15-105**, which is renumbered from Section 62A-8-107 is
1838 renumbered and amended to read:

1839 ~~[62A-8-107].~~ **62A-15-105. Authority and responsibilities of board.**

1840 The board is the policymaking body for the division and for programs funded with state
1841 and federal moneys under Sections 17A-3-602, 17A-3-606, 17A-3-701, and ~~[62A-8-110.5]~~
1842 62A-15-110. The board ~~[has the following duties and responsibilities]~~ shall:

1843 (1) in establishing policy, ~~[the board shall]~~ seek input from local substance abuse
1844 authorities, local mental health authorities, consumers, providers, advocates, division staff, and
1845 other interested parties as determined by the board;

1846 (2) ~~[to]~~ establish, by rule, minimum standards for local substance abuse authorities and
1847 local mental health authorities;

1848 (3) ~~[to]~~ establish, by rule, procedures for developing its policies which ensure that local
1849 substance abuse authorities and local mental health authorities are given opportunity to comment
1850 and provide input on any new policy of the board or proposed changes in existing policy of the
1851 board;

1852 (4) ~~[the board shall also]~~ provide a mechanism for review of its existing policy, and for
1853 consideration of policy changes that are proposed by local substance abuse authorities or local
1854 mental health authorities;

1855 (5) ~~[to]~~ develop program policies, standards, rules, and fee schedules for the division; and

1856 (6) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make

1857 rules approving the form and content of substance abuse treatment, educational series, and
1858 screening and assessment that are described in Section 41-6-44.

1859 Section 36. Section **62A-15-106**, which is renumbered from Section 62A-8-108 is
1860 renumbered and amended to read:

1861 ~~[62A-8-108].~~ **62A-15-106. Membership of board.**

1862 Effective September 1, 2002, the governor shall appoint seven members to the board in
1863 accordance with Section 62A-1-107. At least one member of the board shall be:

1864 (1) a registered pharmacist licensed to practice in this state~~[-Another member of the~~
1865 ~~board shall be];~~

1866 (2) a physician licensed to practice medicine in this state~~[-At least one member of the~~
1867 ~~board shall be];~~

1868 (3) a person recovered or recovering from substance abuse~~[-]; and~~

1869 (4) a psychiatrist licensed to practice in this state.

1870 Section 37. Section **62A-15-107**, which is renumbered from Section 62A-8-104 is
1871 renumbered and amended to read:

1872 ~~[62A-8-104].~~ **62A-15-107. Authority to assess fees.**

1873 (1) The division may, with the approval of the Legislature, the executive director, and the
1874 board, establish fee schedules and assess fees for services rendered by the division.

1875 (2) Fees shall be charged for substance abuse and mental health treatment services, but
1876 services may not be refused to any person because of [his] inability to pay.

1877 Section 38. Section **62A-15-108**, which is renumbered from Section 62A-8-109 is
1878 renumbered and amended to read:

1879 ~~[62A-8-109].~~ **62A-15-108. Formula for allocation of funds to local substance**
1880 **abuse authorities and local mental health authorities.**

1881 (1) The board shall establish, by rule, [~~a formula~~] formulas for allocating funds to local
1882 substance abuse authorities and local mental health authorities through contracts, to provide
1883 substance abuse prevention and treatment services in accordance with the provisions of this
1884 chapter and [~~of~~] Title 17A, Chapter 3, Part 7, Local Substance Abuse Authorities~~[-That formula],~~
1885 and mental health services in accordance with the provisions of this chapter and Title 17A, Chapter
1886 3, Part 6, Local Mental Health Authorities. The formulas shall provide for allocation of funds
1887 based on need. Determination of need shall be based on population unless the board establishes,

1888 by valid and accepted data, that other defined factors are relevant and reliable indicators of need.
1889 The ~~[formula]~~ formulas shall include a differential to compensate for additional costs of providing
1890 services in rural areas.

1891 (2) The ~~[formula]~~ formulas established under Subsection (1) ~~[applies]~~ apply to all state and
1892 federal funds appropriated by the Legislature to the division for local substance abuse authorities
1893 and local mental health authorities, but does not apply to:

1894 (a) funds that local substance abuse authorities and local mental health authorities receive
1895 from sources other than the division;

1896 (b) funds that local substance abuse authorities and local mental health authorities receive
1897 from the division to operate ~~[a]~~ specific ~~[program]~~ programs within ~~[its jurisdiction]~~ their
1898 jurisdictions which ~~[is]~~ are available to all residents of the state;

1899 (c) funds that local substance abuse authorities and local mental health authorities receive
1900 from the division to meet ~~[a need]~~ needs that ~~[exists]~~ exist only within ~~[that]~~ their local ~~[area]~~
1901 areas; and

1902 (d) funds that local substance abuse authorities and local mental health authorities receive
1903 from the division for research projects.

1904 (3) Contracts with local substance abuse authorities and local mental health authorities
1905 shall provide that the division may withhold funds otherwise allocated pursuant to this section to
1906 cover the costs of audits, attorneys' fees, and other expenditures associated with reviewing the
1907 expenditure of public funds by a local substance abuse authority or its contract provider or a local
1908 mental health authority or its contract provider, if there has been an audit finding or judicial
1909 determination that public funds have been misused by the local substance abuse authority or its
1910 contract provider or the local mental health authority or its contract provider.

1911 Section 39. Section **62A-15-109**, which is renumbered from Section 62A-8-110.1 is
1912 renumbered and amended to read:

1913 ~~[62A-8-110.1].~~ **62A-15-109. Responsibilities of the Division of Substance Abuse**
1914 **and Mental Health.**

1915 (1) It is the responsibility of the division to assure that the requirements of this part are met
1916 and applied uniformly by local substance abuse authorities and local mental health authorities
1917 across the state.

1918 (2) Since it is the division's responsibility to contract with, review, approve, and oversee

1919 local substance abuse authority plans and local mental health authority plans, and to withhold
1920 funds from local substance abuse authorities, local mental health authorities, and public and private
1921 providers for contract noncompliance or misuse of public funds, the division shall:

1922 (a) require each local substance abuse authority and each local mental health authority to
1923 submit its plan to the division by May 1 of each year;

1924 (b) conduct an annual program audit and review of each local substance abuse authority
1925 in the state and its contract provider and each local mental health authority in the state, and its
1926 contract provider; and

1927 (c) provide a written report to the Health and Human Services Interim Committee on July
1928 1, 1999, and each year thereafter, and provide an oral report to that committee, as requested. That
1929 report shall provide information regarding:

1930 (i) the annual audit and review;

1931 (ii) the financial expenditures of each local substance abuse authority and its contract
1932 provider and each local mental health authority and its contract provider;

1933 (iii) the status of each local authority's and its contract provider's compliance with its plan,
1934 state statutes, and with the provisions of the contract awarded; and

1935 (iv) whether audit guidelines established pursuant to Section [~~62A-8-110.5~~] 62A-15-110
1936 and Subsection 67-3-1(2)(o) provide the division with sufficient criteria and assurances of
1937 appropriate expenditures of public funds.

1938 (3) The annual audit and review described in Subsection (2)(b) shall, in addition to items
1939 determined by the division to be necessary and appropriate, include a review and determination
1940 regarding whether public funds allocated to local substance abuse authorities and local mental
1941 health authorities are consistent with services rendered and outcomes reported by [~~it~~] them or [~~its~~]
1942 their contract [~~provider~~] providers, and whether each local substance abuse authority and each local
1943 mental health authority is exercising sufficient oversight and control over public funds allocated
1944 for substance abuse and mental health programs and services.

1945 (4) The Legislature may refuse to appropriate funds to the division upon the division's
1946 failure to comply with the provisions of this part.

1947 Section 40. Section **62A-15-110**, which is renumbered from Section 62A-8-110.5 is
1948 renumbered and amended to read:

1949 [~~62A-8-110.5~~]. **62A-15-110. Contracts for substance abuse and mental health**

1950 **services -- Provisions -- Responsibilities.**

1951 When the division contracts with a local substance abuse authority or a local mental health
1952 authority to provide substance abuse or mental health programs and services in accordance with
1953 the provision of this chapter and Title 17A, Chapter 3, Part 7, Local Substance Abuse Authorities,
1954 or Title 17A, Chapter 3, Part 6, Local Mental Health Authorities, it shall ensure that those contracts
1955 include at least the following provisions:

1956 (1) that an independent auditor shall conduct any audit of the local substance abuse
1957 authority or its contract provider's programs or services and any audit of the local mental health
1958 authority or its contract provider's programs or services, pursuant to the provisions of Title 51,
1959 Chapter 2;

1960 (2) in addition to the requirements described in Title 51, Chapter 2, the division:

1961 (a) shall prescribe guidelines and procedures, in accordance with those formulated by the
1962 state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers,
1963 directors, and specified employees of the private contract provider, to assure the state that no
1964 personal benefit is gained from travel or other expenses; and

1965 (b) may prescribe specific items to be addressed by that audit, depending upon the
1966 particular needs or concerns relating to the local substance abuse authority, local mental health
1967 authority, or contract provider at issue;

1968 (3) the local substance abuse authority or its contract provider and the local mental health
1969 authority and its contract provider shall invite and include all funding partners in its auditor's pre-
1970 and exit conferences;

1971 (4) each member of the local substance abuse authority and each member of the local
1972 mental health authority shall annually certify that he has received and reviewed the independent
1973 audit and has participated in a formal interview with the provider's executive officers;

1974 (5) requested information and outcome data will be provided to the division in the manner
1975 and within the time lines defined by the division; and

1976 (6) all audit reports by state or county persons or entities concerning the local substance
1977 abuse authority or its contract provider, or the local mental health authority or its contract provider
1978 shall be provided to the executive director of the department, the local substance abuse authority
1979 or local mental health authority, and members of the contract provider's governing board.

1980 Section 41. Section **62A-15-111**, which is renumbered from Section 62A-8-110.7 is

1981 renumbered and amended to read:

1982 ~~[62A-8-110.7].~~ **62A-15-111. Responsibility for cost of services provided by local**
1983 **substance abuse or mental health authority.**

1984 Whenever a local substance abuse authority or local mental health authority, through its
1985 designated provider, provides any service described in ~~[Subsection]~~ Section 17A-3-602 or
1986 Subsection 17A-3-701(3) to a person who resides within the jurisdiction of another local
1987 ~~[substance abuse]~~ authority, the local ~~[substance abuse]~~ authority in whose jurisdiction the person
1988 resides is responsible for the cost of that service if its designated provider has authorized the
1989 provision of that service.

1990 Section 42. Section **62A-15-112**, which is renumbered from Section 62A-8-112 is
1991 renumbered and amended to read:

1992 ~~[62A-8-112].~~ **62A-15-112. Receipt of funds.**

1993 Local substance abuse authorities, local mental health authorities, and entities that contract
1994 with these authorities to provide substance abuse services or mental health services may receive
1995 funds made available by federal, state, or local health, substance abuse, mental health, education,
1996 welfare, or other agencies, in accordance with the provisions of this chapter ~~[and]~~, Title 17A,
1997 Chapter 3, Part 6, Local Mental Health Authorities, and Title 17A, Chapter 3, Part 7, Local
1998 Substance Abuse Authorities.

1999 Section 43. Section **62A-15-201**, which is renumbered from Section 62A-8-201 is
2000 renumbered and amended to read:

2001 **Part 2. Teen Substance Abuse Intervention and Prevention Act**

2002 ~~[62A-8-201].~~ **62A-15-201. Title.**

2003 This part ~~[shall be]~~ is known as the "Teen Substance Abuse Intervention and Prevention
2004 Act."

2005 Section 44. Section **62A-15-202**, which is renumbered from Section 62A-8-202 is
2006 renumbered and amended to read:

2007 ~~[62A-8-202].~~ **62A-15-202. Definitions.**

2008 As used in this part:

2009 (1) "Juvenile substance abuse offender" means any juvenile found to come within the
2010 provisions of Section 78-3a-104 for a drug or alcohol related offense, as designated by the Board
2011 of Juvenile Court Judges.

2012 (2) "Local substance abuse authority" means a county legislative body designated to
2013 provide substance abuse services in accordance with Section 17A-3-701.

2014 (3) "Teen substance abuse school" means any school established by the local substance
2015 abuse authority, in cooperation with the Board of Juvenile Court Judges, that provides an
2016 educational, interpersonal, skill-building experience for juvenile substance abuse offenders and
2017 their parents or legal guardians.

2018 Section 45. Section **62A-15-203**, which is renumbered from Section 62A-8-203 is
2019 renumbered and amended to read:

2020 ~~[62A-8-203].~~ **62A-15-203. Teen substance abuse schools -- Establishment.**

2021 The division or a local substance abuse authority, in cooperation with the Board of Juvenile
2022 Court Judges, may establish teen substance abuse schools in the districts of the juvenile court.

2023 Section 46. Section **62A-15-204**, which is renumbered from Section 62A-8-204 is
2024 renumbered and amended to read:

2025 ~~[62A-8-204].~~ **62A-15-204. Court order to attend substance abuse school --**
2026 **Assessments.**

2027 (1) In addition to any other disposition ordered by the juvenile court pursuant to Section
2028 78-3a-118, the court may order a juvenile and his parents or legal guardians to attend a teen
2029 substance abuse school, and order payment of an assessment in addition to any other fine imposed.

2030 (2) All assessments collected shall be forwarded to the county treasurer of the county
2031 where the juvenile resides, to be used exclusively for the operation of a teen substance abuse
2032 program.

2033 Section 47. Section **62A-15-301**, which is renumbered from Section 62A-8-501 is
2034 renumbered and amended to read:

2035 **Part 3. Commitment of Minors to Drug or Alcohol Programs or Facilities**

2036 ~~[62A-8-501].~~ **62A-15-301. Commitment of minor to secure drug or alcohol**
2037 **facility or program -- Procedures -- Review.**

2038 (1) For purposes of this ~~[section]~~ part:

2039 (a) "Approved treatment facility or program" means a public or private secure, inpatient
2040 facility or program that is licensed or operated by the department or by the Department of Health
2041 to provide drug or alcohol treatment or rehabilitation.

2042 (b) "Drug or alcohol addiction" means that the person has a physical or psychological

2043 dependence on drugs or alcohol in a manner not prescribed by a physician.

2044 (2) The parent or legal guardian of a minor under the age of 18 years may submit that
2045 child, without the child's consent, to an approved treatment facility or program for treatment or
2046 rehabilitation of drug or alcohol addiction, upon application to a facility or program, and after a
2047 careful diagnostic inquiry is made by a neutral and detached fact finder, in accordance with the
2048 requirements of this section.

2049 (3) The neutral fact finder who conducts the inquiry:

2050 (a) shall be either a physician, psychologist, marriage and family therapist, psychiatric and
2051 mental health nurse specialist, or social worker licensed to practice in this state, who is trained and
2052 practicing in the area of substance abuse; and

2053 (b) may not profit, financially or otherwise, from the commitment of the child and may not
2054 be employed by the proposed facility or program.

2055 (4) The review by a neutral fact finder may be conducted on the premises of the proposed
2056 treatment facility or program.

2057 (5) The inquiry conducted by the neutral fact finder shall include a private interview with
2058 the child, and an evaluation of the child's background and need for treatment.

2059 (6) The child may be committed to the approved treatment facility or program if it is
2060 determined by the neutral fact finder that:

2061 (a) the child is addicted to drugs or alcohol and because of that addiction poses a serious
2062 risk of harm to himself or others;

2063 (b) the proposed treatment or rehabilitation is in the child's best interest; and

2064 (c) there is no less restrictive alternative that would be equally as effective, from a clinical
2065 standpoint, as the proposed treatment facility or program.

2066 (7) Any approved treatment facility or program that receives a child under this section
2067 shall conduct a periodic review, at intervals not to exceed 30 days, to determine whether the
2068 criteria described in Subsection (6) continue to exist.

2069 (8) A minor committed under this section shall be released from the facility or program
2070 upon the request of his parent or legal guardian.

2071 (9) Commitment of a minor under this section terminates when the minor reaches the age
2072 of 18 years.

2073 (10) Nothing in this section requires a program or facility to accept any person for

2074 treatment or rehabilitation.

2075 (11) The parent or legal guardian who requests commitment of a minor under this section
2076 is responsible to pay any fee associated with the review required by this section and any necessary
2077 charges for commitment, treatment, or rehabilitation for a minor committed under this section.

2078 (12) The child shall be released from commitment unless the report of the neutral fact
2079 finder is submitted to the juvenile court within 72 hours of commitment and approved by the court.

2080 Section 48. Section **62A-15-401**, which is renumbered from Section 62A-8-103.5 is
2081 renumbered and amended to read:

2082 **Part 4. Alcohol Training and Education**

2083 ~~[62A-8-103.5]~~. **62A-15-401. Alcohol training and education seminar.**

2084 (1) As used in this ~~[section]~~ part:

2085 (a) "instructor" means a person that directly provides the instruction during an alcohol
2086 training and education seminar for a seminar provider;

2087 (b) "licensee" means a person who is:

2088 (i) a new or renewing licensee under Title 32A, Alcoholic Beverage Control Act; and

2089 (ii) engaged in the retail sale of alcoholic beverages for consumption on the premises of
2090 the licensee; and

2091 (c) "seminar provider" means a person other than the division who provides an alcohol
2092 training and education seminar meeting the requirements of this section.

2093 (2) (a) This section applies to a person who, as defined by the board by rule:

2094 (i) manages operations at the premises of a licensee;

2095 (ii) supervises the serving of alcoholic beverages to a customer for consumption on the
2096 premises of a licensee; or

2097 (iii) serves alcoholic beverages to a customer for consumption on the premises of a
2098 licensee.

2099 (b) A person described in Subsection (2)(a) shall:

2100 (i) complete an alcohol training and education seminar within 30 days of:

2101 (A) if the person is an employee, the day the person begins employment;

2102 (B) if the person is an independent contractor, the day the person is first hired;

2103 (C) if the person holds an ownership interest in the licensee, the day that person first
2104 engages in an activity that would result in that person being required to complete an alcohol

2105 training and education seminar; and

2106 (ii) pay a fee:

2107 (A) to the seminar provider; and

2108 (B) that is equal to or greater than the amount established under Subsection (4)(h).

2109 (c) Notwithstanding Subsection (2)(b)(i)(C), a person described in Subsection (2)(b)(i)(C)

2110 shall complete an alcohol training and education seminar by no later than July 31, 2001, if as of

2111 May 1, 2001 the person:

2112 (i) holds an ownership interest in the licensee; and

2113 (ii) has engaged in an activity that would result in that person being required to complete

2114 an alcohol training and education seminar.

2115 (3) (a) A licensee may not permit a person who is not in compliance with Subsection (2)

2116 to:

2117 (i) serve or supervise the serving of alcoholic beverages to a customer for consumption on

2118 the premises of the licensee; or

2119 (ii) engage in any activity that would constitute managing operations at the premises of a

2120 licensee.

2121 (b) A licensee that violates Subsection (3)(a), is subject to Section 32A-1-401.

2122 (4) The division shall:

2123 (a) (i) provide alcohol training and education seminars; or

2124 (ii) certify one or more seminar providers;

2125 (b) establish the curriculum for an alcohol training and education seminar that includes the

2126 following subjects:

2127 (i) (A) alcohol as a drug; and

2128 (B) alcohol's effect on the body and behavior;

2129 (ii) recognizing the problem drinker;

2130 (iii) an overview of state alcohol laws related to responsible beverage service, as

2131 determined in consultation with the Department of Alcoholic Beverage Control;

2132 (iv) dealing with the problem customer, including ways to terminate service; and

2133 (v) alternative means of transportation to get the customer safely home;

2134 (c) recertify each seminar provider every three years;

2135 (d) monitor compliance with the curriculum described in Subsection (4)(b);

2136 (e) maintain for at least three years a record of every person who has completed an alcohol
2137 training and education seminar;

2138 (f) provide the information described in Subsection (4)(e) on request to:

2139 (i) the Department of Alcoholic Beverage Control; or

2140 (ii) law enforcement;

2141 (g) provide the Department of Alcoholic Beverage Control on request a list of any seminar
2142 provider certified by the division; and

2143 (h) establish a fee amount for each person attending an alcohol training and education
2144 seminar that is sufficient to offset the division's cost of administering this section.

2145 (5) The board shall by rule made in accordance with Title 63, Chapter 46a, Utah
2146 Administrative Rulemaking Act:

2147 (a) define what constitutes under this section a person who:

2148 (i) manages operations at the premises of a licensee;

2149 (ii) supervises the serving of alcoholic beverages to a customer for consumption on the
2150 premises of a licensee; or

2151 (iii) serves alcoholic beverages to a customer for consumption on the premises of a
2152 licensee;

2153 (b) establish criteria for certifying and recertifying a seminar provider; and

2154 (c) establish guidelines for the manner in which an instructor provides an alcohol
2155 education and training seminar.

2156 (6) A seminar provider shall:

2157 (a) obtain recertification by the division every three years;

2158 (b) ensure that an instructor used by the seminar provider:

2159 (i) follows the curriculum established under this section; and

2160 (ii) conducts an alcohol training and education seminar in accordance with the guidelines
2161 established by rule;

2162 (c) ensure that any information provided by the seminar provider or instructor of a seminar
2163 provider is consistent with:

2164 (i) the curriculum established under this section; and

2165 (ii) this section;

2166 (d) provide the division with the names of all persons who complete an alcohol training

2167 and education seminar provided by the seminar provider;

2168 (e) collect a fee for each person attending an alcohol training and education seminar in
2169 accordance with Subsection (2); and

2170 (f) forward to the division the portion of the fee that is equal to the amount described in
2171 Subsection (4)(h).

2172 (7) (a) If after a hearing conducted in accordance with Title 63, Chapter 46b,
2173 Administrative Procedures Act, the division finds that a seminar provider violates this section or
2174 that an instructor of the seminar provider violates this section, the division may:

2175 (i) suspend the certification of the seminar provider for a period not to exceed 90 days;

2176 (ii) revoke the certification of the seminar provider;

2177 (iii) require the seminar provider to take corrective action regarding an instructor; or

2178 (iv) prohibit the seminar provider from using an instructor until such time that the seminar
2179 provider establishes to the satisfaction of the division that the instructor is in compliance with
2180 Subsection (6)(b).

2181 (b) The division may certify a seminar provider whose certification is revoked:

2182 (i) no sooner than 90 days from the date the certification is revoked; and

2183 (ii) if the seminar provider establishes to the satisfaction of the division that the seminar
2184 provider will comply with this section.

2185 Section 49. Section **62A-15-501**, which is renumbered from Section 62A-8-301 is
2186 renumbered and amended to read:

2187 **Part 5. Programs for DUI Drivers**

2188 **~~[62A-8-301].~~ 62A-15-501. DUI -- Legislative policy -- Rehabilitation**
2189 **treatment and evaluation -- Use of victim impact panels.**

2190 The Legislature finds that drivers impaired by alcohol or drugs constitute a major problem
2191 in this state and that the problem demands a comprehensive detection, intervention, education, and
2192 treatment program including emergency services, outpatient treatment, detoxification, residential
2193 care, inpatient care, diagnostic evaluation, medical and psychological care, social service care,
2194 vocational rehabilitation, and career counseling through public and private agencies. It is the
2195 policy of this state to provide those programs at the expense of persons convicted of driving while
2196 under the influence of intoxicating liquor or drugs. It is also the policy of this state to utilize
2197 victim impact panels to assist persons convicted of driving under the influence of intoxicating

2198 liquor or drugs to gain a full understanding of the severity of their offense.

2199 Section 50. Section **62A-15-502**, which is renumbered from Section 62A-8-302 is
2200 renumbered and amended to read:

2201 ~~[62A-8-302]~~. **62A-15-502. Penalty for DUI conviction -- Amounts.**

2202 (1) Courts of record and not of record may at sentencing assess against the defendant, in
2203 addition to any fine, an amount that will fully compensate agencies that treat the defendant for their
2204 costs in each case where a defendant is convicted of violating:

2205 (a) Section 41-6-44 or 41-6-44.6;

2206 (b) a criminal prohibition resulting from a plea bargain after an original charge of violating
2207 Section 41-6-44; or

2208 (c) an ordinance that complies with the requirements of Subsection 41-6-43(1).

2209 (2) The fee assessed shall be collected by the court or an entity appointed by the court.

2210 Section 51. Section **62A-15-503**, which is renumbered from Section 62A-8-303 is
2211 renumbered and amended to read:

2212 ~~[62A-8-303]~~. **62A-15-503. Assessments for DUI -- Use of money for**
2213 **rehabilitation programs, including victim impact panels -- Rulemaking power granted.**

2214 (1) Assessments imposed under Section ~~[62A-8-302]~~ 62A-15-502 may, pursuant to court
2215 order, either:

2216 (a) be collected by the clerk of the court in which the person was convicted; or

2217 (b) be paid directly to the licensed alcohol or drug treatment program. Those assessments
2218 collected by the court shall either be:

2219 (i) forwarded to the state treasurer for credit to a special account in the General Fund,
2220 designated as the "Intoxicated Driver Rehabilitation Account"; or

2221 (ii) forwarded to a special nonlapsing account created by the county treasurer of the county
2222 in which the fee is collected.

2223 (2) Proceeds of the accounts described in Subsection (1) shall be used exclusively for the
2224 operation of licensed alcohol or drug rehabilitation programs and education, assessment,
2225 supervision, and other activities related to and supporting the rehabilitation of persons convicted
2226 of driving while under the influence of intoxicating liquor or drugs. A requirement of the
2227 rehabilitation program shall be participation with a victim impact panel or program providing a
2228 forum for victims of alcohol or drug related offenses and defendants to share experiences on the

2229 impact of alcohol or drug related incidents in their lives. The Division of Substance Abuse and
2230 Mental Health shall establish guidelines to implement victim impact panels where, in the judgment
2231 of the licensed alcohol or drug program, appropriate victims are available, and shall establish
2232 guidelines for other programs where such victims are not available.

2233 (3) None of the assessments shall be maintained for administrative costs by the division.

2234 Section 52. Section **62A-15-504**, which is renumbered from Section 62A-8-304 is
2235 renumbered and amended to read:

2236 ~~[62A-8-304].~~ **62A-15-504. Policy -- Alternatives to incarceration.**

2237 It is the policy of this state to provide adequate and appropriate health and social services
2238 as alternatives to incarceration for public intoxication.

2239 Section 53. Section **62A-15-601**, which is renumbered from Section 62A-12-201 is
2240 renumbered and amended to read:

2241 **Part 6. Utah State Hospital and Other Mental Health Facilities**

2242 ~~[62A-12-201].~~ **62A-15-601. Utah State Hospital.**

2243 The Utah State Hospital is established and located in Provo, in Utah county. For purposes
2244 of this part it is referred to as the "state hospital."

2245 Section 54. Section **62A-15-602**, which is renumbered from Section 62A-12-202 is
2246 renumbered and amended to read:

2247 ~~[62A-12-202].~~ **62A-15-602. Definitions.**

2248 As used in this ~~chapter~~ part, Part 7, Commitment of Persons Under Age 18 to Division
2249 of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah
2250 Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

2251 (1) "Adult" means a person 18 years of age or older.

2252 (2) "Commitment to the custody of a local mental health authority" means that an adult
2253 is committed to the custody of the local mental health authority that governs the mental health
2254 catchment area in which the proposed patient resides or is found.

2255 (3) "Designated examiner" means a licensed physician, preferably a psychiatrist,
2256 designated by the division as specially qualified by training or experience in the diagnosis of
2257 mental or related illness or another licensed mental health professional designated by the division
2258 as specially qualified by training and at least five years' continual experience in the treatment of
2259 mental or related illness. At least one designated examiner in any case shall be a licensed

2260 physician. No person who is the applicant, or who signs the certification, under Section
2261 [~~62A-12-234~~] 62A-15-631 may be a designated examiner in the same case.

2262 (4) "Designee" means a physician who has responsibility for medical functions including
2263 admission and discharge, an employee of a local mental health authority, or an employee of an
2264 agency that has contracted with a local mental health authority to provide mental health services
2265 under Section 17A-3-606.

2266 (5) "Institution" means a hospital, or a health facility licensed under the provisions of
2267 Section 26-21-9.

2268 (6) "Licensed physician" means an individual licensed under the laws of this state to
2269 practice medicine, or a medical officer of the United States government while in this state in the
2270 performance of official duties.

2271 (7) "Local comprehensive community mental health center" means an agency or
2272 organization that provides treatment and services to residents of a designated geographic area,
2273 operated by or under contract with a local mental health authority, in compliance with state
2274 standards for local comprehensive community mental health centers.

2275 (8) "Mental illness" means a psychiatric disorder as defined by the current edition of the
2276 Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric
2277 Association which substantially impairs a person's mental, emotional, behavioral, or related
2278 functioning.

2279 (9) "Mental health facility" means the Utah State Hospital or other facility that provides
2280 mental health services under contract with the division, a local mental health authority, or
2281 organization that contracts with a local mental health authority.

2282 (10) "Mental health officer" means an individual who is designated by a local mental
2283 health authority as qualified by training and experience in the recognition and identification of
2284 mental illness, to interact with and transport persons to any mental health facility.

2285 (11) "Patient" means an individual who has been temporarily placed in the custody of a
2286 local mental health authority, or who has been committed to a local mental health authority either
2287 voluntarily or by court order.

2288 (12) "Treatment" means psychotherapy, medication, including the administration of
2289 psychotropic medication, and other medical treatments that are generally accepted medical and
2290 psychosocial interventions for the purpose of restoring the patient to an optimal level of

2291 functioning in the least restrictive environment.

2292 Section 55. Section **62A-15-603**, which is renumbered from Section 62A-12-203 is
2293 renumbered and amended to read:

2294 ~~[62A-12-203].~~ **62A-15-603. Administration of state hospital -- Division --**
2295 **Authority.**

2296 (1) The administration of the state hospital is vested in the division where it shall function
2297 and be administered as a part of the state's comprehensive mental health program and, to the fullest
2298 extent possible, shall be coordinated with local mental health authority programs. When it
2299 becomes feasible the board may direct that the hospital be decentralized and administered at the
2300 local level by being integrated with, and becoming a part of, the community mental health services.

2301 (2) The division shall succeed to all the powers, discharge all the duties, and perform all
2302 the functions, duties, rights, and responsibilities pertaining to the state hospital which by law are
2303 conferred upon it or required to be discharged or performed. However, the functions, powers,
2304 duties, rights, and responsibilities of the division and of the board otherwise provided by law and
2305 by this part apply.

2306 (3) Supervision and administration of security responsibilities for the state hospital is
2307 vested in the division. The executive director shall designate, as special function officers,
2308 individuals to perform special security functions for the state hospital that require peace officer
2309 authority. These special function officers may not become or be designated as members of the
2310 Public Safety Retirement System.

2311 (4) Directors of mental health facilities that house involuntary detainees or detainees
2312 committed pursuant to judicial order may establish secure areas, as prescribed in Section
2313 76-8-311.1, within the mental health facility for the detainees.

2314 Section 56. Section **62A-15-604**, which is renumbered from Section 62A-12-204 is
2315 renumbered and amended to read:

2316 ~~[62A-12-204].~~ **62A-15-604. Receipt of gift -- Transfer of persons from other**
2317 **institutions.**

2318 (1) The division may take and hold by gift, devise, or bequest real and personal property
2319 required for the use of the state hospital. With the approval of the governor it may convert that
2320 property which is not suitable for its use into money or property that is suitable for that use.

2321 (2) The state hospital is authorized to receive from any other institution within the

2322 department any person committed to that institution, when a careful evaluation of the treatment
2323 needs of the person and of the treatment programs available at the state hospital indicates that the
2324 transfer would be in the interest of that person.

2325 (3) (a) Notwithstanding the provisions of Subsection 62A-1-111 (10), the state hospital
2326 is authorized to receive gifts, grants, devises, and donations and shall deposit them into an
2327 interest-bearing restricted special revenue fund. The state treasurer may invest the fund and all
2328 interest is to remain with the fund.

2329 (b) Those gifts, grants, devises, donations, and the proceeds thereof shall be used by the
2330 superintendent or his designee for the use and benefit of patients at the state hospital.

2331 Section 57. Section **62A-15-605**, which is renumbered from Section 62A-12-204.5 is
2332 renumbered and amended to read:

2333 ~~[62A-12-204.5].~~ **62A-15-605. Forensic Mental Health Coordinating Council --**
2334 **Establishment and purpose.**

2335 (1) There is established the Forensic Mental Health Coordinating Council composed of
2336 the following members:

2337 (a) the director or the director's appointee;

2338 (b) the superintendent of the state hospital or the superintendent's appointee;

2339 (c) the executive director of the Department of Corrections or the executive director's
2340 appointee;

2341 (d) a member of the Board of Pardons and Parole or its appointee;

2342 (e) the attorney general or the attorney general's appointee;

2343 (f) the director of the Division of Services for People with Disabilities or the director's
2344 appointee;

2345 (g) the director of the Division of Youth Corrections or the director's appointee;

2346 (h) the director of the Commission on Criminal and Juvenile Justice or the director's
2347 appointee;

2348 (i) the state court administrator or the administrator's appointee;

2349 (j) the state juvenile court administrator or the administrator's appointee;

2350 (k) a representative from a local mental health authority or an organization, excluding the
2351 state hospital that provides mental health services under contract with the Division of Substance
2352 Abuse and Mental Health or a local mental health authority, as appointed by the director of the

2353 division;

2354 (1) the executive director of the Governor's Council for People with Disabilities or the
2355 director's appointee; and

2356 (m) other persons as appointed by the members described in Subsections (1)(a) through
2357 (l).

2358 (2) (a) (i) Members who are not government employees shall receive no compensation or
2359 benefits for their services, but may receive per diem and expenses incurred in the performance of
2360 the member's official duties at the rates established by the Division of Finance under Sections
2361 63A-3-106 and 63A-3-107.

2362 (ii) Members may decline to receive per diem and expenses for their service.

2363 (b) (i) State government officer and employee members who do not receive salary, per
2364 diem, or expenses from their agency for their service may receive per diem and expenses incurred
2365 in the performance of their official duties from the council at the rates established by the Division
2366 of Finance under Sections 63A-3-106 and 63A-3-107.

2367 (ii) State government officer and employee members may decline to receive per diem and
2368 expenses for their service.

2369 (3) The purpose of the Forensic Mental Health Coordinating Council is to:

2370 (a) advise the director regarding admissions to the state hospital of persons in the custody
2371 of the Department of Corrections;

2372 (b) develop policies for coordination between the division and the Department of
2373 Corrections;

2374 (c) advise the executive director of the Department of Corrections regarding issues of care
2375 for persons in the custody of the Department of Corrections who are mentally ill;

2376 (d) promote communication between and coordination among all agencies dealing with
2377 persons with mental retardation, as defined in Section 62A-5-101, or mental illness who become
2378 involved in the civil commitment system or in the criminal or juvenile justice system;

2379 (e) study, evaluate, and recommend changes to laws and procedures relating to persons
2380 with mental retardation or mental illness who become involved in the civil commitment system
2381 or in the criminal or juvenile justice system;

2382 (f) identify and promote the implementation of specific policies and programs to deal fairly
2383 and efficiently with persons with mental retardation or mental illness who become involved in the

2384 civil commitment system or in the criminal or juvenile justice system; and

2385 (g) promote judicial education relating to persons with mental retardation or mental illness
2386 who become involved in the civil commitment system or in the criminal or juvenile justice system.

2387 Section 58. Section **62A-15-605.5**, which is renumbered from Section 62A-12-204.6 is
2388 renumbered and amended to read:

2389 ~~[62A-12-204.6]~~. **62A-15-605.5. Admission of person in custody of Department**
2390 **of Corrections to state hospital -- Retransfer of person to Department of Corrections.**

2391 (1) The executive director of the Department of Corrections may request the director to
2392 admit a person who is in the custody of the Department of Corrections to the state hospital, if the
2393 clinical director within the Department of Corrections finds that the inmate has mentally
2394 deteriorated to the point that admission to the state hospital is necessary to ensure adequate mental
2395 health treatment. In determining whether that inmate should be placed in the state hospital, the
2396 director of the division shall consider:

- 2397 (a) the mental health treatment needs of the inmate;
- 2398 (b) the treatment programs available at the state hospital; and
- 2399 (c) whether the inmate meets the requirements of Subsection ~~[62A-12-209]~~
2400 62A-15-610(2).

2401 (2) If the director denies the admission of an inmate as requested by the clinical director
2402 within the Department of Corrections, the Board of Pardons and Parole shall determine whether
2403 the inmate will be admitted to the state hospital. The Board of Pardons and Parole shall consider:

- 2404 (a) the mental health treatment needs of the inmate;
- 2405 (b) the treatment programs available at the state hospital; and
- 2406 (c) whether the inmate meets the requirements of Subsection ~~[62A-12-209]~~
2407 62A-15-610(2).

2408 (3) The state hospital shall receive any person in the custody of the Department of
2409 Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to
2410 Subsection (1) or (2). Any person so transferred to the state hospital shall remain in the custody
2411 of the Department of Corrections, and the state hospital shall act solely as the agent of the
2412 Department of Corrections.

2413 (4) Inmates transferred to the state hospital pursuant to this section shall be transferred
2414 back to the Department of Corrections through negotiations between the director and the director

2415 of the Department of Corrections. If agreement between the director and the director of the
2416 Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final
2417 authority in determining whether a person will be transferred back to the Department of
2418 Corrections. In making that determination, that board shall consider:

- 2419 (a) the mental health treatment needs of the inmate;
- 2420 (b) the treatment programs available at the state hospital;
- 2421 (c) whether the person continues to meet the requirements of Subsection [~~62A-12-209~~]
2422 62A-15-610(2);
- 2423 (d) the ability of the state hospital to provide adequate treatment to the person, as well as
2424 safety and security to the public; and
- 2425 (e) whether, in the opinion of the director, in consultation with the clinical director of the
2426 state hospital, the person's treatment needs have been met.

2427 Section 59. Section **62A-15-606**, which is renumbered from Section 62A-12-205 is
2428 renumbered and amended to read:

2429 [~~62A-12-205~~]. **62A-15-606. Board -- Rulemaking authority -- Administration**
2430 **by division.**

2431 The board may make rules applying to the state hospital, to be enforced and administered
2432 by the division.

2433 Section 60. Section **62A-15-607**, which is renumbered from Section 62A-12-206 is
2434 renumbered and amended to read:

2435 [~~62A-12-206~~]. **62A-15-607. Responsibility for cost of care.**

2436 (1) The division shall estimate and determine, as nearly as possible, the actual expense per
2437 annum of caring for and maintaining a patient in the state hospital, and that amount or portion of
2438 that amount shall be assessed to and paid by the applicant, patient, spouse, parents, child or
2439 children who are of sufficient financial ability to do so, or by the guardian of the patient who has
2440 funds of the patient that may be used for that purpose.

2441 (2) In addition to the expenses described in Subsection (1), parents are responsible for the
2442 support of their child while the child is in the care of the state hospital pursuant to Title 78,
2443 Chapter 45, Uniform Civil Liability for Support Act, and Title 62A, Chapter 11, [~~Public Support~~
2444 ~~of Children Act~~] Recovery Services.

2445 Section 61. Section **62A-15-608**, which is renumbered from Section 62A-12-207 is

2446 renumbered and amended to read:

2447 ~~[62A-12-207]~~. 62A-15-608. **Local mental health authority -- Supervision and**
2448 **treatment of mentally ill persons.**

2449 (1) Each local mental health authority has responsibility for supervision and treatment of
2450 mentally ill persons who have been committed to its custody under the provisions of this part,
2451 whether residing in the state hospital or elsewhere.

2452 (2) The division, in administering and supervising the security responsibilities of the state
2453 hospital under its authority provided by Section ~~[62A-12-203]~~ 62A-15-603, shall enforce Sections
2454 ~~[62A-12-222]~~ 62A-15-620 through ~~[62A-12-227]~~ 62A-15-624 to the extent they pertain to the
2455 state hospital.

2456 Section 62. Section **62A-15-609**, which is renumbered from Section 62A-12-208 is
2457 renumbered and amended to read:

2458 ~~[62A-12-208]~~. 62A-15-609. **Responsibility for education of school-aged**
2459 **children at the hospital -- Responsibility for noninstructional services.**

2460 (1) The State Board of Education is responsible for the education of school-aged children
2461 committed to the division.

2462 (2) In order to fulfill its responsibility under Subsection (1), the board may contract with
2463 local school districts or other appropriate agencies to provide educational and related
2464 administrative services.

2465 (3) Medical, residential, and other noninstructional services at the state hospital are the
2466 responsibility of the division.

2467 Section 63. Section **62A-15-610**, which is renumbered from Section 62A-12-209 is
2468 renumbered and amended to read:

2469 ~~[62A-12-209]~~. 62A-15-610. **Objectives of state hospital and other facilities --**
2470 **Persons who may be admitted to state hospital.**

2471 (1) The objectives of the state hospital and other mental health facilities shall be to care
2472 for all persons within this state who are subject to the provisions of this chapter; and to furnish
2473 them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement,
2474 occupation, and support that is conducive to their physical and mental well-being.

2475 (2) Only the following persons may be admitted to the state hospital:

2476 (a) persons 18 years of age and older who meet the criteria necessary for commitment

2477 under this part and who have severe mental disorders for whom no appropriate, less restrictive
2478 treatment alternative is available;

2479 (b) persons under 18 years of age who meet the criteria necessary for commitment under
2480 Part 2A and for whom no less restrictive alternative is available;

2481 (c) persons adjudicated and found to be guilty and mentally ill under Title 77, Chapter 16a,
2482 Commitment and Treatment of Mentally Ill Persons;

2483 (d) persons adjudicated and found to be not guilty by reason of insanity who are under a
2484 subsequent commitment order because they are mentally ill and a danger to themselves or others,
2485 under Section 77-16a-302;

2486 (e) persons found incompetent to proceed under Section 77-15-6;

2487 (f) persons who require an examination under Title 77, Utah Code of Criminal Procedure;
2488 and

2489 (g) persons in the custody of the Department of Corrections, admitted in accordance with
2490 Section [~~62A-12-204.6~~] 62A-15-605.5, giving priority to those persons with severe mental
2491 disorders.

2492 Section 64. Section **62A-15-611**, which is renumbered from Section 62A-12-209.5 is
2493 renumbered and amended to read:

2494 [~~62A-12-209.5~~]. **62A-15-611. Allocation of state hospital beds -- Formula.**

2495 (1) As used in this section:

2496 (a) "Adult beds" means the total number of patient beds located in the adult general
2497 psychiatric unit and the geriatric unit at the state hospital, as determined by the superintendent of
2498 the state hospital.

2499 (b) "Mental health catchment area" means a county or group of counties governed by a
2500 local mental health authority.

2501 (2) (a) The board shall establish by rule a formula to separately allocate to local mental
2502 health authorities adult beds for persons who meet the requirements of Subsection [~~62A-12-209~~]
2503 62A-15-610(2)(a). Beginning on the effective date of this act and until June 30, 2002, one hundred
2504 eighty two beds shall be allocated to local mental health authorities under this section.

2505 (b) The number of beds shall be reviewed and adjusted as necessary:

2506 (i) on July 1, 2002, to restore the number of beds allocated to 212 beds as funding permits;

2507 and

2508 (ii) every three years thereafter according to the state's population.

2509 (c) All population figures utilized shall reflect the most recent available population
2510 estimates from the Utah Population Estimates Committee.

2511 (3) The formula established under Subsection (2) shall provide for allocation of beds based
2512 on:

2513 (a) the percentage of the state's adult population located within a mental health catchment
2514 area; and

2515 (b) a differential to compensate for the additional demand for hospital beds in mental
2516 health catchment areas that are located in urban areas.

2517 (4) A local mental health authority may sell or loan its allocation of beds to another local
2518 mental health authority.

2519 (5) The division shall allocate adult beds at the state hospital to local mental health
2520 authorities for their use in accordance with the formula established under this section. If a local
2521 mental health authority is unable to access a bed allocated to it under the formula established under
2522 Subsection (2), the division shall provide that local mental health authority with funding equal to
2523 the reasonable, average daily cost of an acute care bed purchased by the local mental health
2524 authority.

2525 (6) The board shall periodically review and make changes in the formula established under
2526 Subsection (2) as necessary to accurately reflect changes in population.

2527 Section 65. Section **62A-15-612**, which is renumbered from Section 62A-12-209.6 is
2528 renumbered and amended to read:

2529 ~~[62A-12-209.6].~~ **62A-15-612. Allocation of pediatric state hospital beds --**
2530 **Formula.**

2531 (1) As used in this section:

2532 (a) "Pediatric beds" means the total number of patient beds located in the children's unit
2533 and the youth units at the state hospital, as determined by the superintendent of the state hospital.

2534 (b) "Mental health catchment area" means a county or group of counties governed by a
2535 local mental health authority.

2536 (2) The board shall establish by rule a formula to separately allocate to local mental health
2537 authorities pediatric beds for persons who meet the requirements of Subsection [~~62A-12-209~~
2538 62A-15-610](2)(b). On July 1, 1996, 72 pediatric beds shall be allocated to local mental health

2539 authorities under this section. That number shall be reviewed and adjusted as necessary every
2540 three years according to the state's population of persons under 18 years of age. All population
2541 figures utilized shall reflect the most recent available population estimates from the governor's
2542 Office of Planning and Budget.

2543 (3) The formula established under Subsection (2) becomes effective on July 1, 1996, and
2544 shall provide for allocation of beds based on the percentage of the state's population of persons
2545 under the age of 18 located within a mental health catchment area. Each community mental health
2546 center shall be allocated at least one bed.

2547 (4) A local mental health authority may sell or loan its allocation of beds to another local
2548 mental health authority.

2549 (5) The division shall allocate 72 pediatric beds at the state hospital to local mental health
2550 authorities for their use in accordance with the formula established under this section. If a local
2551 mental health authority is unable to access a bed allocated to it under that formula, the division
2552 shall provide that local mental health authority with funding equal to the reasonable, average daily
2553 cost of an acute care bed purchased by the local mental health authority.

2554 (6) The board shall periodically review and make changes in the formula established under
2555 Subsection (2) as necessary to accurately reflect changes in the state's population.

2556 Section 66. Section **62A-15-613**, which is renumbered from Section 62A-12-210 is
2557 renumbered and amended to read:

2558 **[62A-12-210]. 62A-15-613. Appointment of superintendent -- Qualifications**
2559 **-- Powers and responsibilities.**

2560 (1) The director, with the advice and consent of the board and the approval of the
2561 executive director, shall appoint a superintendent of the state hospital, who shall hold office at the
2562 will of the director.

2563 (2) The superintendent shall have a bachelor's degree from an accredited university or
2564 college, be experienced in administration, and be knowledgeable in matters concerning mental
2565 health.

2566 (3) Subject to the rules of the board, the superintendent has general responsibility for the
2567 buildings, grounds, and property of the state hospital. The superintendent shall appoint, with the
2568 approval of the director, as many employees as necessary for the efficient and economical care and
2569 management of the state hospital, and shall fix their compensation and administer personnel

2570 functions according to the standards of the Department of Human Resource Management.

2571 Section 67. Section **62A-15-614**, which is renumbered from Section 62A-12-212 is
2572 renumbered and amended to read:

2573 ~~[62A-12-212].~~ **62A-15-614. Clinical director -- Appointment -- Conditions and**
2574 **procedure -- Duties.**

2575 (1) Whenever the superintendent is not qualified to be the clinical director of the state
2576 hospital under this section, he shall, with the approval of the director of the division, appoint a
2577 clinical director who is licensed to practice medicine and surgery in this state, and who has had at
2578 least three years' training in a psychiatric residency program approved by the American Board of
2579 Psychiatry and Neurology, Inc., and who is eligible for certification by that board.

2580 (2) The salary of the clinical director of the state hospital shall be fixed by the standards
2581 of the Division of Finance, to be paid in the same manner as the salaries of other employees. The
2582 clinical director shall perform such duties as directed by the superintendent and prescribed by the
2583 rules of the board, and shall prescribe and direct the treatment of patients and adopt sanitary
2584 measures for their welfare.

2585 (3) If the superintendent is qualified to be the clinical director, he may assume the duties
2586 of the clinical director.

2587 Section 68. Section **62A-15-615**, which is renumbered from Section 62A-12-214 is
2588 renumbered and amended to read:

2589 ~~[62A-12-214].~~ **62A-15-615. Forms.**

2590 The division shall furnish the clerks of the district courts with forms, blanks, warrants, and
2591 certificates, to enable the district court judges, with regularity and facility, to comply with the
2592 provisions of this chapter.

2593 Section 69. Section **62A-15-616**, which is renumbered from Section 62A-12-215 is
2594 renumbered and amended to read:

2595 ~~[62A-12-215].~~ **62A-15-616. Persons entering state mentally ill.**

2596 (1) A person who enters this state while mentally ill may be returned by a local mental
2597 health authority to the home of relatives or friends of that mentally ill person, if known, or to a
2598 hospital in the state where that mentally ill person is domiciled, in accordance with Title 62A,
2599 Chapter ~~[12]~~ 15, Part ~~[3]~~ 8, Interstate Compact on Mental Health.

2600 (2) This section does not prevent commitment of persons who are traveling through or

2601 temporarily residing in this state.

2602 Section 70. Section **62A-15-617**, which is renumbered from Section 62A-12-216 is
2603 renumbered and amended to read:

2604 ~~[62A-12-216].~~ **62A-15-617. Expenses of voluntary patients.**

2605 The expense for the care and treatment of voluntary patients shall be assessed to and paid
2606 in the same manner and to the same extent as is provided for involuntary patients under the
2607 provisions of Section ~~[62A-12-206]~~ 62A-15-607.

2608 Section 71. Section **62A-15-618**, which is renumbered from Section 62A-12-217 is
2609 renumbered and amended to read:

2610 ~~[62A-12-217].~~ **62A-15-618. Designated examiners -- Fees.**

2611 Designated examiners shall be allowed a reasonable fee by the county legislative body of
2612 the county in which the proposed patient resides or is found, unless they are otherwise paid.

2613 Section 72. Section **62A-15-619**, which is renumbered from Section 62A-12-219 is
2614 renumbered and amended to read:

2615 ~~[62A-12-219].~~ **62A-15-619. Liability of estate of mentally ill person.**

2616 The provisions made in this part for the support of mentally ill persons at public expense
2617 do not release the estates of those persons from liability for their care and treatment, and the
2618 division is authorized and empowered to collect from the estates of those persons any sums paid
2619 by the state in their behalf.

2620 Section 73. Section **62A-15-620**, which is renumbered from Section 62A-12-222 is
2621 renumbered and amended to read:

2622 ~~[62A-12-222].~~ **62A-15-620. Attempt to commit person contrary to**
2623 **requirements -- Penalty.**

2624 Any person who attempts to place another person in the custody of a local mental health
2625 authority contrary to the provisions of this part is guilty of a class B misdemeanor, in addition to
2626 liability in an action for damages, or subject to other criminal charges.

2627 Section 74. Section **62A-15-621**, which is renumbered from Section 62A-12-224 is
2628 renumbered and amended to read:

2629 ~~[62A-12-224].~~ **62A-15-621. Trespass -- Disturbance -- Penalty.**

2630 Any person who, without permission, enters any of the buildings or enclosures appropriated
2631 to the use of patients, or makes any attempt to do so, or enters anywhere upon the premises

2632 belonging to or used by the division, a local mental health authority, or the state hospital and
2633 commits, or attempts to commit, any trespass or depredation thereon, or any person who, either
2634 from within or without the enclosures, willfully annoys or disturbs the peace or quiet of the
2635 premises or of any patient therein, is guilty of a class B misdemeanor.

2636 Section 75. Section **62A-15-622**, which is renumbered from Section 62A-12-225 is
2637 renumbered and amended to read:

2638 ~~[62A-12-225]~~. **62A-15-622. Abduction of patient -- Penalty.**

2639 Any person who abducts a patient who is in the custody of a local mental health authority,
2640 or induces any patient to elope or escape from that custody, or attempts to do so, or aids or assists
2641 therein, is guilty of a class B misdemeanor, in addition to liability for damages, or subject to other
2642 criminal charges.

2643 Section 76. Section **62A-15-623**, which is renumbered from Section 62A-12-226 is
2644 renumbered and amended to read:

2645 ~~[62A-12-226]~~. **62A-15-623. Criminal's escape -- Penalty.**

2646 Any person committed to the state hospital under the provisions of Title 77, Chapter 15,
2647 Inquiry into Sanity of Defendant, or Chapter 16, Mental Examination after Conviction, who
2648 escapes or leaves the state hospital without proper legal authority is guilty of a class A
2649 misdemeanor.

2650 Section 77. Section **62A-15-624**, which is renumbered from Section 62A-12-227 is
2651 renumbered and amended to read:

2652 ~~[62A-12-227]~~. **62A-15-624. Violations of this part -- Penalty.**

2653 Any person who willfully and knowingly violates any provision of this part, except where
2654 another penalty is provided by law, is guilty of a class C misdemeanor.

2655 Section 78. Section **62A-15-625**, which is renumbered from Section 62A-12-228 is
2656 renumbered and amended to read:

2657 ~~[62A-12-228]~~. **62A-15-625. Voluntary admission of adults.**

2658 (1) A local mental health authority or its designee may admit to that authority, for
2659 observation, diagnosis, care, and treatment any individual who is mentally ill or has symptoms of
2660 mental illness and who, being 18 years of age or older, applies for voluntary admission.

2661 (2) (a) No adult may be committed or continue to be committed to a local mental health
2662 authority against his will except as provided in this chapter.

2663 (b) No person under 18 years of age may be committed to a local mental health authority,
2664 but may be committed to the division in accordance with the provisions of Part ~~[2A]~~ 7.

2665 (3) An adult may be voluntarily admitted to a local mental health authority for treatment
2666 at the Utah State Hospital as a condition of probation or stay of sentence only after the
2667 requirements of Subsection 77-18-1~~(14)~~ (13) have been met.

2668 Section 79. Section **62A-15-626**, which is renumbered from Section 62A-12-229 is
2669 renumbered and amended to read:

2670 ~~[62A-12-229].~~ **62A-15-626. Release from commitment.**

2671 (1) A local mental health authority or its designee shall release from commitment any
2672 person who, in the opinion of the local mental health authority or its designee, has recovered or
2673 no longer meets the criteria specified in Section ~~[62A-12-234]~~ 62A-15-631.

2674 (2) A local mental health authority or its designee may release from commitment any
2675 patient whose commitment is determined to be no longer advisable except as provided by Section
2676 78-3a-121, but an effort shall be made to assure that any further supportive services required to
2677 meet the patient's needs upon release will be provided.

2678 (3) When a patient has been committed to a local mental health authority by judicial
2679 process, the local mental health authority shall follow the procedures described in Sections
2680 ~~[62A-12-240]~~ 62A-15-636 and ~~[62A-12-241]~~ 62A-15-637.

2681 Section 80. Section **62A-15-627**, which is renumbered from Section 62A-12-230 is
2682 renumbered and amended to read:

2683 ~~[62A-12-230].~~ **62A-15-627. Release of voluntary patient -- Exceptions.**

2684 A voluntary patient who requests release, or whose release is requested in writing by his
2685 legal guardian, parent, spouse, or adult next of kin, shall be immediately released except that:

2686 (1) if the patient was voluntarily admitted on his own application, and the request for
2687 release is made by a person other than the patient, release may be conditioned upon the agreement
2688 of the patient; and

2689 (2) if a local mental health authority, or its designee is of the opinion that release of a
2690 patient would be unsafe for that patient or others, release of that patient may be postponed for up
2691 to 48 hours, excluding weekends and holidays, provided that the local mental health authority, or
2692 its designee, shall cause to be instituted involuntary commitment proceedings with the district
2693 court within the specified time period, unless cause no longer exists for instituting those

2694 proceedings. Written notice of that postponement with the reasons, shall be given to the patient
2695 without undue delay. No judicial proceedings may be commenced with respect to a voluntary
2696 patient unless he has requested release.

2697 Section 81. Section ~~62A-15-628~~, which is renumbered from Section 62A-12-231 is
2698 renumbered and amended to read:

2699 ~~[62A-12-231]~~. 62A-15-628. Involuntary commitment -- Procedures.

2700 (1) An adult may not be involuntarily committed to the custody of a local mental health
2701 authority except under the following provisions:

2702 (a) emergency procedures for temporary commitment upon medical or designated
2703 examiner certification, as provided in Subsection ~~[62A-12-232]~~ 62A-15-629(1);

2704 (b) emergency procedures for temporary commitment without endorsement of medical or
2705 designated examiner certification, as provided in Subsection ~~[62A-12-232]~~ 62A-15-629(2); or

2706 (c) commitment on court order, as provided in Section ~~[62A-12-234]~~ 62A-15-631.

2707 (2) A person under 18 years of age may not be committed to a local mental health
2708 authority, but may be committed to the division in accordance with the provisions of Part ~~[2A]~~ 7.

2709 Section 82. Section ~~62A-15-629~~, which is renumbered from Section 62A-12-232 is
2710 renumbered and amended to read:

2711 ~~[62A-12-232]~~. 62A-15-629. Temporary commitment -- Requirements and
2712 procedures.

2713 (1) (a) An adult may be temporarily, involuntarily committed to a local mental health
2714 authority upon:

2715 (i) written application by a responsible person who has reason to know, stating a belief that
2716 the individual is likely to cause serious injury to himself or others if not immediately restrained,
2717 and stating the personal knowledge of the individual's condition or circumstances which lead to
2718 that belief; and

2719 (ii) a certification by a licensed physician or designated examiner stating that the physician
2720 or designated examiner has examined the individual within a three-day period immediately
2721 preceding that certification, and that he is of the opinion that the individual is mentally ill and,
2722 because of his mental illness, is likely to injure himself or others if not immediately restrained.

2723 (b) Application and certification as described in Subsection (1)(a) authorizes any peace
2724 officer to take the individual into the custody of a local mental health authority and transport the

2725 individual to that authority's designated facility.

2726 (2) If a duly authorized peace officer observes a person involved in conduct that gives the
2727 officer probable cause to believe that the person is mentally ill, as defined in Section [~~62A-12-202~~]
2728 62A-15-602, and because of that apparent mental illness and conduct, there is a substantial
2729 likelihood of serious harm to that person or others, pending proceedings for examination and
2730 certification under this part, the officer may take that person into protective custody. The peace
2731 officer shall transport the person to be transported to the designated facility of the appropriate local
2732 mental health authority pursuant to this section, either on the basis of his own observation or on
2733 the basis of a mental health officer's observation that has been reported to him by that mental
2734 health officer. Immediately thereafter, the officer shall place the person in the custody of the local
2735 mental health authority and make application for commitment of that person to the local mental
2736 health authority. The application shall be on a prescribed form and shall include the following:

2737 (a) a statement by the officer that he believes, on the basis of personal observation or on
2738 the basis of a mental health officer's observation reported to him by the mental health officer, that
2739 the person is, as a result of a mental illness, a substantial and immediate danger to himself or
2740 others;

2741 (b) the specific nature of the danger;

2742 (c) a summary of the observations upon which the statement of danger is based; and

2743 (d) a statement of facts which called the person to the attention of the officer.

2744 (3) A person committed under this section may be held for a maximum of 24 hours,
2745 excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the person
2746 shall be released unless application for involuntary commitment has been commenced pursuant
2747 to Section [~~62A-12-234~~] 62A-15-631. If that application has been made, an order of detention may
2748 be entered under Subsection [~~62A-12-234~~] 62A-15-631(3). If no order of detention is issued, the
2749 patient shall be released unless he has made voluntary application for admission.

2750 (4) Transportation of mentally ill persons pursuant to Subsections (1) and (2) shall be
2751 conducted by the appropriate municipal, or city or town, law enforcement authority or, under the
2752 appropriate law enforcement's authority, by ambulance to the extent that Subsection (5) applies.
2753 However, if the designated facility is outside of that authority's jurisdiction, the appropriate county
2754 sheriff shall transport the person or cause the person to be transported by ambulance to the extent
2755 that Subsection (5) applies.

2756 (5) Notwithstanding Subsections (2) and (4), a peace officer shall cause a person to be
2757 transported by ambulance if the person meets any of the criteria in Section 26-8a-305. In addition,
2758 if the person requires physical medical attention, the peace officer shall direct that transportation
2759 be to an appropriate medical facility for treatment.

2760 Section 83. Section **62A-15-630**, which is renumbered from Section 62A-12-233 is
2761 renumbered and amended to read:

2762 ~~[62A-12-233].~~ **62A-15-630. Mental health commissioners.**

2763 The court may appoint a mental health commissioner to assist in conducting commitment
2764 proceedings in accordance with Section 78-3-31.

2765 Section 84. Section **62A-15-631**, which is renumbered from Section 62A-12-234 is
2766 renumbered and amended to read:

2767 ~~[62A-12-234].~~ **62A-15-631. Involuntary commitment under court order --**
2768 **Examination -- Hearing -- Power of court -- Findings required -- Costs.**

2769 (1) Proceedings for involuntary commitment of an individual who is 18 years of age or
2770 older may be commenced by filing a written application with the district court of the county in
2771 which the proposed patient resides or is found, by a responsible person who has reason to know
2772 of the condition or circumstances of the proposed patient which lead to the belief that the
2773 individual is mentally ill and should be involuntarily committed. That application shall be
2774 accompanied by:

2775 (a) a certificate of a licensed physician or a designated examiner stating that within a
2776 seven-day period immediately preceding the certification the physician or designated examiner has
2777 examined the individual, and that he is of the opinion that the individual is mentally ill and should
2778 be involuntarily committed; or

2779 (b) a written statement by the applicant that the individual has been requested to but has
2780 refused to submit to an examination of mental condition by a licensed physician or designated
2781 examiner. That application shall be sworn to under oath and shall state the facts upon which the
2782 application is based.

2783 (2) Prior to issuing a judicial order, the court may require the applicant to consult with the
2784 appropriate local mental health authority, or may direct a mental health professional from that local
2785 mental health authority to interview the applicant and the proposed patient to determine the
2786 existing facts and report them to the court.

2787 (3) If the court finds from the application, from any other statements under oath, or from
2788 any reports from a mental health professional that there is a reasonable basis to believe that the
2789 proposed patient's mental condition and immediate danger to himself, others, or property requires
2790 involuntary commitment pending examination and hearing; or, if the proposed patient has refused
2791 to submit to an interview with a mental health professional as directed by the court or to go to a
2792 treatment facility voluntarily, the court may issue an order, directed to a mental health officer or
2793 peace officer, to immediately place the proposed patient in the custody of a local mental health
2794 authority or in a temporary emergency facility as provided in Section [~~62A-12-237~~] 62A-15-634
2795 to be detained for the purpose of examination. Within 24 hours of the issuance of the order for
2796 examination, a local mental health authority or its designee shall report to the court, orally or in
2797 writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient
2798 has agreed to become a voluntary patient under Section [~~62A-12-228~~] 62A-15-625, and whether
2799 treatment programs are available and acceptable without court proceedings. Based on that
2800 information, the court may, without taking any further action, terminate the proceedings and
2801 dismiss the application. In any event, if the examiner reports orally, he shall immediately send the
2802 report in writing to the clerk of the court.

2803 (4) Notice of commencement of proceedings for involuntary commitment, setting forth
2804 the allegations of the application and any reported facts, together with a copy of any official order
2805 of detention, shall be provided by the court to a proposed patient prior to, or upon, placement in
2806 the custody of a local mental health authority or, with respect to any individual presently in the
2807 custody of a local mental health authority whose status is being changed from voluntary to
2808 involuntary, upon the filing of an application for that purpose with the court. A copy of that order
2809 of detention shall be maintained at the place of detention.

2810 (5) Notice of commencement of those proceedings shall be provided by the court as soon
2811 as practicable to the applicant, any legal guardian, any immediate adult family members, legal
2812 counsel for the parties involved, and any other persons whom the proposed patient or the court
2813 shall designate. That notice shall advise those persons that a hearing may be held within the time
2814 provided by law. If the patient has refused to permit release of information necessary for
2815 provisions of notice under this subsection, the extent of notice shall be determined by the court.

2816 (6) Proceedings for commitment of an individual under the age of 18 years to the division
2817 may be commenced by filing a written application with the juvenile court in accordance with the

2818 provisions of Part ~~[2A]~~ 7.

2819 (7) The district court may, in its discretion, transfer the case to any other district court
2820 within this state, provided that the transfer will not be adverse to the interest of the proposed
2821 patient.

2822 (8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance
2823 of a judicial order, or after commitment of a proposed patient to a local mental health authority
2824 under court order for detention or examination, the court shall appoint two designated examiners
2825 to examine the proposed patient. If requested by the proposed patient's counsel, the court shall
2826 appoint, as one of the examiners, a reasonably available qualified person designated by counsel.
2827 The examinations, to be conducted separately, shall be held at the home of the proposed patient,
2828 a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful
2829 effect on the patient's health.

2830 (b) A time shall be set for a hearing to be held within ten court days of the appointment
2831 of the designated examiners, unless those examiners or a local mental health authority or its
2832 designee informs the court prior to that hearing date that the patient is not mentally ill, that he has
2833 agreed to become a voluntary patient under Section ~~[62A-12-228]~~ 62A-15-625, or that treatment
2834 programs are available and acceptable without court proceedings, in which event the court may,
2835 without taking any further action, terminate the proceedings and dismiss the application.

2836 (9) (a) Prior to the hearing, an opportunity to be represented by counsel shall be afforded
2837 to every proposed patient, and if neither the patient nor others provide counsel, the court shall
2838 appoint counsel and allow him sufficient time to consult with the patient prior to the hearing. In
2839 the case of an indigent patient, the payment of reasonable attorneys' fees for counsel, as determined
2840 by the court, shall be made by the county in which the patient resides or was found.

2841 (b) The proposed patient, the applicant, and all other persons to whom notice is required
2842 to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and
2843 cross-examine witnesses. The court may, in its discretion, receive the testimony of any other
2844 person. The court may allow a waiver of the patient's right to appear only for good cause shown,
2845 and that cause shall be made a matter of court record.

2846 (c) The court is authorized to exclude all persons not necessary for the conduct of the
2847 proceedings and may, upon motion of counsel, require the testimony of each examiner to be given
2848 out of the presence of any other examiners.

2849 (d) The hearing shall be conducted in as informal a manner as may be consistent with
2850 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental
2851 health of the proposed patient.

2852 (e) The court shall receive all relevant and material evidence which is offered, subject to
2853 the rules of evidence.

2854 (f) A local mental health authority or its designee, or the physician in charge of the
2855 patient's care shall, at the time of the hearing, provide the court with the following information:

2856 (i) the detention order;

2857 (ii) admission notes;

2858 (iii) the diagnosis;

2859 (iv) any doctors' orders;

2860 (v) progress notes;

2861 (vi) nursing notes; and

2862 (vii) medication records pertaining to the current commitment.

2863 That information shall also be supplied to the patient's counsel at the time of the hearing,
2864 and at any time prior to the hearing upon request.

2865 (10) The court shall order commitment of an individual who is 18 years of age or older to
2866 a local mental health authority if, upon completion of the hearing and consideration of the record,
2867 the court finds by clear and convincing evidence that:

2868 (a) the proposed patient has a mental illness;

2869 (b) because of the proposed patient's mental illness he poses an immediate danger of
2870 physical injury to others or himself, which may include the inability to provide the basic necessities
2871 of life such as food, clothing, and shelter, if allowed to remain at liberty;

2872 (c) the patient lacks the ability to engage in a rational decision-making process regarding
2873 the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible
2874 costs and benefits of treatment;

2875 (d) there is no appropriate less-restrictive alternative to a court order of commitment; and

2876 (e) the local mental health authority can provide the individual with treatment that is
2877 adequate and appropriate to his conditions and needs. In the absence of the required findings of
2878 the court after the hearing, the court shall forthwith dismiss the proceedings.

2879 (11) (a) The order of commitment shall designate the period for which the individual shall

2880 be treated. When the individual is not under an order of commitment at the time of the hearing,
2881 that period may not exceed six months without benefit of a review hearing. Upon such a review
2882 hearing, to be commenced prior to the expiration of the previous order, an order for commitment
2883 may be for an indeterminate period, if the court finds by clear and convincing evidence that the
2884 required conditions in Subsection (10) will last for an indeterminate period.

2885 (b) The court shall maintain a current list of all patients under its order of commitment.
2886 That list shall be reviewed to determine those patients who have been under an order of
2887 commitment for the designated period. At least two weeks prior to the expiration of the designated
2888 period of any order of commitment still in effect, the court that entered the original order shall
2889 inform the appropriate local mental health authority or its designee. The local mental health
2890 authority or its designee shall immediately reexamine the reasons upon which the order of
2891 commitment was based. If the local mental health authority or its designee determines that the
2892 conditions justifying that commitment no longer exist, it shall discharge the patient from
2893 involuntary commitment and immediately report that to the court. Otherwise, the court shall
2894 immediately appoint two designated examiners and proceed under Subsections (8) through (10).

2895 (c) The local mental health authority or its designee responsible for the care of a patient
2896 under an order of commitment for an indeterminate period, shall at six-month intervals reexamine
2897 the reasons upon which the order of indeterminate commitment was based. If the local mental
2898 health authority or its designee determines that the conditions justifying that commitment no longer
2899 exist, that local mental health authority or its designee shall discharge the patient from its custody
2900 and immediately report the discharge to the court. If the local mental health authority or its
2901 designee determines that the conditions justifying that commitment continue to exist, the local
2902 mental health authority or its designee shall send a written report of those findings to the court.
2903 The patient and his counsel of record shall be notified in writing that the involuntary commitment
2904 will be continued, the reasons for that decision, and that the patient has the right to a review
2905 hearing by making a request to the court. Upon receiving the request, the court shall immediately
2906 appoint two designated examiners and proceed under Subsections (8) through (10).

2907 (12) In the event that the designated examiners are unable, because a proposed patient
2908 refuses to submit to an examination, to complete that examination on the first attempt, the court
2909 shall fix a reasonable compensation to be paid to those designated examiners for their services.

2910 (13) Any person committed as a result of an original hearing or a person's legally

2911 designated representative who is aggrieved by the findings, conclusions, and order of the court
2912 entered in the original hearing has the right to a new hearing upon a petition filed with the court
2913 within 30 days of the entry of the court order. The petition must allege error or mistake in the
2914 findings, in which case the court shall appoint three impartial designated examiners previously
2915 unrelated to the case to conduct an additional examination of the patient. The new hearing shall,
2916 in all other respects, be conducted in the manner otherwise permitted.

2917 (14) Costs of all proceedings under this section shall be paid by the county in which the
2918 proposed patient resides or is found.

2919 Section 85. Section **62A-15-632**, which is renumbered from Section 62A-12-235 is
2920 renumbered and amended to read:

2921 ~~[62A-12-235].~~ **62A-15-632. Circumstances under which conditions justifying**
2922 **initial involuntary commitment shall be considered to continue to exist.**

2923 (1) After a person has been involuntarily committed to the custody of a local mental health
2924 authority under Subsection ~~[62A-12-234]~~ 62A-15-631(10), the conditions justifying commitment
2925 under that subsection shall be considered to continue to exist, for purposes of continued treatment
2926 under Subsection ~~[62A-12-234]~~ 62A-15-631(11) or conditional release under Section
2927 ~~[62A-12-241]~~ 62A-15-637, if the court finds that the patient is still mentally ill, and that absent
2928 an order of involuntary commitment and without continued treatment he will suffer severe and
2929 abnormal mental and emotional distress as indicated by recent past history, and will experience
2930 deterioration in his ability to function in the least restrictive environment, thereby making him a
2931 substantial danger to himself or others.

2932 (2) A patient whose treatment is continued or who is conditionally released under the
2933 terms of this section, shall be maintained in the least restrictive environment available which can
2934 provide him with the treatment that is adequate and appropriate.

2935 Section 86. Section **62A-15-633**, which is renumbered from Section 62A-12-236 is
2936 renumbered and amended to read:

2937 ~~[62A-12-236].~~ **62A-15-633. Persons eligible for care or treatment by federal**
2938 **agency -- Continuing jurisdiction of state courts.**

2939 (1) If an individual committed pursuant to Section ~~[62A-12-234]~~ 62A-15-631 is eligible
2940 for care or treatment by any agency of the United States, the court, upon receipt of a certificate
2941 from a United States agency, showing that facilities are available and that the individual is eligible

2942 for care or treatment therein, may order the individual to be placed in the custody of that agency
2943 for care.

2944 (2) When admitted to any facility or institution operated by a United States agency, within
2945 or without this state, the individual shall be subject to the rules and regulations of that agency.

2946 (3) The chief officer of any facility or institution operated by a United States agency and
2947 in which the individual is hospitalized, shall, with respect to that individual, be vested with the
2948 same powers as the superintendent or director of a mental health facility, regarding detention,
2949 custody, transfer, conditional release, or discharge of patients. Jurisdiction is retained in
2950 appropriate courts of this state at any time to inquire into the mental condition of an individual so
2951 hospitalized, and to determine the necessity for continuance of hospitalization, and every order of
2952 hospitalization issued pursuant to this section is so conditioned.

2953 Section 87. Section **62A-15-634**, which is renumbered from Section 62A-12-237 is
2954 renumbered and amended to read:

2955 ~~[62A-12-237]~~. **62A-15-634. Detention pending placement in custody.**

2956 Pending commitment to a local mental health authority, a patient taken into custody or
2957 ordered to be committed pursuant to this part may be detained in the patient's home, a licensed
2958 foster home, or any other suitable facility under reasonable conditions prescribed by the local
2959 mental health authority. Except in an extreme emergency, the patient may not be detained in a
2960 nonmedical facility used for the detention of individuals charged with or convicted of criminal
2961 offenses. The local mental health authority shall take reasonable measures, including provision
2962 of medical care, as may be necessary to assure proper care of an individual temporarily detained
2963 pursuant to this section.

2964 Section 88. Section **62A-15-635**, which is renumbered from Section 62A-12-238 is
2965 renumbered and amended to read:

2966 ~~[62A-12-238]~~. **62A-15-635. Notice of commitment.**

2967 Whenever a patient has been temporarily, involuntarily committed to a local mental health
2968 authority pursuant to Section ~~[62A-12-232]~~ **62A-15-629** on the application of any person other
2969 than his legal guardian, spouse, or next of kin, the local mental health authority or its designee
2970 shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

2971 Section 89. Section **62A-15-636**, which is renumbered from Section 62A-12-240 is
2972 renumbered and amended to read:

2973 ~~[62A-12-240].~~ **62A-15-636. Periodic review -- Discharge.**

2974 Each local mental health authority or its designee shall, as frequently as practicable,
2975 examine or cause to be examined every person who has been committed to it. Whenever the local
2976 mental health authority or its designee determines that the conditions justifying involuntary
2977 commitment no longer exist, it shall discharge the patient. If the patient has been committed
2978 through judicial proceedings, a report describing that determination shall be sent to the clerk of the
2979 court where the proceedings were held.

2980 Section 90. Section **62A-15-637**, which is renumbered from Section 62A-12-241 is
2981 renumbered and amended to read:

2982 ~~[62A-12-241].~~ **62A-15-637. Release of patient to receive other treatment --**
2983 **Placement in more restrictive environment -- Procedures.**

2984 (1) A local mental health authority or its designee may release an improved patient to less
2985 restrictive treatment as it may specify, and when agreed to in writing by the patient. Whenever a
2986 local mental health authority or its designee determines that the conditions justifying commitment
2987 no longer exist, the patient shall be discharged. If the patient has been committed through judicial
2988 proceedings, a report describing that determination shall be sent to the clerk of the court where the
2989 proceedings were held.

2990 (2) (a) A local mental health authority or its designee is authorized to issue an order for
2991 the immediate placement of a patient not previously released from an order of commitment into
2992 a more restrictive environment, if the local mental health authority or its designee has reason to
2993 believe that the less restrictive environment in which the patient has been placed is aggravating the
2994 patient's mental illness as defined in Subsection ~~[62A-12-234]~~ 62A-15-631(10), or that the patient
2995 has failed to comply with the specified treatment plan to which he had agreed in writing.

2996 (b) That order shall include the reasons therefor and shall authorize any peace officer to
2997 take the patient into physical custody and transport him to a facility designated by the division.
2998 Prior to or upon admission to the more restrictive environment, or upon imposition of additional
2999 or different requirements as conditions for continued release from inpatient care, copies of the
3000 order shall be personally delivered to the patient and sent to the person in whose care the patient
3001 is placed. The order shall also be sent to the patient's counsel of record and to the court that
3002 entered the original order of commitment. The order shall inform the patient of the right to a
3003 hearing, as prescribed in this section, the right to appointed counsel, and the other procedures

3004 prescribed in Subsection [~~62A-12-234~~] 62A-15-631(9).

3005 (c) If the patient has been in the less restrictive environment for more than 30 days and is
3006 aggrieved by the change to a more restrictive environment, the patient or his representative may
3007 request a hearing within 30 days of the change. Upon receiving the request, the court shall
3008 immediately appoint two designated examiners and proceed pursuant to Section [~~62A-12-234~~]
3009 62A-15-631, with the exception of Subsection [~~62A-12-234~~] 62A-15-631(10), unless, by the time
3010 set for the hearing, the patient has again been placed in the less restrictive environment, or the
3011 patient has in writing withdrawn his request for a hearing.

3012 (3) The court shall find that either:

3013 (a) the less restrictive environment in which the patient has been placed is aggravating the
3014 patient's dangerousness or mental illness as defined in Subsection [~~62A-12-234~~] 62A-15-631(10),
3015 or the patient has failed to comply with a specified treatment plan to which he had agreed in
3016 writing; or

3017 (b) the less restrictive environment in which the patient has been placed is not aggravating
3018 the patient's mental illness or dangerousness, and the patient has not failed to comply with any
3019 specified treatment plan to which he had agreed in writing, in which event the order shall designate
3020 that the individual shall be placed and treated in a less restrictive environment appropriate for his
3021 needs.

3022 (4) The order shall also designate the period for which the individual shall be treated, in
3023 no event to extend beyond expiration of the original order of commitment.

3024 (5) Nothing contained in this section prevents a local mental health authority or its
3025 designee, pursuant to Section [~~62A-12-240~~] 62A-15-636, from discharging a patient from
3026 commitment or from placing a patient in an environment that is less restrictive than that ordered
3027 by the court.

3028 Section 91. Section **62A-15-638**, which is renumbered from Section 62A-12-242 is
3029 renumbered and amended to read:

3030 [~~62A-12-242~~]. **62A-15-638. Reexamination of court order for commitment --**
3031 **Procedures -- Costs.**

3032 (1) Any patient committed pursuant to Section [~~62A-12-234~~] 62A-15-631 is entitled to a
3033 reexamination of the order for commitment on the patient's own petition, or on that of the legal
3034 guardian, parent, spouse, relative, or friend, to the district court of the county in which the patient

3035 resides or is detained.

3036 (2) Upon receipt of the petition, the court shall conduct or cause to be conducted by a
3037 mental health commissioner proceedings in accordance with Section [~~62A-12-234~~] 62A-15-631,
3038 except that those proceedings shall not be required to be conducted if the petition is filed sooner
3039 than six months after the issuance of the order of commitment or the filing of a previous petition
3040 under this section, provided that the court may hold a hearing within a shorter period of time if
3041 good cause appears. The costs of proceedings for such judicial determination shall be paid by the
3042 county in which the patient resided or was found prior to commitment, upon certification, by the
3043 clerk of the district court in the county where the proceedings are held, to the county legislative
3044 body that those proceedings were held and the costs incurred.

3045 Section 92. Section **62A-15-639**, which is renumbered from Section 62A-12-243 is
3046 renumbered and amended to read:

3047 [~~62A-12-243~~]. **62A-15-639. Standards for care and treatment.**

3048 Every patient is entitled to humane care and treatment and to medical care and treatment
3049 in accordance with the prevailing standards accepted in medical practice, psychiatric nursing
3050 practice, social work practice, and the practice of clinical psychology.

3051 Section 93. Section **62A-15-640**, which is renumbered from Section 62A-12-244 is
3052 renumbered and amended to read:

3053 [~~62A-12-244~~]. **62A-15-640. Mechanical restraints and medication -- Clinical**
3054 **record.**

3055 (1) Mechanical restraints may not be applied to a patient unless it is determined by the
3056 director or his designee to be required by the needs of the patient. Every use of a mechanical
3057 restraint and the reasons therefor shall be made a part of the patient's clinical record, under the
3058 signature of the director or his designee, and shall be reviewed regularly.

3059 (2) In no event shall medication be prescribed for a patient unless it is determined by a
3060 physician to be required by the patient's medical needs. Every use of a medication and the reasons
3061 therefor shall be made a part of the patient's clinical record.

3062 Section 94. Section **62A-15-641**, which is renumbered from Section 62A-12-245 is
3063 renumbered and amended to read:

3064 [~~62A-12-245~~]. **62A-15-641. Restrictions and limitations -- Civil rights and**
3065 **privileges.**

3066 (1) Subject to the general rules of the division, and except to the extent that the director
3067 or his designee determines that it is necessary for the welfare of the patient to impose restrictions,
3068 every patient is entitled to:

3069 (a) communicate, by sealed mail or otherwise, with persons, including official agencies,
3070 inside or outside the facility;

3071 (b) receive visitors; and

3072 (c) exercise all civil rights, including the right to dispose of property, execute instruments,
3073 make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated
3074 to be incompetent and has not been restored to legal capacity.

3075 (2) When any right of a patient is limited or denied, the nature, extent, and reason for that
3076 limitation or denial shall be entered in the patient's treatment record. Any continuing denial or
3077 limitation shall be reviewed every 30 days and shall also be entered in that treatment record.
3078 Notice of that continuing denial in excess of 30 days shall be sent to the division or to the
3079 appropriate local mental health authority.

3080 (3) Notwithstanding any limitations authorized under this section on the right of
3081 communication, each patient is entitled to communicate by sealed mail with the appropriate local
3082 mental health authority, the division, his attorney, and the court, if any, that ordered his
3083 commitment. In no case may the patient be denied a visit with the legal counsel or clergy of the
3084 patient's choice.

3085 (4) Local mental health authorities shall provide reasonable means and arrangements for
3086 informing involuntary patients of their right to release as provided in this chapter, and for assisting
3087 them in making and presenting requests for release.

3088 (5) Mental health facilities shall post a statement, promulgated by the division, describing
3089 patient's rights under Utah law.

3090 (6) Notwithstanding Section 53B-17-303, any person committed under this chapter has the
3091 right to determine the final disposition of his body after death.

3092 Section 95. Section **62A-15-642**, which is renumbered from Section 62A-12-246 is
3093 renumbered and amended to read:

3094 ~~**62A-12-246.**~~ **62A-15-642. Habeas corpus.**

3095 Any individual detained pursuant to this part is entitled to the writ of habeas corpus upon
3096 proper petition by himself or a friend, to the district court in the county in which he is detained.

3097 Section 96. Section **62A-15-643**, which is renumbered from Section 62A-12-247 is
3098 renumbered and amended to read:

3099 ~~[62A-12-247]~~. **62A-15-643**. **Confidentiality of information and records --**
3100 **Exceptions -- Penalty.**

3101 (1) All certificates, applications, records, and reports made for the purpose of this part,
3102 including those made on judicial proceedings for involuntary commitment, that directly or
3103 indirectly identify a patient or former patient or an individual whose commitment has been sought
3104 under this part, shall be kept confidential and may not be disclosed by any person except insofar
3105 as:

3106 (a) the individual identified or his legal guardian, if any, or, if a minor, his parent or legal
3107 guardian shall consent;

3108 (b) disclosure may be necessary to carry out the provisions of:

3109 (i) this part; or

3110 (ii) Section 53-10-208.1; or

3111 (c) a court may direct, upon its determination that disclosure is necessary for the conduct
3112 of proceedings before it, and that failure to make the disclosure would be contrary to the public
3113 interest.

3114 (2) A person who knowingly or intentionally discloses any information not authorized by
3115 this section is guilty of a class B misdemeanor.

3116 Section 97. Section **62A-15-644**, which is renumbered from Section 62A-12-248 is
3117 renumbered and amended to read:

3118 ~~[62A-12-248]~~. **62A-15-644**. **Additional powers of director -- Reports and**
3119 **records of division.**

3120 (1) In addition to specific authority granted by other provisions of this part, the director
3121 has authority to prescribe the form of applications, records, reports, and medical certificates
3122 provided for under this part, and the information required to be contained therein, and to adopt
3123 rules that are not inconsistent with the provisions of this part that he finds to be reasonably
3124 necessary for the proper and efficient commitment of mentally ill persons.

3125 (2) The division shall require reports relating to the admission, examination, diagnosis,
3126 release, or discharge of any patient and investigate complaints made by any patient or by any
3127 person on behalf of a patient.

3128 (3) A local mental health authority shall keep a record of the names and current status of
3129 all persons involuntarily committed to it under this chapter.

3130 Section 98. Section **62A-15-645**, which is renumbered from Section 62A-12-249 is
3131 renumbered and amended to read:

3132 **~~[62A-12-249].~~ 62A-15-645. Retrospective effect of provisions.**

3133 Patients who were in a mental health facility on May 8, 1951, shall be deemed to have been
3134 admitted under the provisions of this part appropriate in each instance, and their care, custody, and
3135 rights shall be governed by this part.

3136 Section 99. Section **62A-15-646**, which is renumbered from Section 62A-12-250 is
3137 renumbered and amended to read:

3138 **~~[62A-12-250].~~ 62A-15-646. Commitment and care of criminally insane.**

3139 Nothing contained in this part may be construed to alter or change the method presently
3140 employed for the commitment and care of the criminally insane as provided in Title 77, Chapter
3141 15.

3142 Section 100. Section **62A-15-647**, which is renumbered from Section 62A-12-252 is
3143 renumbered and amended to read:

3144 **~~[62A-12-252].~~ 62A-15-647. Severability.**

3145 If any one or more provision, section, subsection, sentence, clause, phrase, or word of this
3146 part, or the application thereof to any person or circumstance, is found to be unconstitutional the
3147 same is hereby declared to be severable and the balance of this part shall remain effective
3148 notwithstanding that unconstitutionality. The Legislature hereby declares that it would have
3149 passed this part, and each provision, section, subsection, sentence, clause, phrase, or word thereof,
3150 irrespective of the fact that any one or more provision, section, subsection, sentence, clause,
3151 phrase, or word be declared unconstitutional.

3152 Section 101. Section **62A-15-701**, which is renumbered from Section 62A-12-280.1 is
3153 renumbered and amended to read:

3154 **Part 7. Commitment of Persons Under Age 18 to**

3155 **Division of Substance Abuse and Mental Health**

3156 **~~[62A-12-280.1].~~ 62A-15-701. Definitions.**

3157 As used in this part:

3158 (1) "Child" means a person under 18 years of age.

3159 (2) "Commit" and "commitment" mean the transfer of physical or legal custody in
3160 accordance with the requirements of this part.

3161 (3) "Legal custody" means:

3162 (a) the right to determine where and with whom the child shall live;

3163 (b) the right to participate in all treatment decisions and to consent or withhold consent
3164 for treatment in which a constitutionally protected liberty or privacy interest may be affected,
3165 including antipsychotic medication, electroshock therapy, and psychosurgery; and

3166 (c) the right to authorize surgery or other extraordinary medical care.

3167 (4) "Physical custody" means:

3168 (a) placement of a child in any residential or inpatient setting;

3169 (b) the right to physical custody of a child;

3170 (c) the right and duty to protect the child; and

3171 (d) the duty to provide, or insure that the child is provided with, adequate food, clothing,
3172 shelter, and ordinary medical care.

3173 (5) "Residential" means any out-of-home placement made by a local mental health
3174 authority, but does not include out-of-home respite care.

3175 (6) "Respite care" means temporary, periodic relief provided to parents or guardians from
3176 the daily care of children with serious emotional disorders for the limited time periods designated
3177 by the division.

3178 Section 102. Section **62A-15-702**, which is renumbered from Section 62A-12-281.1 is
3179 renumbered and amended to read:

3180 **~~62A-12-281.1~~. 62A-15-702. Treatment and commitment of minors in the**
3181 **public mental health system.**

3182 A child is entitled to due process proceedings, in accordance with the requirements of this
3183 part, whenever the child:

3184 (1) may receive or receives services through the public mental health system and is placed,
3185 by a local mental health authority, in a physical setting where his liberty interests are restricted,
3186 including residential and inpatient placements; or

3187 (2) receives treatment in which a constitutionally protected privacy or liberty interest may
3188 be affected, including the administration of antipsychotic medication, electroshock therapy, and
3189 psychosurgery.

3190 Section 103. Section **62A-15-703**, which is renumbered from Section 62A-12-282.1 is
3191 renumbered and amended to read:

3192 ~~[62A-12-282.1]~~. **62A-15-703. Residential and inpatient settings -- Commitment**
3193 **proceeding -- Child in physical custody of local mental health authority.**

3194 (1) A child may receive services from a local mental health authority in an inpatient or
3195 residential setting only after a commitment proceeding, for the purpose of transferring physical
3196 custody, has been conducted in accordance with the requirements of this section.

3197 (2) That commitment proceeding shall be initiated by a petition for commitment, and shall
3198 be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the
3199 procedures and requirements of this section. If the findings described in Subsection (4) exist, the
3200 proceeding shall result in the transfer of physical custody to the appropriate local mental health
3201 authority, and the child may be placed in an inpatient or residential setting.

3202 (3) The neutral and detached fact finder who conducts the inquiry:

3203 (a) shall be a designated examiner, as defined in Subsection ~~[62A-12-202]~~ 62A-15-602(3);

3204 and

3205 (b) may not profit, financially or otherwise, from the commitment or physical placement
3206 of the child in that setting.

3207 (4) Upon determination by the fact finder that the following circumstances clearly exist,
3208 he may order that the child be committed to the physical custody of a local mental health authority:

3209 (a) the child has a mental illness, as defined in Subsection ~~[62A-12-202]~~ 62A-15-602(8);

3210 (b) the child demonstrates a risk of harm to himself or others;

3211 (c) the child is experiencing significant impairment in his ability to perform socially;

3212 (d) the child will benefit from care and treatment by the local mental health authority; and

3213 (e) there is no appropriate less-restrictive alternative.

3214 (5) (a) The commitment proceeding before the neutral and detached fact finder shall be
3215 conducted in as informal manner as possible, and in a physical setting that is not likely to have a
3216 harmful effect on the child.

3217 (b) The child, the child's parent or legal guardian, the person who submitted the petition
3218 for commitment, and a representative of the appropriate local mental health authority shall all
3219 receive informal notice of the date and time of the proceeding. Those parties shall also be afforded
3220 an opportunity to appear and to address the petition for commitment.

3221 (c) The neutral and detached fact finder may, in his discretion, receive the testimony of any
3222 other person.

3223 (d) The fact finder may allow the child to waive his right to be present at the commitment
3224 proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made
3225 a matter of record at the proceeding.

3226 (e) At the time of the commitment proceeding, the appropriate local mental health
3227 authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the
3228 commitment proceeding, shall provide the neutral and detached fact finder with the following
3229 information, as it relates to the period of current admission:

3230 (i) the petition for commitment;

3231 (ii) the admission notes;

3232 (iii) the child's diagnosis;

3233 (iv) physicians' orders;

3234 (v) progress notes;

3235 (vi) nursing notes; and

3236 (vii) medication records.

3237 (f) The information described in Subsection (5)(e) shall also be provided to the child's
3238 parent or legal guardian upon written request.

3239 (g) (i) The neutral and detached fact finder's decision of commitment shall state the
3240 duration of the commitment. Any commitment to the physical custody of a local mental health
3241 authority may not exceed 180 days. Prior to expiration of the commitment, and if further
3242 commitment is sought, a hearing shall be conducted in the same manner as the initial commitment
3243 proceeding, in accordance with the requirements of this section.

3244 (ii) When a decision for commitment is made, the neutral and detached fact finder shall
3245 inform the child and his parent or legal guardian of that decision, and of the reasons for ordering
3246 commitment at the conclusion of the hearing, and also in writing.

3247 (iii) The neutral and detached fact finder shall state in writing the basis of his decision,
3248 with specific reference to each of the criteria described in Subsection (4), as a matter of record.

3249 (6) Absent the procedures and findings required by this section, a child may be temporarily
3250 committed to the physical custody of a local mental health authority only in accordance with the
3251 emergency procedures described in Subsection [~~62A-12-232~~] 62A-15-629(1) or (2). A child

3252 temporarily committed in accordance with those emergency procedures may be held for a
3253 maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that
3254 time period, the child shall be released unless the procedures and findings required by this section
3255 have been satisfied.

3256 (7) A local mental health authority shall have physical custody of each child committed
3257 to it under this section. The parent or legal guardian of a child committed to the physical custody
3258 of a local mental health authority under this section, retains legal custody of the child, unless legal
3259 custody has been otherwise modified by a court of competent jurisdiction. In cases when the
3260 Division of Child and Family Services or the Division of Youth Corrections has legal custody of
3261 a child, that division shall retain legal custody for purposes of this part.

3262 (8) The cost of caring for and maintaining a child in the physical custody of a local mental
3263 health authority shall be assessed to and paid by the child's parents, according to their ability to
3264 pay. For purposes of this section, the Division of Child and Family Services or the Division of
3265 Youth Corrections shall be financially responsible, in addition to the child's parents, if the child
3266 is in the legal custody of either of those divisions at the time the child is committed to the physical
3267 custody of a local mental health authority under this section, unless Medicaid regulation or contract
3268 provisions specify otherwise. The Office of Recovery Services shall assist those divisions in
3269 collecting the costs assessed pursuant to this section.

3270 (9) Whenever application is made for commitment of a minor to a local mental health
3271 authority under any provision of this section by a person other than the child's parent or guardian,
3272 the local mental health authority or its designee shall notify the child's parent or guardian. The
3273 parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

3274 (10) (a) Each child committed pursuant to this section is entitled to an appeal within 30
3275 days after any order for commitment. The appeal may be brought on the child's own petition, or
3276 that of his parent or legal guardian, to the juvenile court in the district where the child resides or
3277 is currently physically located. With regard to a child in the custody of the Division of Child and
3278 Family Services or the Division of Youth Corrections, the attorney general's office shall handle
3279 the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought
3280 pursuant to this Subsection (10)(a).

3281 (b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner
3282 previously unrelated to the case, to conduct an examination of the child in accordance with the

3283 criteria described in Subsection (4), and file a written report with the court. The court shall then
3284 conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by
3285 clear and convincing evidence.

3286 (c) Prior to the time of the appeal hearing, the appropriate local mental health authority,
3287 its designee, or the mental health professional who has been in charge of the child's care prior to
3288 commitment, shall provide the court and the designated examiner for the appeal hearing with the
3289 following information, as it relates to the period of current admission:

3290 (i) the original petition for commitment;

3291 (ii) admission notes;

3292 (iii) diagnosis;

3293 (iv) physicians' orders;

3294 (v) progress notes;

3295 (vi) nursing notes; and

3296 (vii) medication records.

3297 (d) Both the neutral and detached fact finder and the designated examiner appointed for
3298 the appeal hearing shall be provided with an opportunity to review the most current information
3299 described in Subsection (10)(c) prior to the appeal hearing.

3300 (e) The child, his parent or legal guardian, the person who submitted the original petition
3301 for commitment, and a representative of the appropriate local mental health authority shall be
3302 notified by the court of the date and time of the appeal hearing. Those persons shall be afforded
3303 an opportunity to appear at the hearing. In reaching its decision, the court shall review the record
3304 and findings of the neutral and detached fact finder, the report of the designated examiner
3305 appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony
3306 of the neutral and detached fact finder, the designated examiner, the child, the child's parent or
3307 legal guardian, the person who brought the initial petition for commitment, or any other person
3308 whose testimony the court deems relevant. The court may allow the child to waive his right to
3309 appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be
3310 made a part of the court's record.

3311 (11) Each local mental health authority has an affirmative duty to conduct periodic
3312 evaluations of the mental health and treatment progress of every child committed to its physical
3313 custody under this section, and to release any child who has sufficiently improved so that the

3314 criteria justifying commitment no longer exist.

3315 (12) (a) A local mental health authority or its designee, in conjunction with the child's
3316 current treating mental health professional may release an improved child to a less restrictive
3317 environment, as they determine appropriate. Whenever the local mental health authority or its
3318 designee, and the child's current treating mental health professional, determine that the conditions
3319 justifying commitment no longer exist, the child shall be discharged and released to his parent or
3320 legal guardian. With regard to a child who is in the physical custody of the State Hospital, the
3321 treating psychiatrist or clinical director of the State Hospital shall be the child's current treating
3322 mental health professional.

3323 (b) A local mental health authority or its designee, in conjunction with the child's current
3324 treating mental health professional, is authorized to issue a written order for the immediate
3325 placement of a child not previously released from an order of commitment into a more restrictive
3326 environment, if the local authority or its designee and the child's current treating mental health
3327 professional has reason to believe that the less restrictive environment in which the child has been
3328 placed is exacerbating his mental illness, or increasing the risk of harm to himself or others.

3329 (c) The written order described in Subsection (12)(b) shall include the reasons for
3330 placement in a more restrictive environment and shall authorize any peace officer to take the child
3331 into physical custody and transport him to a facility designated by the appropriate local mental
3332 health authority in conjunction with the child's current treating mental health professional. Prior
3333 to admission to the more restrictive environment, copies of the order shall be personally delivered
3334 to the child, his parent or legal guardian, the administrator of the more restrictive environment, or
3335 his designee, and the child's former treatment provider or facility.

3336 (d) If the child has been in a less restrictive environment for more than 30 days and is
3337 aggrieved by the change to a more restrictive environment, the child or his representative may
3338 request a review within 30 days of the change, by a neutral and detached fact finder as described
3339 in Subsection (3). The fact finder shall determine whether:

3340 (i) the less restrictive environment in which the child has been placed is exacerbating his
3341 mental illness, or increasing the risk of harm to himself or others; or

3342 (ii) the less restrictive environment in which the child has been placed is not exacerbating
3343 his mental illness, or increasing the risk of harm to himself or others, in which case the fact finder
3344 shall designate that the child remain in the less restrictive environment.

3345 (e) Nothing in this section prevents a local mental health authority or its designee, in
3346 conjunction with the child's current mental health professional, from discharging a child from
3347 commitment or from placing a child in an environment that is less restrictive than that designated
3348 by the neutral and detached fact finder.

3349 (13) Each local mental health authority or its designee, in conjunction with the child's
3350 current treating mental health professional shall discharge any child who, in the opinion of that
3351 local authority, or its designee, and the child's current treating mental health professional, no longer
3352 meets the criteria specified in Subsection (4), except as provided by Section 78-3a-121. The local
3353 authority and the mental health professional shall assure that any further supportive services
3354 required to meet the child's needs upon release will be provided.

3355 (14) Even though a child has been committed to the physical custody of a local mental
3356 health authority pursuant to this section, the child is still entitled to additional due process
3357 proceedings, in accordance with Section [~~62A-12-283.1~~] 62A-15-704, before any treatment which
3358 may affect a constitutionally protected liberty or privacy interest is administered. Those treatments
3359 include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

3360 Section 104. Section **62A-15-704**, which is renumbered from Section 62A-12-283.1 is
3361 renumbered and amended to read:

3362 [~~62A-12-283.1~~]. **62A-15-704. Invasive treatment -- Due process proceedings.**

3363 (1) For purposes of this section, "invasive treatment" means treatment in which a
3364 constitutionally protected liberty or privacy interest may be affected, including antipsychotic
3365 medication, electroshock therapy, and psychosurgery.

3366 (2) The requirements of this section apply to all children receiving services or treatment
3367 from a local mental health authority, its designee, or its provider regardless of whether a local
3368 mental health authority has physical custody of the child or the child is receiving outpatient
3369 treatment from the local authority, its designee, or provider.

3370 (3) (a) The division shall promulgate rules, in accordance with Title 63, Chapter 46a, Utah
3371 Administrative Rulemaking Act, establishing due process procedures for children prior to any
3372 invasive treatment as follows:

3373 (i) with regard to antipsychotic medications, if either the parent or child disagrees with that
3374 treatment, a due process proceeding shall be held in compliance with the procedures established
3375 under this Subsection (3);

3376 (ii) with regard to psychosurgery and electroshock therapy, a due process proceeding shall
3377 be conducted pursuant to the procedures established under this Subsection (3), regardless of
3378 whether the parent or child agree or disagree with the treatment; and

3379 (iii) other possible invasive treatments may be conducted unless either the parent or child
3380 disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant
3381 to the procedures established under this Subsection (3).

3382 (b) In promulgating the rules required by Subsection (3)(a), the division shall consider the
3383 advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact
3384 finder, and other methods of providing due process for the purposes of this section. The division
3385 shall also establish the criteria and basis for determining when invasive treatment should be
3386 administered.

3387 Section 105. Section **62A-15-705**, which is renumbered from Section 62A-12-283.2 is
3388 renumbered and amended to read:

3389 ~~[62A-12-283.2]~~. **62A-15-705. Commitment proceedings in juvenile court --**
3390 **Criteria -- Custody.**

3391 (1) In addition to the processes described in Sections ~~[62A-12-282.1]~~ 62A-15-703 and
3392 ~~[62A-12-283.1]~~ 62-15-704, commitment proceedings for a child may be commenced by filing a
3393 written application with the juvenile court of the county in which the child resides or is found, in
3394 accordance with the procedures described in Section ~~[62A-12-234]~~ 62A-15-631.

3395 (2) The juvenile court shall order commitment to the legal custody of the division or to the
3396 physical custody of a local mental health authority if, upon completion of the hearing and
3397 consideration of the record, it finds by clear and convincing evidence that:

3398 (a) the child has a mental illness, as defined in Subsection ~~[62A-12-202]~~ 62A-15-602(8);

3399 (b) the child demonstrates a risk of harm to himself or others;

3400 (c) the child is experiencing significant impairment in his ability to perform socially;

3401 (d) the child will benefit from the proposed care and treatment; and

3402 (e) there is no appropriate less restrictive alternative.

3403 (3) The division has an affirmative duty to conduct periodic reviews of children committed
3404 to its custody pursuant to this section, and to release any child who has sufficiently improved so
3405 that the director or his designee determines that commitment is no longer appropriate.

3406 (4) When the division receives legal custody of a child upon order of the court pursuant

3407 to this section, it may place the child in the physical custody of a local mental health authority.
3408 The local mental health authority shall carry out its responsibilities with regard to that child in
3409 accordance with the provisions of this part.

3410 Section 106. Section **62A-15-706**, which is renumbered from Section 62A-12-283.3 is
3411 renumbered and amended to read:

3412 ~~[62A-12-283.3].~~ **62A-15-706. Parent advocate.**

3413 The division shall establish the position of a parent advocate to assist parents of mentally
3414 ill children who are subject to the procedures required by this part.

3415 Section 107. Section **62A-15-707**, which is renumbered from Section 62A-12-284 is
3416 renumbered and amended to read:

3417 ~~[62A-12-284].~~ **62A-15-707. Confidentiality of information and records --**
3418 **Exceptions -- Penalty.**

3419 (1) Notwithstanding the provisions of Sections 63-2-101 through 63-2-909, Government
3420 Records Access Management Act, all certificates, applications, records, and reports made for the
3421 purpose of this part that directly or indirectly identify a patient or former patient or an individual
3422 whose commitment has been sought under this part, shall be kept confidential and may not be
3423 disclosed by any person except as follows:

3424 (a) the individual identified consents after reaching 18 years of age;

3425 (b) the child's parent or legal guardian consents;

3426 (c) disclosure is necessary to carry out any of the provisions of this part; or

3427 (d) a court may direct, upon its determination that disclosure is necessary for the conduct
3428 of proceedings before it, and that failure to make the disclosure would be contrary to the public
3429 interest.

3430 (2) A person who violates any provision of this section is guilty of a class B misdemeanor.

3431 Section 108. Section **62A-15-708**, which is renumbered from Section 62A-12-285 is
3432 renumbered and amended to read:

3433 ~~[62A-12-285].~~ **62A-15-708. Mechanical restraints -- Clinical record.**

3434 Mechanical restraints may not be applied to a child unless it is determined, by the local
3435 mental health authority or its designee in conjunction with the child's current treating mental health
3436 professional, that they are required by the needs of that child. Every use of a mechanical restraint
3437 and the reasons for that use shall be made a part of the child's clinical record, under the signature

3438 of the local mental health authority, its designee, and the child's current treating mental health
3439 professional.

3440 Section 109. Section **62A-15-709**, which is renumbered from Section 62A-12-286 is
3441 renumbered and amended to read:

3442 ~~[62A-12-286].~~ **62A-15-709. Habeas corpus.**

3443 Any child committed in accordance with Section [~~62A-12-282.1~~] 62A-15-703 is entitled
3444 to a writ of habeas corpus upon proper petition by himself or next of friend to the district court in
3445 the district in which he is detained.

3446 Section 110. Section **62A-15-710**, which is renumbered from Section 62A-12-287 is
3447 renumbered and amended to read:

3448 ~~[62A-12-287].~~ **62A-15-710. Restrictions and limitations -- Civil rights and**
3449 **privileges.**

3450 (1) Subject to the specific rules of the division, and except to the extent that the local
3451 mental health authority or its designee, in conjunction with the child's current treating mental
3452 health professional, determines that it is necessary for the welfare of the person to impose
3453 restrictions, every child committed to the physical custody of a local mental health authority under
3454 Section [~~62A-12-282.1~~] 62A-15-703 is entitled to:

3455 (a) communicate, by sealed mail or otherwise, with persons, including official agencies,
3456 inside or outside of the facility;

3457 (b) receive visitors; and

3458 (c) exercise his civil rights.

3459 (2) When any right of a child is limited or denied, the nature, extent, and reason for that
3460 limitation or denial shall be entered in the child's treatment record. Any continuing denial or
3461 limitation shall be reviewed every 30 days and shall also be entered in that treatment record.

3462 Notice of that continuing denial in excess of 30 days shall be sent to the division.

3463 (3) Notwithstanding any limitations authorized under this section on the right of
3464 communication, each child committed to the physical custody of a local mental health authority
3465 is entitled to communicate by sealed mail with his attorney, the local mental health authority, its
3466 designee, his current treating mental health professional, and the court, if commitment was court
3467 ordered. In no case may the child be denied a visit with the legal counsel or clergy of his choice.

3468 (4) Each local mental health authority shall provide appropriate and reasonable means and

3469 arrangements for informing children and their parents or legal guardians of their rights as provided
3470 in this part, and for assisting them in making and presenting requests for release.

3471 (5) All local mental health facilities shall post a statement, promulgated by the division,
3472 describing patient's rights under Utah law.

3473 Section 111. Section **62A-15-711**, which is renumbered from Section 62A-12-288 is
3474 renumbered and amended to read:

3475 ~~[62A-12-288].~~ **62A-15-711. Standards for care and treatment.**

3476 Every child is entitled to humane care and treatment and to medical care and treatment in
3477 accordance with the prevailing standards accepted in medical practice, psychiatric nursing practice,
3478 social work practice, and the practice of clinical psychology.

3479 Section 112. Section **62A-15-712**, which is renumbered from Section 62A-12-289 is
3480 renumbered and amended to read:

3481 ~~[62A-12-289].~~ **62A-15-712. Responsibilities of the Division of Substance Abuse**
3482 **and Mental Health.**

3483 (1) It is the responsibility of the division to [~~assure~~] ensure that the requirements of this
3484 part are met and applied uniformly by local mental health authorities across the state.

3485 (2) Since it is the division's responsibility, under Section [~~62A-12-102~~] 62A-15-103, to
3486 contract with, review, approve, and oversee local mental health authority plans, and to withhold
3487 funds from local mental health authorities and public and private providers for contract
3488 noncompliance or misuse of public funds, the division shall:

3489 (a) require each local mental health authority to submit its plan to the division by May 1
3490 of each year;

3491 (b) conduct an annual program audit and review of each local mental health authority in
3492 the state, and its contract provider; and

3493 (c) provide a written report to the Health and Human Services Interim Committee on July
3494 1, 1996, and each year thereafter, and provide an oral report to that committee, as requested. That
3495 report shall provide information regarding:

3496 (i) the annual audit and review;

3497 (ii) the financial expenditures of each local mental health authority and its contract
3498 provider;

3499 (iii) the status of each local authority's and its contract provider's compliance with its plan,

3500 state statutes, and with the provisions of the contract awarded; and

3501 (iv) whether audit guidelines established pursuant to [~~Subsection 62A-12-289.1~~]
3502 Subsections 62A-15-713(2)(a) and [~~Subsection~~] 67-3-1(2)(o) provide the division with sufficient
3503 criteria and assurances of appropriate expenditures of public funds.

3504 (3) The annual audit and review described in Subsection (2)(b) shall, in addition to items
3505 determined by the division to be necessary and appropriate, include a review and determination
3506 regarding whether public funds allocated to local mental health authorities are consistent with
3507 services rendered and outcomes reported by it or its contract provider, and whether each local
3508 mental health authority is exercising sufficient oversight and control over public funds allocated
3509 for mental health programs and services.

3510 (4) The Legislature may refuse to appropriate funds to the division upon the division's
3511 failure to comply with the provisions of this part.

3512 Section 113. Section **62A-15-713**, which is renumbered from Section 62A-12-289.1 is
3513 renumbered and amended to read:

3514 [~~62A-12-289.1~~]. **62A-15-713. Contracts with local mental health authorities --**
3515 **Provisions.**

3516 When the division contracts with a local mental health authority to provide mental health
3517 programs and services in accordance with the provision of this chapter and Title 17A, Chapter 3,
3518 Part 6, Local Mental Health Authorities, it shall ensure that those contracts include at least the
3519 following provisions:

3520 (1) that an independent auditor shall conduct any audit of the local mental health authority
3521 or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2,
3522 Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities;

3523 (2) in addition to the requirements described in Title 51, Chapter 2, Audits of Political
3524 Subdivisions, Interlocal Organizations and Other Local Entities, the division:

3525 (a) shall prescribe guidelines and procedures, in accordance with those formulated by the
3526 state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers,
3527 directors, and specified employees of the private contract provider, to assure the state that no
3528 personal benefit is gained from travel or other expenses; and

3529 (b) may prescribe specific items to be addressed by that audit, depending upon the
3530 particular needs or concerns relating to the local mental health authority or contract provider at

3531 issue;

3532 (3) the local mental health authority or its contract provider shall invite and include all
3533 funding partners in its auditor's pre- and exit conferences;

3534 (4) each member of the local mental health authority shall annually certify that he has
3535 received and reviewed the independent audit and has participated in a formal interview with the
3536 provider's executive officers;

3537 (5) requested information and outcome data will be provided to the division in the manner
3538 and within the timelines defined by the division;

3539 (6) all audit reports by state or county persons or entities concerning the local mental
3540 health authority or its contract provider shall be provided to the executive director of the
3541 department, the local mental health authority, and members of the contract provider's governing
3542 board; and

3543 (7) the local mental health authority or its contract provider will offer and provide mental
3544 health services to residents who are indigent and who meet state criteria for serious and persistent
3545 mental illness or severe emotional disturbance.

3546 Section 114. Section **62A-15-801**, which is renumbered from Section 62A-12-301 is
3547 renumbered and amended to read:

3548 **Part 8. Interstate Compact on Mental Health**

3549 **~~[62A-12-301].~~ 62A-15-801. Interstate compact on mental health -- Compact**
3550 **provisions.**

3551 The Interstate Compact on Mental Health is hereby enacted and entered into with all other
3552 jurisdictions that legally join in the compact, which is, in form, substantially as follows:

3553 **INTERSTATE COMPACT ON MENTAL HEALTH**

3554 The contracting states solemnly agree that:

3555 **Article I**

3556 The proper and expeditious treatment of the mentally ill can be facilitated by cooperative
3557 action, to the benefit of the patients, their families, and society as a whole. Further, the party states
3558 find that the necessity of and desirability of furnishing that care and treatment bears no primary
3559 relation to the residence or citizenship of the patient but that the controlling factors of community
3560 safety and humanitarianism require that facilities and services be made available for all who are
3561 in need of them. Consequently, it is the purpose of this compact and of the party states to provide

3562 the necessary legal and constitutional basis for commitment or other appropriate care and treatment
3563 of the mentally ill under a system that recognizes the paramount importance of patient welfare and
3564 to establish the responsibilities of the party states.

3565 The appropriate authority in this state for making determinations under this compact is the
3566 director of the division or his designee.

3567 Article II

3568 As used in this compact:

3569 (1) "After-care" means care, treatment, and services provided to a patient on convalescent
3570 status or conditional release.

3571 (2) "Institution" means any hospital, program, or facility maintained by a party state or
3572 political subdivision for the care and treatment of persons with a mental illness.

3573 (3) "Mental illness" means a psychiatric disorder as defined by the current Diagnostic and
3574 Statistical Manual of Mental Disorders, that substantially impairs a person's mental, emotional,
3575 behavioral, or related functioning to such an extent that he requires care and treatment for his own
3576 welfare, the welfare of others, or the community.

3577 (4) "Patient" means any person subject to or eligible, as determined by the laws of the
3578 sending state, for institutionalization or other care, treatment, or supervision pursuant to the
3579 provisions of this compact and constitutional due process requirements.

3580 (5) "Receiving state" means a party state to which a patient is transported pursuant to the
3581 provisions of the compact or to which it is contemplated that a patient may be sent.

3582 (6) "Sending state" means a party state from which a patient is transported pursuant to the
3583 provisions of the compact or from which it is contemplated that a patient may be sent.

3584 (7) "State" means any state, territory, or possession of the United States, the District of
3585 Columbia, and the Commonwealth of Puerto Rico.

3586 Article III

3587 (1) Whenever a person physically present in any party state is in need of
3588 institutionalization because of mental illness, he shall be eligible for care and treatment in an
3589 institution in that state, regardless of his residence, settlement, or citizenship qualifications.

3590 (2) Notwithstanding the provisions of Subsection (1) of this article, any patient may be
3591 transferred to an institution in another state whenever there are factors, based upon clinical
3592 determinations, indicating that the care and treatment of that patient would be facilitated or

3593 improved by that action. Any such institutionalization may be for the entire period of care and
3594 treatment or for any portion or portions thereof. The factors to be considered include the patient's
3595 full record with due regard for the location of the patient's family, the character of his illness and
3596 its probable duration, and other factors considered appropriate by authorities in the party state and
3597 the director of the division, or his designee.

3598 (3) No state is obliged to receive any patient pursuant to the provisions of Subsection (2)
3599 of this article unless the sending state has:

3600 (a) given advance notice of its intent to send the patient;

3601 (b) furnished all available medical and other pertinent records concerning the patient;

3602 (c) given the qualified medical or other appropriate clinical authorities of the receiving
3603 state an opportunity to examine the patient; and

3604 (d) determined that the receiving state agrees to accept the patient.

3605 (4) In the event that the laws of the receiving state establish a system of priorities for the
3606 admission of patients, an interstate patient under this compact shall receive the same priority as
3607 a local patient and shall be taken in the same order and at the same time that he would be taken if
3608 he were a local patient.

3609 (5) Pursuant to this compact, the determination as to the suitable place of
3610 institutionalization for a patient may be reviewed at any time and further transfer of the patient may
3611 be made as is deemed to be in the best interest of the patient, as determined by appropriate
3612 authorities in the receiving and sending states.

3613 Article IV

3614 (1) Whenever, pursuant to the laws of the state in which a patient is physically present, it
3615 is determined that the patient should receive after-care or supervision, that care or supervision may
3616 be provided in the receiving state. If the medical or other appropriate clinical authorities who have
3617 responsibility for the care and treatment of the patient in the sending state believe that after-care
3618 in another state would be in the best interest of the patient and would not jeopardize the public
3619 safety, they shall request the appropriate authorities in the receiving state to investigate the
3620 desirability of providing the patient with after-care in the receiving state. That request for
3621 investigation shall be accompanied by complete information concerning the patient's intended
3622 place of residence and the identity of the person in whose charge the patient would be placed, the
3623 complete medical history of the patient, and other pertinent documents.

3624 (2) If the medical or other appropriate clinical authorities who have responsibility for the
3625 care and treatment of the patient in the sending state, and the appropriate authorities in the
3626 receiving state find that the best interest of the patient would be served, and if the public safety
3627 would not be jeopardized, the patient may receive after-care or supervision in the receiving state.

3628 (3) In supervising, treating, or caring for a patient on after-care pursuant to the terms of
3629 this article, a receiving state shall employ the same standards of visitation, examination, care, and
3630 treatment as for similar local patients.

3631 Article V

3632 Whenever a dangerous or potentially dangerous patient escapes from an institution in any
3633 party state, that state shall promptly notify all appropriate authorities both within and without the
3634 jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension
3635 of the escapee. Immediately upon the apprehension and identification of that patient, he shall be
3636 detained in the state where found, pending disposition in accordance with the laws of that state.

3637 Article VI

3638 Accredited officers of any party state, upon the establishment of their authority and the
3639 identity of the patient, shall be permitted to transport any patient being moved pursuant to this
3640 compact through any and all states party to this compact, without interference.

3641 Article VII

3642 (1) No person may be deemed a patient of more than one institution at any given time.
3643 Completion of transfer of any patient to an institution in a receiving state has the effect of making
3644 the person a patient of the institution in the receiving state.

3645 (2) The sending state shall pay all costs of and incidental to the transportation of any
3646 patient pursuant to this compact, but any two or more party states may, by making a specific
3647 agreement for that purpose, arrange for a different allocation of costs among themselves.

3648 (3) No provision of this compact may be construed to alter or affect any internal
3649 relationships among the departments, agencies, and officers of a party state, or between a party
3650 state and its subdivisions, as to the payment of costs or responsibilities.

3651 (4) Nothing in this compact may be construed to prevent any party state or any of its
3652 subdivisions from asserting any right against any person, agency, or other entity with regard to
3653 costs for which that party state or its subdivision may be responsible under this compact.

3654 (5) Nothing in this compact may be construed to invalidate any reciprocal agreement

3655 between a party state and a nonparty state relating to institutionalization, care, or treatment of the
3656 mentally ill, or any statutory authority under which those agreements are made.

3657 Article VIII

3658 (1) Nothing in this compact may be construed to abridge, diminish, or in any way impair
3659 the rights, duties, and responsibilities of any patient's guardian on his own behalf or with respect
3660 to any patient for whom he serves, except that when the transfer of a patient to another jurisdiction
3661 makes advisable the appointment of a supplemental or substitute guardian, a court of competent
3662 jurisdiction in the receiving state may make supplemental or substitute appointments. In that case,
3663 the court that appointed the previous guardian shall, upon being advised of the new appointment
3664 and upon the satisfactory completion of accounting and other acts as the court may require, relieve
3665 the previous guardian of power and responsibility to whatever extent is appropriate in the
3666 circumstances.

3667 However, in the case of any patient having settlement in the sending state, a court of
3668 competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed
3669 by it or to continue his power and responsibility, as it deems advisable. The court in the receiving
3670 state may, in its discretion, confirm or reappoint the person or persons previously serving as
3671 guardian in the sending state in lieu of making a supplemental or substitute appointment.

3672 (2) The term "guardian" as used in Subsection (1) of this article includes any guardian,
3673 trustee, legal committee, conservator, or other person or agency however denominated, who is
3674 charged by law with power to act for the person or property of a patient.

3675 Article IX

3676 (1) No provision of this compact except Article V applies to any person institutionalized
3677 while under sentence in a penal or correctional institution, while subject to trial on a criminal
3678 charge, or whose institutionalization is due to the commission of an offense for which, in the
3679 absence of mental illness, he would be subject to incarceration in a penal or correctional
3680 institution.

3681 (2) To every extent possible, it shall be the policy of party states that no patient be placed
3682 or detained in any prison, jail, or lockup, but shall, with all expedition, be taken to a suitable
3683 institutional facility for mental illness.

3684 Article X

3685 (1) Each party state shall appoint a "compact administrator" who, on behalf of his state,

3686 shall act as general coordinator of activities under the compact in his state and receive copies of
3687 all reports, correspondence, and other documents relating to any patient processed under the
3688 compact by his state, either in the capacity of sending or receiving state. The compact
3689 administrator, or his designee, shall deal with all matters relating to the compact and patients
3690 processed under the compact. In this state the director of the division, or his designee shall act as
3691 the "compact administrator."

3692 (2) The compact administrators of the respective party states have power to promulgate
3693 reasonable rules and regulations as are necessary to carry out the terms and provisions of this
3694 compact. In this state, the division has authority to establish those rules in accordance with the
3695 Utah Administrative Rulemaking Act.

3696 (3) The compact administrator shall cooperate with all governmental departments,
3697 agencies, and officers in this state and its subdivisions in facilitating the proper administration of
3698 the compact and any supplementary agreement or agreements entered into by this state under the
3699 compact.

3700 (4) The compact administrator is hereby authorized and empowered to enter into
3701 supplementary agreements with appropriate officials of other states pursuant to Articles VII and
3702 XI of this compact. In the event that supplementary agreements require or contemplate the use of
3703 any institution or facility of this state or require or contemplate the provision of any service by this
3704 state, that agreement shall have no force unless approved by the director of the department or
3705 agency under whose jurisdiction the institution or facility is operated, or whose department or
3706 agency will be charged with the rendering of services.

3707 (5) The compact administrator may make or arrange for any payments necessary to
3708 discharge financial obligations imposed upon this state by the compact or by any supplementary
3709 agreement entered into under the compact.

3710 Article XI

3711 Administrative authorities of any two or more party states may enter into supplementary
3712 agreements for the provision of any service or facility, or for the maintenance of any institution on
3713 a joint or cooperative basis whenever the states concerned find that those agreements will improve
3714 services, facilities, or institutional care and treatment of persons who are mentally ill. A
3715 supplementary agreement may not be construed to relieve a party state of any obligation that it
3716 otherwise would have under other provisions of this compact.

3717 Article XII

3718 This compact has full force and effect in any state when it is enacted into law in that state.
3719 Thereafter, that state is a party to the compact with any and all states that have legally joined.

3720 Article XIII

3721 A party state may withdraw from the compact by enacting a statute repealing the compact.
3722 Withdrawal takes effect one year after notice has been communicated officially and in writing to
3723 the compact administrators of all other party states. However, the withdrawal of a state does not
3724 change the status of any patient who has been sent to that state or sent out of that state pursuant
3725 to the compact.

3726 Article XIV

3727 This compact shall be liberally construed so as to effectuate its purposes. The provisions
3728 of this compact are severable, and if any phrase, clause, sentence or provision is declared to be
3729 contrary to the constitution of the United States or the applicability to any government, agency,
3730 person, or circumstance is held invalid, the validity of the remainder of this compact and its
3731 applicability to any government, agency, person, or circumstance shall not be affected thereby. If
3732 this compact is held to be contrary to the constitution of any party state the compact shall remain
3733 in full force and effect as to the remaining states and in full force and effect as to the state affected
3734 as to all severable matters.

3735 Section 115. Section **62A-15-802**, which is renumbered from Section 62A-12-302 is
3736 renumbered and amended to read:

3737 ~~[62A-12-302].~~ **62A-15-802. Requirement of conformity with this chapter.**

3738 All actions and proceedings taken under authority of this compact shall be in accordance
3739 with the procedures and constitutional requirements described in Part [2] 6 of this chapter.

3740 Section 116. Section **62A-15-901**, which is renumbered from Section 62A-12-401 is
3741 renumbered and amended to read:

3742 **Part 9. Utah Forensic Mental Health Facility**

3743 ~~[62A-12-401].~~ **62A-15-901. Establishment and funding.**

3744 The Utah Forensic Mental Health Facility is hereby established and shall be located on state
3745 land on the campus of the Utah State Hospital in Provo, Utah County.

3746 Section 117. Section **62A-15-902**, which is renumbered from Section 62A-12-402 is
3747 renumbered and amended to read:

3748 ~~[62A-12-402]~~. 62A-15-902. Design and operation -- Security -- Funding.

3749 (1) The forensic mental health facility shall be designed as a secure treatment facility. The
3750 department shall have primary responsibility to design the treatment environment. However, the
3751 department shall consult with the Department of Corrections on all matters that affect the ability
3752 to secure the facility, its residents, and staff.

3753 (2) (a) The forensic mental health facility shall be designed to separately accommodate the
3754 following populations:

3755 (i) prison inmates displaying mental illness, as defined in Section ~~[62A-12-202]~~

3756 62A-15-602, necessitating treatment in a secure mental health facility;

3757 (ii) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation
3758 for mental illness under Title 77, Chapter 16a, Commitment and Treatment of Mentally Ill Persons;

3759 (iii) criminally adjudicated persons found guilty and mentally ill under Title 77, Chapter
3760 16a, Commitment and Treatment of Mentally Ill Persons, who are also mentally retarded;

3761 (iv) persons found by a court to be incompetent to proceed in accordance with Title 77,
3762 Chapter 15, Inquiry Into Sanity of Defendant, or not guilty by reason of insanity under Title 77,
3763 Chapter 14, Defenses; and

3764 (v) persons who are civilly committed to the custody of a local mental health authority
3765 in accordance with Title 62A, Chapter ~~[42]~~ 15, Part ~~[2]~~ 6, Utah State Hospital and Other Mental
3766 Health Facilities, and who may not be properly supervised by the Utah State Hospital because of
3767 a lack of necessary security, as determined by the superintendent or his designee.

3768 (b) Placement of an offender in the forensic mental health facility under any category
3769 described in Subsection (2)(a)(ii), (iii), or (iv) shall be made on the basis of the offender's status
3770 as established by the court at the time of adjudication.

3771 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
3772 department shall make rules providing for the allocation of beds to the categories described in
3773 Subsection (2)(a).

3774 (3) The department shall:

3775 (a) own and operate the forensic mental health facility;

3776 (b) provide and supervise administrative and clinical staff; and

3777 (c) provide security staff who are trained both as psychiatric technicians and certified by
3778 the Department of Corrections to perform security responsibilities for the forensic mental health

3779 facility.

3780 Section 118. Section **62A-15-1001**, which is renumbered from Section 62A-12-501 is
3781 renumbered and amended to read:

3782 **Part 10. Declaration for Mental Health Treatment**

3783 ~~[62A-12-501].~~ **62A-15-1001. Definitions.**

3784 As used in this part:

3785 (1) "Attending physician" means a physician licensed to practice medicine in this state who
3786 has primary responsibility for the care and treatment of the declarant.

3787 (2) "Attorney-in-fact" means an adult properly appointed under this part to make mental
3788 health treatment decisions for a declarant under a declaration for mental health treatment.

3789 (3) "Incapable" means that, in the opinion of the court in a guardianship proceeding under
3790 Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's ability to
3791 receive and evaluate information effectively or communicate decisions is impaired to such an
3792 extent that the person currently lacks the capacity to make mental health treatment decisions.

3793 (4) "Mental health facility" means the same as that term is defined in Section
3794 ~~[62A-12-202]~~ 62A-15-602.

3795 (5) "Mental health treatment" means convulsive treatment, treatment with psychoactive
3796 medication, or admission to and retention in a facility for a period not to exceed 17 days.

3797 Section 119. Section **62A-15-1002**, which is renumbered from Section 62A-12-502 is
3798 renumbered and amended to read:

3799 ~~[62A-12-502].~~ **62A-15-1002. Declaration for mental health treatment.**

3800 (1) An adult who is not incapable may make a declaration of preferences or instructions
3801 regarding his mental health treatment. The declaration may include, but is not limited to, consent
3802 to or refusal of specified mental health treatment.

3803 (2) A declaration for mental health treatment shall designate a capable adult to act as
3804 attorney-in-fact to make decisions about mental health treatment for the declarant. An alternative
3805 attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable
3806 or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing
3807 may make decisions about mental health treatment on behalf of the declarant only when the
3808 declarant is incapable. The decisions shall be consistent with any instructions or desires the
3809 declarant has expressed in the declaration.

3810 (3) A declaration is effective only if it is signed by the declarant and two capable adult
3811 witnesses. The witnesses shall attest that the declarant is known to them, signed the declaration
3812 in their presence, appears to be of sound mind and is not under duress, fraud, or undue influence.
3813 Persons specified in Subsection [~~62A-12-503~~] 62A-15-1003(6) may not act as witnesses.

3814 (4) A declaration becomes operative when it is delivered to the declarant's physician or
3815 other mental health treatment provider and remains valid until it expires or is revoked by the
3816 declarant. The physician or provider is authorized to act in accordance with an operative
3817 declaration when the declarant has been found to be incapable. The physician or provider shall
3818 continue to obtain the declarant's informed consent to all mental health treatment decisions if the
3819 declarant is capable of providing informed consent or refusal.

3820 (5) (a) An attorney-in-fact does not have authority to make mental health treatment
3821 decisions unless the declarant is incapable.

3822 (b) An attorney-in-fact is not, solely as a result of acting in that capacity, personally liable
3823 for the cost of treatment provided to the declarant.

3824 (c) Except to the extent that a right is limited by a declaration or by any federal law, an
3825 attorney-in-fact has the same right as the declarant to receive information regarding the proposed
3826 mental health treatment and to receive, review, and consent to disclosure of medical records
3827 relating to that treatment. This right of access does not waive any evidentiary privilege.

3828 (d) In exercising authority under the declaration, the attorney-in-fact shall act consistently
3829 with the instructions and desires of the declarant, as expressed in the declaration. If the declarant's
3830 desires are unknown, the attorney-in-fact shall act in what he, in good faith, believes to be the best
3831 interest of the declarant.

3832 (e) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional
3833 disciplinary action for any action taken in good faith pursuant to a declaration for mental health
3834 treatment.

3835 (6) (a) A declaration for mental health treatment remains effective for a period of three
3836 years or until revoked by the declarant. If a declaration for mental health treatment has been
3837 invoked and is in effect at the expiration of three years after its execution, the declaration remains
3838 effective until the declarant is no longer incapable.

3839 (b) The authority of a named attorney-in-fact and any alternative attorney-in-fact continues
3840 in effect as long as the declaration appointing the attorney-in-fact is in effect or until the

3841 attorney-in-fact has withdrawn.

3842 (7) A person may not be required to execute or to refrain from executing a declaration as
3843 a criterion for insurance, as a condition for receiving mental or physical health services, or as a
3844 condition of discharge from a facility.

3845 Section 120. Section **62A-15-1003**, which is renumbered from Section 62A-12-503 is
3846 renumbered and amended to read:

3847 ~~[62A-12-503]~~. **62A-15-1003. Physician and provider responsibilities --**
3848 **Provision of services contrary to declaration -- Revocation.**

3849 (1) Upon being presented with a declaration, a physician shall make the declaration a part
3850 of the declarant's medical record. When acting under authority of a declaration, a physician shall
3851 comply with it to the fullest extent possible, consistent with reasonable medical practice, the
3852 availability of treatments requested, and applicable law. If the physician or other provider is
3853 unwilling at any time to comply with the declaration, the physician or provider shall promptly
3854 notify the declarant and the attorney-in-fact, and document the notification in the declarant's
3855 medical record.

3856 (2) A physician or provider may subject a declarant to intrusive treatment in a manner
3857 contrary to the declarant's wishes, as expressed in a declaration for mental health treatment if:

3858 (a) the declarant has been committed to the custody of a local mental health authority in
3859 accordance with Part [2] 6; or

3860 (b) in cases of emergency endangering life or health.

3861 (3) A declaration does not limit any authority provided in Part [2] 6 to take a person into
3862 custody, or admit or retain a person in the custody of a local mental health authority.

3863 (4) A declaration may be revoked in whole or in part by the declarant at any time so long
3864 as the declarant is not incapable. That revocation is effective when the declarant communicates
3865 the revocation to the attending physician or other provider. The attending physician or other
3866 provider shall note the revocation as part of the declarant's medical record.

3867 (5) A physician who administers or does not administer mental health treatment according
3868 to and in good faith reliance upon the validity of a declaration is not subject to criminal
3869 prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding
3870 that a declaration is invalid.

3871 (6) None of the following persons may serve as an attorney-in-fact or as witnesses to the

3872 signing of a declaration:

3873 (a) the declarant's attending physician or mental health treatment provider, or an employee
3874 of that physician or provider;

3875 (b) an employee of the division; or

3876 (c) an employee of a local mental health authority or any organization that contracts with
3877 a local mental health authority.

3878 (7) An attorney-in-fact may withdraw by giving notice to the declarant. If a declarant is
3879 incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or
3880 provider. The attending physician shall note the withdrawal as part of the declarant's medical
3881 record.

3882 Section 121. Section **62A-15-1004**, which is renumbered from Section 62A-12-504 is
3883 renumbered and amended to read:

3884 ~~[62A-12-504].~~ **62A-15-1004. Declaration for mental health treatment -- Form.**

3885 A declaration for mental health treatment shall be in substantially the following form:

3886 DECLARATION FOR MENTAL HEALTH TREATMENT

3887 I, _____, being an adult of sound mind, willfully and
3888 voluntarily make this declaration for mental health treatment, to be followed if it is determined by
3889 a court or by two physicians that my ability to receive and evaluate information effectively or to
3890 communicate my decisions is impaired to such an extent that I lack the capacity to refuse or
3891 consent to mental health treatment. "Mental health treatment" means convulsive treatment,
3892 treatment with psychoactive medication, and admission to and retention in a mental health facility
3893 for a period up to 17 days.

3894 I understand that I may become incapable of giving or withholding informed consent for
3895 mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms
3896 may include:

3897 _____
3898 _____

3899 PSYCHOACTIVE MEDICATIONS

3900 If I become incapable of giving or withholding informed consent for mental health
3901 treatment, my wishes regarding psychoactive medications are as follows:

3902 _____ I consent to the administration of the following medications:

3903 _____

3904 in the dosages:

3905 _____ considered appropriate by my attending physician.

3906 _____ approved by _____

3907 _____ as I hereby direct: _____

3908 _____ I do not consent to the administration of the following medications:

3909 _____

3910 _____

3911 _____

3912 CONVULSIVE TREATMENT

3913 If I become incapable of giving or withholding informed consent for mental health
3914 treatment, my wishes regarding convulsive treatment are as follows:

3915 _____ I consent to the administration of convulsive treatment of the following type:

3916 _____, the number of treatments to be:

3917 _____ determined by my attending physician.

3918 _____ approved by _____

3919 _____ as follows: _____

3920 _____ I do not consent to the administration of convulsive treatment.

3921 My reasons for consenting to or refusing convulsive treatment are as follows;

3922 _____

3923 _____

3924 _____

3925 ADMISSION TO AND RETENTION IN A MENTAL HEALTH FACILITY

3926 If I become incapable of giving or withholding informed consent for mental health
3927 treatment, my wishes regarding admission to and retention in a mental health facility are as
3928 follows:

3929 _____ I consent to being admitted to the following mental health facilities:

3930 _____

3931 I may be retained in the facility for a period of time:

3932 _____ determined by my attending physician.

3933 _____ approved by _____

3934 _____ no longer than _____

3935 This directive cannot, by law, provide consent to retain me in a facility for more than 17 days.

3936 ADDITIONAL REFERENCES OR INSTRUCTIONS

3937 _____

3938 _____

3939 _____

3940 ATTORNEY-IN-FACT

3941 I hereby appoint:

3942 NAME _____

3943 ADDRESS _____

3944 TELEPHONE # _____

3945 to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become
3946 incapable of giving or withholding informed consent for that treatment.

3947 If the person named above refuses or is unable to act on my behalf, or if I revoke that
3948 person's authority to act as my attorney-in-fact, I authorize the following person to act as my
3949 alternative attorney-in-fact:

3950 NAME _____

3951 ADDRESS _____

3952 TELEPHONE # _____

3953 My attorney-in-fact is authorized to make decisions which are consistent with the wishes
3954 I have expressed in this declaration. If my wishes are not expressed, my attorney-in-fact is to act
3955 in good faith according to what he or she believes to be in my best interest.

3956 _____

3957 (Signature of Declarant/Date)

3958 AFFIRMATION OF WITNESSES

3959 We affirm that the declarant is personally known to us, that the declarant signed or
3960 acknowledged the declarant's signature on this declaration for mental health treatment in our
3961 presence, that the declarant appears to be of sound mind and does not appear to be under duress,
3962 fraud, or undue influence. Neither of us is the person appointed as attorney-in-fact by this
3963 document, the attending physician, an employee of the attending physician, an employee of the
3964 Division of Substance Abuse and Mental Health within the Department of Human Services, an

3965 employee of a local mental health authority, or an employee of any organization that contracts with
3966 a local mental health authority.

3967 Witnessed By:

3968 _____

3969 (Signature of Witness/Date)

(Printed Name of Witness)

3970 _____

3971 (Signature of Witness/Date)

(Printed Name of Witness)

3972 ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

3973 I accept this appointment and agree to serve as attorney-in-fact to make decisions about
3974 mental health treatment for the declarant. I understand that I have a duty to act consistently with
3975 the desires of the declarant as expressed in the declaration. I understand that this document gives
3976 me authority to make decisions about mental health treatment only while the declarant is incapable
3977 as determined by a court or two physicians. I understand that the declarant may revoke this
3978 appointment, or the declaration, in whole or in part, at any time and in any manner, when the
3979 declarant is not incapable.

3980 _____

3981 (Signature of Attorney-in-fact/Date)

(Printed name)

3982 _____

3983 (Signature of Alternate Attorney-in-fact/Date)

(Printed name)

3984 NOTICE TO PERSON MAKING A

3985 DECLARATION FOR MENTAL HEALTH TREATMENT

3986 This is an important legal document. It is a declaration that allows, or disallows, mental
3987 health treatment. Before signing this document, you should know that:

3988 (1) this document allows you to make decisions in advance about three types of mental
3989 health treatment: psychoactive medication, convulsive therapy, and short-term (up to 17 days)
3990 admission to a mental health facility;

3991 (2) the instructions that you include in this declaration will be followed only if a court or
3992 two physicians believe that you are incapable of otherwise making treatment decisions. Otherwise,
3993 you will be considered capable to give or withhold consent for treatment;

3994 (3) you may also appoint a person as your attorney-in-fact to make these treatment
3995 decisions for you if you become incapable. The person you appoint has a duty to act consistently

3996 with your desires as stated in this document or, if not stated, to make decisions in accordance with
3997 what that person believes, in good faith, to be in your best interest. For the appointment to be
3998 effective, the person you appoint must accept the appointment in writing. The person also has the
3999 right to withdraw from acting as your attorney-in-fact at any time;

4000 (4) this document will continue in effect for a period of three years unless you become
4001 incapable of participating in mental health treatment decisions. If this occurs, the directive will
4002 continue in effect until you are no longer incapable;

4003 (5) you have the right to revoke this document in whole or in part, or the appointment of
4004 an attorney-in-fact, at any time you have not been determined to be incapable. YOU MAY NOT
4005 REVOKE THE DECLARATION OR APPOINTMENT WHEN YOU ARE CONSIDERED
4006 INCAPABLE BY A COURT OR TWO PHYSICIANS. A revocation is effective when it is
4007 communicated to your attending physician or other provider; and

4008 (6) if there is anything in this document that you do not understand, you should ask an
4009 attorney to explain it to you. This declaration is not valid unless it is signed by two qualified
4010 witnesses who are personally known to you and who are present when you sign or acknowledge
4011 your signature.

4012 Section 122. Section **63-25a-201** is amended to read:

4013 **63-25a-201. Creation of council -- Membership -- Terms.**

4014 (1) There is created within the governor's office the Utah Substance Abuse and
4015 Anti-Violence Coordinating Council.

4016 (2) The Utah Substance Abuse and Anti-Violence Coordinating Council comprises [26]
4017 25 voting members as follows:

4018 (a) the attorney general or the attorney general's designee;

4019 (b) a county commissioner designated by the Utah Association of Counties;

4020 (c) the commissioner of public safety or the commissioner's designee;

4021 (d) the director of the Division of Substance Abuse and Mental Health or the director's
4022 designee;

4023 (e) the state superintendent of public instruction or the superintendent's designee;

4024 (f) the director of the Department of Health or the director's designee;

4025 [~~(g) the director of the Division of Mental Health or the director's designee;~~]

4026 [~~(h)~~] (g) the executive director of the Commission on Criminal and Juvenile Justice or the

4027 executive director's designee;

4028 ~~[(†)]~~ (h) the governor or the governor's designee;

4029 ~~[(†)]~~ (i) the executive director of the Department of Corrections or the executive director's
4030 designee;

4031 ~~[(†)]~~ (j) the director of the Division of Youth Corrections or the director's designee;

4032 ~~[(†)]~~ (k) the chair of the Domestic Violence Advisory Council or the chair's designee;

4033 ~~[(m)]~~ (l) the following members designated to serve four-year terms:

4034 (i) a member of the House of Representatives designated by the speaker;

4035 (ii) a member of the Senate designated by the president;

4036 (iii) a member of the judiciary designated by the chief justice of the Utah Supreme Court;

4037 (iv) a representative designated by the Utah League of Cities and Towns; and

4038 (v) a representative from the offices of minority affairs designated by the directors of those
4039 offices or a designee;

4040 ~~[(n)]~~ (m) the following members appointed by the governor to serve four-year terms:

4041 (i) a representative of the Utah National Guard, appointed by the governor;

4042 (ii) one resident of the state who has been personally affected by domestic violence;

4043 (iii) one resident of the state who has been personally affected by gang violence;

4044 (iv) one resident of the state who has been personally affected by alcohol or other drug
4045 abuse; and

4046 (v) one citizen representative; and

4047 ~~[(o)]~~ (n) the following members appointed by the members in Subsections (2)(a) through
4048 (2)(n) to serve four-year terms:

4049 (i) a person knowledgeable in criminal justice issues;

4050 (ii) a person knowledgeable in substance abuse treatment issues;

4051 (iii) a person knowledgeable in substance abuse prevention issues; and

4052 (iv) a person knowledgeable in judiciary issues.

4053 Section 123. Section **63-38-2** is amended to read:

4054 **63-38-2. Governor to submit budget to Legislature -- Contents -- Preparation --**

4055 **Appropriations based on current tax laws and not to exceed estimated revenues.**

4056 (1) (a) The governor shall, within three days after the convening of the Legislature in the
4057 annual general session, submit a budget for the ensuing fiscal year by delivering it to the presiding

4058 officer of each house of the Legislature together with a schedule for all of the proposed
4059 appropriations of the budget, clearly itemized and classified.

4060 (b) The budget message shall include a projection of estimated revenues and expenditures
4061 for the next fiscal year.

4062 (2) At least 34 days before the submission of any budget, the governor shall deliver a
4063 confidential draft copy of his proposed budget recommendations to the Office of the Legislative
4064 Fiscal Analyst.

4065 (3) (a) The budget shall contain a complete plan of proposed expenditures and estimated
4066 revenues for the next fiscal year based upon the current fiscal year state tax laws and rates.

4067 (b) The budget may be accompanied by a separate document showing proposed
4068 expenditures and estimated revenues based on changes in state tax laws or rates.

4069 (4) The budget shall be accompanied by a statement showing:

4070 (a) the revenues and expenditures for the last fiscal year;

4071 (b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and funds
4072 of the state;

4073 (c) an estimate of the state's financial condition as of the beginning and the end of the
4074 period covered by the budget;

4075 (d) a complete analysis of lease with an option to purchase arrangements entered into by
4076 state agencies;

4077 (e) the recommendations for each state agency for new full-time employees for the next
4078 fiscal year; which recommendation should be provided also to the State Building Board under
4079 Subsection 63A-5-103(2);

4080 (f) any explanation the governor may desire to make as to the important features of the
4081 budget and any suggestion as to methods for the reduction of expenditures or increase of the state's
4082 revenue; and

4083 (g) the information detailing certain regulatory fee increases required by Section 63-38-3.2.

4084 (5) The budget shall include an itemized estimate of the appropriations for:

4085 (a) the Legislative Department as certified to the governor by the president of the Senate
4086 and the speaker of the House;

4087 (b) the Executive Department;

4088 (c) the Judicial Department as certified to the governor by the state court administrator;

4089 (d) payment and discharge of the principal and interest of the indebtedness of the state [of
4090 Utah];

4091 (e) the salaries payable by the state under the Utah Constitution or under law for the lease
4092 agreements planned for the next fiscal year;

4093 (f) other purposes that are set forth in the Utah Constitution or under law; and

4094 (g) all other appropriations.

4095 (6) Deficits or anticipated deficits shall be included in the budget.

4096 (7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall require
4097 from the proper state officials, including public and higher education officials, all heads of
4098 executive and administrative departments and state institutions, bureaus, boards, commissions, and
4099 agencies expending or supervising the expenditure of the state moneys, and all institutions
4100 applying for state moneys and appropriations, itemized estimates of revenues and expenditures.
4101 The entities required by this Subsection (7)(a)(i) to submit itemized estimates of revenues and
4102 expenditures to the governor, shall also report to the Utah Information Technology Commission
4103 created in Title 63D, Chapter 1, Information Technology Act, before October 30 of each year. The
4104 report to the Information Technology Commission shall include the proposed information
4105 technology expenditures and objectives, the proposed appropriation requests and other sources of
4106 revenue necessary to fund the proposed expenditures and an analysis of:

4107 (A) the entity's need for appropriations for information technology;

4108 (B) how the entity's development of information technology coordinates with other state
4109 or local government entities;

4110 (C) any performance measures used by the entity for implementing information technology
4111 goals; and

4112 (D) any efforts to develop public/private partnerships to accomplish information
4113 technology goals.

4114 (ii) (A) The governor may also require other information under these guidelines and at
4115 times as the governor may direct.

4116 (B) These guidelines may include a requirement for program productivity and performance
4117 measures, where appropriate, with emphasis on outcome indicators.

4118 (b) The estimate for the Legislative Department as certified by the presiding officers of
4119 both houses shall be included in the budget without revision by the governor. Before preparing

4120 the estimates for the Legislative Department, the Legislature shall report to the Information
4121 Technology Commission the proposed information technology expenditures and objectives, the
4122 proposed appropriation requests and other sources of revenue necessary to fund the proposed
4123 expenditures, including an analysis of:

4124 (i) the Legislature's implementation of information technology goals;

4125 (ii) any coordination of information technology with other departments of state and local
4126 government;

4127 (iii) any efforts to develop public/private partnerships to accomplish information
4128 technology goals; and

4129 (iv) any performance measures used by the entity for implementing information technology
4130 goals.

4131 (c) The estimate for the Judicial Department, as certified by the state court administrator,
4132 shall also be included in the budget without revision, but the governor may make separate
4133 recommendations on it. Before preparing the estimates for the Judicial Department, the state court
4134 administrator shall report to the Information Technology Commission the proposed information
4135 technology expenditures and objectives, the proposed appropriation requests and other sources of
4136 revenue necessary to fund the proposed expenditures, including an analysis of:

4137 (i) the Judicial Department's information technology goals;

4138 (ii) coordination of information technology statewide between all courts;

4139 (iii) any efforts to develop public/private partnerships to accomplish information
4140 technology goals; and

4141 (iv) any performance measures used by the entity for implementing information technology
4142 goals.

4143 (d) Before preparing the estimates for the State Office of Education, the state
4144 superintendent shall report to the Information Technology Commission the proposed information
4145 technology expenditures and objectives, the proposed appropriation requests and other sources of
4146 revenue necessary to fund the proposed expenditures, including an analysis of:

4147 (i) the Office of Education's information technology goals;

4148 (ii) coordination of information technology statewide between all public schools;

4149 (iii) any efforts to develop public/private partnerships to accomplish information
4150 technology goals; and

4151 (iv) any performance measures used by the Office of Education for implementing
4152 information technology goals.

4153 (e) Before preparing the estimates for the state system of Higher Education, the
4154 commissioner shall report to the Information Technology Commission the proposed information
4155 technology expenditures and objectives, the proposed appropriation requests and other sources of
4156 revenue necessary to fund the proposed expenditures, including an analysis of:

4157 (i) Higher Education's information technology goals;

4158 (ii) coordination of information technology statewide within the state system of higher
4159 education;

4160 (iii) any efforts to develop public/private partnerships to accomplish information
4161 technology goals; and

4162 (iv) any performance measures used by the state system of higher education for
4163 implementing information technology goals.

4164 (f) The governor may require the attendance at budget meetings of representatives of
4165 public and higher education, state departments and institutions, and other institutions or individuals
4166 applying for state appropriations.

4167 (g) The governor may revise all estimates, except those relating to the Legislative
4168 Department, the Judicial Department, and those providing for the payment of principal and interest
4169 to the state debt and for the salaries and expenditures specified by the Utah Constitution or under
4170 the laws of the state.

4171 (8) The total appropriations requested for expenditures authorized by the budget may not
4172 exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal
4173 year.

4174 (9) If any item of the budget as enacted is held invalid upon any ground, the invalidity does
4175 not affect the budget itself or any other item in it.

4176 (10) (a) In submitting the budgets for the Departments of Health and Human Services and
4177 the Office of the Attorney General, the governor shall consider a separate recommendation in his
4178 budget for funds to be contracted to:

4179 (i) local mental health authorities under Section [~~17A-3-606~~] 62A-15-110;

4180 (ii) local substance abuse authorities under Section [~~62A-8-110.5~~] 62A-15-110;

4181 (iii) area agencies under Section 62A-3-104.2;

4182 (iv) programs administered directly by and for operation of the Divisions of Substance
4183 Abuse and Mental Health[~~Substance Abuse~~] and Aging and Adult Services;

4184 (v) local health departments under Title 26A, Chapter 1, Local Health Departments; and

4185 (vi) counties for the operation of Children's Justice Centers under Section 67-5b-102.

4186 (b) In his budget recommendations under Subsections (10)(a)(i), (ii), and (iii), the governor
4187 shall consider an amount sufficient to grant local health departments, local mental health
4188 authorities, local substance abuse authorities, and area agencies the same percentage increase for
4189 wages and benefits that he includes in his budget for persons employed by the state.

4190 (c) If the governor does not include in his budget an amount sufficient to grant the increase
4191 described in Subsection (10)(b), he shall include a message to the Legislature regarding his reason
4192 for not including that amount.

4193 (11) (a) In submitting the budget for the Division of Services for People with Disabilities,
4194 the Division of Child and Family Services, and the Division of Youth Corrections within the
4195 Department of Human Services, the governor shall consider an amount sufficient to grant
4196 employees of corporations that provide direct services under contract with those divisions, the
4197 same percentage increase for cost-of-living that he includes in his budget for persons employed
4198 by the state.

4199 (b) If the governor does not include in his budget an amount sufficient to grant the increase
4200 described in Subsection (11)(a), he shall include a message to the Legislature regarding his reason
4201 for not including that amount.

4202 (12) (a) The Families, Agencies, and Communities Together Council may propose to the
4203 governor under Subsection 63-75-4(4)(e) a budget recommendation for collaborative service
4204 delivery systems operated under Section 63-75-6.5.

4205 (b) The Legislature may, through a specific program schedule, designate funds
4206 appropriated for collaborative service delivery systems operated under Section 63-75-6.5.

4207 (13) The governor shall include in his budget the state's portion of the budget for the Utah
4208 Communications Agency Network established in Title 63C, Chapter 7, Utah Communications
4209 Agency Network Act.

4210 Section 124. Section **63-46b-1** is amended to read:

4211 **63-46b-1. Scope and applicability of chapter.**

4212 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute

4213 superseding provisions of this chapter by explicit reference to this chapter, the provisions of this
4214 chapter apply to every agency of the state and govern:

4215 (a) all state agency actions that determine the legal rights, duties, privileges, immunities,
4216 or other legal interests of one or more identifiable persons, including all agency actions to grant,
4217 deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

4218 (b) judicial review of these actions.

4219 (2) This chapter does not govern:

4220 (a) the procedures for making agency rules, or the judicial review of those procedures or
4221 rules;

4222 (b) the issuance of any notice of a deficiency in the payment of a tax, the decision to waive
4223 penalties or interest on taxes, the imposition of and penalties or interest on taxes, or the issuance
4224 of any tax assessment, except that this chapter governs any agency action commenced by a
4225 taxpayer or by another person authorized by law to contest the validity or correctness of those
4226 actions;

4227 (c) state agency actions relating to extradition, to the granting of pardons or parole,
4228 commutations or terminations of sentences, or to the rescission, termination, or revocation of
4229 parole or probation, to the discipline of, resolution of grievances of, supervision of, confinement
4230 of, or the treatment of inmates or residents of any correctional facility, the Utah State Hospital, the
4231 Utah State Developmental Center, or persons in the custody or jurisdiction of the Division of
4232 Substance Abuse and Mental Health, or persons on probation or parole, or judicial review of those
4233 actions;

4234 (d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote
4235 students or teachers in any school or educational institution, or judicial review of those actions;

4236 (e) applications for employment and internal personnel actions within an agency
4237 concerning its own employees, or judicial review of those actions;

4238 (f) the issuance of any citation or assessment under Title 34A, Chapter 6, Utah
4239 Occupational Safety and Health Act, and Title 58, Chapter 55, Utah Construction Trades Licensing
4240 Act, except that this chapter governs any agency action commenced by the employer, licensee, or
4241 other person authorized by law to contest the validity or correctness of the citation or assessment;

4242 (g) state agency actions relating to management of state funds, the management and
4243 disposal of school and institutional trust land assets, and contracts for the purchase or sale of

4244 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
4245 the state, except as provided in those contracts, or judicial review of those actions;

4246 (h) state agency actions under Title 7, Chapter 1, Article 3, Powers and Duties of
4247 Commissioner of Financial Institutions; and Title 7, Chapter 2, Possession of Depository
4248 Institution by Commissioner; Title 7, Chapter 19, Acquisition of Failing Depository Institutions
4249 or Holding Companies; and Title 63, Chapter 30, Utah Governmental Immunity Act, or judicial
4250 review of those actions;

4251 (i) the initial determination of any person's eligibility for unemployment benefits, the
4252 initial determination of any person's eligibility for benefits under Title 34A, Chapter 2, Workers'
4253 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
4254 determination of a person's unemployment tax liability;

4255 (j) state agency actions relating to the distribution or award of monetary grants to or
4256 between governmental units, or for research, development, or the arts, or judicial review of those
4257 actions;

4258 (k) the issuance of any notice of violation or order under Title 26, Chapter 8a, Utah
4259 Emergency Medical Services System Act; Title 19, Chapter 2, Air Conservation Act; Title 19,
4260 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act; Title 19, Chapter
4261 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19,
4262 Chapter 6, Part 4, Underground Storage Tank Act; or Title 19, Chapter 6, Part 7, Used Oil
4263 Management Act, except that this chapter governs any agency action commenced by any person
4264 authorized by law to contest the validity or correctness of the notice or order;

4265 (l) state agency actions, to the extent required by federal statute or regulation to be
4266 conducted according to federal procedures;

4267 (m) the initial determination of any person's eligibility for government or public assistance
4268 benefits;

4269 (n) state agency actions relating to wildlife licenses, permits, tags, and certificates of
4270 registration;

4271 (o) licenses for use of state recreational facilities;

4272 (p) state agency actions under Title 63, Chapter 2, Government Records Access and
4273 Management Act, except as provided in Section 63-2-603;

4274 (q) state agency actions relating to the collection of water commissioner fees and

4275 delinquency penalties, or judicial review of those actions; and

4276 (r) state agency actions relating to the installation, maintenance, and repair of headgates,
4277 caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring
4278 devices, or judicial review of those actions.

4279 (3) This chapter does not affect any legal remedies otherwise available to:

4280 (a) compel an agency to take action; or

4281 (b) challenge an agency's rule.

4282 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
4283 proceeding, or the presiding officer during an adjudicative proceeding from:

4284 (a) requesting or ordering conferences with parties and interested persons to:

4285 (i) encourage settlement;

4286 (ii) clarify the issues;

4287 (iii) simplify the evidence;

4288 (iv) facilitate discovery; or

4289 (v) expedite the proceedings; or

4290 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
4291 Rule 12(b) or Rule 56, respectively, of the Utah Rules of Civil Procedure are met by the moving
4292 party, except to the extent that the requirements of those rules are modified by this chapter.

4293 (5) (a) Declaratory proceedings authorized by Section 63-46b-21 are not governed by this
4294 chapter, except as explicitly provided in that section.

4295 (b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are
4296 governed by this chapter.

4297 (6) This chapter does not preclude an agency from enacting rules affecting or governing
4298 adjudicative proceedings or from following any of those rules, if the rules are enacted according
4299 to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if
4300 the rules conform to the requirements of this chapter.

4301 (7) (a) If the attorney general issues a written determination that any provision of this
4302 chapter would result in the denial of funds or services to an agency of the state from the federal
4303 government, the applicability of those provisions to that agency shall be suspended to the extent
4304 necessary to prevent the denial.

4305 (b) The attorney general shall report the suspension to the Legislature at its next session.

4306 (8) Nothing in this chapter may be interpreted to provide an independent basis for
4307 jurisdiction to review final agency action.

4308 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause
4309 shown, from lengthening or shortening any time period prescribed in this chapter, except those
4310 time periods established for judicial review.

4311 Section 125. Section **63-63a-7** is amended to read:

4312 **63-63a-7. Intoxicated Driver Rehabilitation Account share of surcharge.**

4313 The Division of Finance shall allocate 7.5% of the collected surcharge established in
4314 Section 63-63a-1, but not to exceed the amount appropriated by the Legislature, to the Intoxicated
4315 Driver Rehabilitation Account established by Section ~~[62A-8-303]~~ 62A-15-503.

4316 Section 126. Section **63-75-5** is amended to read:

4317 **63-75-5. Steering committee -- Membership -- Duties.**

4318 (1) As used in this section, "Council of Mental Health Programs" means a council
4319 consisting of all of the directors of Utah public mental health centers.

4320 (2) There is established a Families, Agencies, and Communities Together Steering
4321 Committee.

4322 (3) The steering committee shall include at least ~~[19]~~ 18 voting members as follows:

4323 (a) the director of the Division of Health Care Financing within the Department of Health;

4324 (b) a representative annually designated by the Council of Mental Health Programs;

4325 (c) the director of the Division of Substance Abuse and Mental Health within the
4326 Department of Human Services;

4327 (d) the director of the Division of Youth Corrections within the Department of Human
4328 Services;

4329 (e) the state director of special education;

4330 (f) the person responsible for programs for at risk students within the Utah State Office
4331 of Education, if that person is not the state director of special education;

4332 (g) the Juvenile Court Administrator;

4333 (h) a representative annually designated by substance abuse directors;

4334 (i) the director of the Division of Child and Family Services within the Department of
4335 Human Services;

4336 ~~[(j) the director of the Division of Mental Health within the Department of Human~~

4337 Services;]

4338 ~~[(k)]~~ (j) the director of family health services programs;

4339 ~~[(h)]~~ (k) a representative annually designated by the Utah School Superintendents

4340 Association;

4341 ~~[(m)]~~ (l) a juvenile court judge designated by the presiding officer of the state Judicial

4342 Council;

4343 ~~[(n)]~~ (m) a representative annually designated by the local health officers;

4344 ~~[(o)]~~ (n) a representative annually designated by the executive director of the Department

4345 of Workforce Services;

4346 ~~[(p)]~~ (o) three at-large members appointed by a majority of the committee to four-year

4347 terms, who represent a statewide perspective on children and youth issues; and

4348 ~~[(q)]~~ (p) parent representatives appointed by members specified in Subsections (3)(a)

4349 through ~~[(r)]~~ (o).

4350 (4) Additional members may be selected by a majority of the committee to serve as voting

4351 members for four-year terms.

4352 (5) (a) Except as required by Subsection (5)(b), as terms of current at-large committee

4353 members expire, the committee shall appoint each new member or reappointed member to a

4354 four-year term.

4355 (b) Notwithstanding the requirements of Subsection (5)(a), the committee shall, at the time

4356 of appointment or reappointment, adjust the length of terms to ensure that the terms of at-large

4357 committee members are staggered so that approximately half of the at-large committee members

4358 are appointed every two years.

4359 (6) When a vacancy occurs in the membership for any reason, the replacement shall be

4360 appointed for the unexpired term.

4361 (7) The members shall annually elect a chair and vice chair.

4362 (8) A majority of committee members are necessary to constitute a quorum and to transact

4363 the business of the committee.

4364 (9) (a) (i) Members who are not government employees may not receive compensation or

4365 benefits for their services, but may receive per diem and expenses incurred in the performance of

4366 the member's official duties at the rates established by the Division of Finance under Sections

4367 63A-3-106 and 63A-3-107.

4368 (ii) Members may decline to receive per diem and expenses for their service.

4369 (b) (i) State government officer and employee members who do not receive salary, per
4370 diem, or expenses from their agency for their service may receive per diem and expenses incurred
4371 in the performance of their official duties from the committee at the rates established by the
4372 Division of Finance under Sections 63A-3-106 and 63A-3-107.

4373 (ii) State government officer and employee members may decline to receive per diem and
4374 expenses for their service.

4375 (c) (i) Local government members who do not receive salary, per diem, or expenses from
4376 the entity that they represent for their service may receive per diem and expenses incurred in the
4377 performance of their official duties at the rates established by the Division of Finance under
4378 Sections 63A-3-106 and 63A-3-107.

4379 (ii) Local government members may decline to receive per diem and expenses for their
4380 service.

4381 (10) The committee shall:

4382 (a) assist the council in fulfilling its duties set out in Section 63-75-4;

4383 (b) monitor, solicit input for policy changes, and provide technical assistance to local
4384 collaborative programs; and

4385 (c) report any formal recommendations to the council.

4386 Section 127. Section **64-13-7.5** is amended to read:

4387 **64-13-7.5. Persons in need of mental health services -- Contracts.**

4388 (1) Except as provided for in Subsection (2), when the department determines that a person
4389 in its custody is in need of mental health services, the department shall contract with the Division
4390 of Substance Abuse and Mental Health, local mental health authorities, or the state hospital to
4391 provide mental health services for that person. Those services may be provided at the Utah State
4392 Hospital or in community programs provided by or under contract with the Division of Substance
4393 Abuse and Mental Health, a local mental health authority, or other public or private mental health
4394 care providers.

4395 (2) If the Division of Substance Abuse and Mental Health, a local mental health authority,
4396 or the state hospital notifies the department that it is unable to provide mental health services under
4397 Subsection (1), the department may contract with other public or private mental health care
4398 providers to provide mental health services for persons in its custody.

4399 (3) A person who provides mental health services for sex offender treatment as required
4400 in Section 64-13-6 shall be licensed as a mental health professional in accordance with Title 58,
4401 Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist
4402 Licensing Act, and exhibit competency to practice in the area of sex offender treatment based on
4403 education, training, and practice.

4404 Section 128. Section **76-5-412** is amended to read:

4405 **76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions --**
4406 **Penalties -- Defenses.**

4407 (1) As used in this section:

4408 (a) "Actor" means:

4409 (i) a correctional officer, as defined in Section 53-13-104;

4410 (ii) a law enforcement officer, as defined in Section 53-13-103; or

4411 (iii) an employee of, or private provider or contractor for, the Department of Corrections
4412 or a county jail.

4413 (b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor
4414 younger than 18 years of age, who is:

4415 (i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody
4416 of the Department of Corrections created under Section 64-13-2, but who is being housed at the
4417 Utah State Hospital established under Section [~~62A-12-201~~] 62A-15-601 or other medical facility;

4418 (ii) under correctional supervision, such as at a work release facility or as a parolee or
4419 probationer; or

4420 (iii) under lawful or unlawful arrest, either with or without a warrant.

4421 (c) "Private provider or contractor" means any person or entity that contracts with the
4422 Department of Corrections or with a county jail to provide services or functions that are part of the
4423 operation of the Department of Corrections or a county jail under state or local law.

4424 (2) (a) An actor commits custodial sexual relations if the actor commits any of the acts
4425 under Subsection (3):

4426 (i) under circumstances not amounting to commission of, or an attempt to commit, an
4427 offense under Subsection (6); and

4428 (ii) (A) the actor knows that the individual is a person in custody; or

4429 (B) a reasonable person in the actor's position should have known under the circumstances

4430 that the individual was a person in custody.

4431 (b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody
4432 is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

4433 (c) If the act committed under this Subsection (2) amounts to an offense subject to a
4434 greater penalty under another provision of state law than is provided under this Subsection (2), this
4435 Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

4436 (3) Acts referred to in Subsection (2)(a) are:

4437 (a) having sexual intercourse with a person in custody;

4438 (b) engaging in any sexual act with a person in custody involving the genitals of one
4439 person and the mouth or anus of another person, regardless of the sex of either participant; or

4440 (c) causing the penetration, however slight, of the genital or anal opening of a person in
4441 custody by any foreign object, substance, instrument, or device, including a part of the human
4442 body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the
4443 sex of any participant.

4444 (4) (a) An actor commits custodial sexual misconduct if the actor commits any of the acts
4445 under Subsection (5):

4446 (i) under circumstances not amounting to commission of, or an attempt to commit, an
4447 offense under Subsection (6); and

4448 (ii) (A) the actor knows that the individual is a person in custody; or

4449 (B) a reasonable person in the actor's position should have known under the circumstances
4450 that the individual was a person in custody.

4451 (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody
4452 is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

4453 (c) If the act committed under this Subsection (4) amounts to an offense subject to a
4454 greater penalty under another provision of state law than is provided under this Subsection (4), this
4455 Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

4456 (5) Acts referred to in Subsection (4)(a) are the following acts when committed with the
4457 intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or
4458 gratify the sexual desire of any person, regardless of the sex of any participant:

4459 (a) touching the anus, buttocks, or any part of the genitals of a person in custody;

4460 (b) touching the breast of a female person in custody;

- 4461 (c) otherwise taking indecent liberties with a person in custody; or
4462 (d) causing a person in custody to take indecent liberties with the actor or another person.
4463 (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:
4464 (a) Section 76-5-401, unlawful sexual activity with a minor;
4465 (b) Section 76-5-402, rape;
4466 (c) Section 76-5-402.1, rape of a child;
4467 (d) Section 76-5-402.2, object rape;
4468 (e) Section 76-5-402.3, object rape of a child;
4469 (f) Section 76-5-403, forcible sodomy;
4470 (g) Section 76-5-403.1, sodomy on a child;
4471 (h) Section 76-5-404, forcible sexual abuse;
4472 (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
4473 (j) Section 76-5-405, aggravated sexual assault.
4474 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations
4475 under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit
4476 either of these offenses, if the person in custody is younger than 18 years of age, that the actor:
4477 (i) mistakenly believed the person in custody to be 18 years of age or older at the time of
4478 the alleged offense; or
4479 (ii) was unaware of the true age of the person in custody.
4480 (b) Consent of the person in custody is not a defense to any violation or attempted
4481 violation of Subsection (2) or (4).
4482 (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4)
4483 is the result of compulsion, as the defense is described in Subsection 76-2-302(1).
4484 Section 129. Section **76-8-311.1** is amended to read:
4485 **76-8-311.1. Secure areas -- Items prohibited -- Penalty.**
4486 (1) In addition to the definitions in Section 76-10-501, as used in this section:
4487 (a) "Correctional facility" has the same meaning as defined in Section 76-8-311.3.
4488 (b) "Explosive" has the same meaning as defined for "explosive, chemical, or incendiary
4489 device" defined in Section 76-10-306.
4490 (c) "Law enforcement facility" means a facility which is owned, leased, or operated by a
4491 law enforcement agency.

4492 (d) "Mental health facility" has the same meaning as defined in Section [~~62A-12-202~~]
4493 62A-15-602.

4494 (e) (i) "Secure area" means any area into which certain persons are restricted from
4495 transporting any firearm, ammunition, dangerous weapon, or explosive.

4496 (ii) A "secure area" may not include any area normally accessible to the public.

4497 (2) (a) A person in charge of a correctional, law enforcement, or mental health facility may
4498 establish secure areas within the facility and may prohibit or control by rule any firearm,
4499 ammunition, dangerous weapon, or explosive.

4500 (b) Subsections (2)(a), (3), (4), (5), and (6) apply to higher education secure area hearing
4501 rooms referred to in Subsections 53B-3-103(2)(a)(ii) and (b).

4502 (3) At least one notice shall be prominently displayed at each entrance to an area in which
4503 a firearm, ammunition, dangerous weapon, or explosive is restricted.

4504 (4) (a) Provisions shall be made to provide a secure weapons storage area so that persons
4505 entering the secure area may store their weapons prior to entering the secure area.

4506 (b) The entity operating the facility shall be responsible for weapons while they are stored
4507 in the storage area.

4508 (5) It is a defense to any prosecution under this section that the accused, in committing the
4509 act made criminal by this section, acted in conformity with the facility's rule or policy established
4510 pursuant to this section.

4511 (6) (a) Any person who knowingly or intentionally transports into a secure area of a facility
4512 any firearm, ammunition, or dangerous weapon is guilty of a third degree felony.

4513 (b) Any person violates Section 76-10-306 who knowingly or intentionally transports,
4514 possesses, distributes, or sells any explosive in a secure area of a facility.

4515 Section 130. Section **76-8-311.3** is amended to read:

4516 **76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.**

4517 (1) As used in this section:

4518 (a) "Contraband" means any item not specifically prohibited for possession by offenders
4519 under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

4520 (b) "Controlled substance" means any substance defined as a controlled substance under
4521 Title 58, Chapter 37, Utah Controlled Substances Act.

4522 (c) "Correctional facility" means:

4523 (i) any facility operated by or contracting with the Department of Corrections to house
4524 offenders in either a secure or nonsecure setting;

4525 (ii) any facility operated by a municipality or a county to house or detain criminal
4526 offenders;

4527 (iii) any juvenile detention facility; and

4528 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
4529 municipality, or county for use as a correctional facility.

4530 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a, Pharmacy
4531 Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37,
4532 Utah Controlled Substances Act.

4533 (e) "Mental health facility" has the same meaning as defined in Section [~~62A-12-202~~]
4534 62A-15-602.

4535 (f) "Offender" means a person in custody at a correctional facility.

4536 (g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

4537 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may provide
4538 by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive,
4539 controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:

4540 (a) transported to or upon a correctional or mental health facility;

4541 (b) sold or given away at any correctional or mental health facility;

4542 (c) given to or used by any offender at a correctional or mental health facility; or

4543 (d) knowingly or intentionally possessed at a correctional or mental health facility.

4544 (3) It is a defense to any prosecution under this section if the accused in committing the
4545 act made criminal by this section:

4546 (a) with respect to a correctional facility operated by the Department of Corrections, acted
4547 in conformity with departmental rule or policy;

4548 (b) with respect to a correctional facility operated by a municipality, acted in conformity
4549 with the policy of the municipality;

4550 (c) with respect to a correctional facility operated by a county, acted in conformity with
4551 the policy of the county; or

4552 (d) with respect to a mental health facility, acted in conformity with the policy of the
4553 mental health facility.

4554 (4) (a) Any person who transports to or upon a correctional facility, or into a secure area
4555 of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape
4556 with intent to provide or sell it to any offender, is guilty of a second degree felony.

4557 (b) Any person who provides or sells to any offender at a correctional facility, or any
4558 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon,
4559 or implement of escape is guilty of a second degree felony.

4560 (c) Any offender who possesses at a correctional facility, or any detainee who possesses
4561 at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or
4562 implement of escape is guilty of a second degree felony.

4563 (d) Any person who, without the permission of the authority operating the correctional
4564 facility or the secure area of a mental health facility, knowingly possesses at a correctional facility
4565 or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or
4566 implement of escape is guilty of a third degree felony.

4567 (e) Any person violates Section 76-10-306 who knowingly or intentionally transports,
4568 possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

4569 (5) (a) A person is guilty of a third degree felony who, without the permission of the
4570 authority operating the correctional facility or secure area of a mental health facility, knowingly
4571 transports to or upon a correctional facility or into a secure area of a mental health facility any:

4572 (i) spirituous or fermented liquor;

4573 (ii) medicine, whether or not lawfully prescribed for the offender; or

4574 (iii) poison in any quantity.

4575 (b) A person is guilty of a third degree felony who knowingly violates correctional or
4576 mental health facility policy or rule by providing or selling to any offender at a correctional facility
4577 or detainee within a secure area of a mental health facility any:

4578 (i) spirituous or fermented liquor;

4579 (ii) medicine, whether or not lawfully prescribed for the offender; or

4580 (iii) poison in any quantity.

4581 (c) An inmate is guilty of a third degree felony who, in violation of correctional or mental
4582 health facility policy or rule, possesses at a correctional facility or in a secure area of a mental
4583 health facility any:

4584 (i) spirituous or fermented liquor;

4585 (ii) medicine, other than medicine provided by the facility's health care providers in
4586 compliance with facility policy; or

4587 (iii) poison in any quantity.

4588 (d) A person is guilty of a class A misdemeanor who, without the permission of the
4589 authority operating the correctional or mental health facility, fails to declare or knowingly
4590 possesses at a correctional facility or in a secure area of a mental health facility any:

4591 (i) spirituous or fermented liquor;

4592 (ii) medicine; or

4593 (iii) poison in any quantity.

4594 (e) A person is guilty of a class B misdemeanor who, without the permission of the
4595 authority operating the facility, knowingly engages in any activity that would facilitate the
4596 possession of any contraband by an offender in a correctional facility.

4597 (f) Exemptions may be granted for worship for Native American inmates pursuant to
4598 Section 64-13-40.

4599 (6) The possession, distribution, or use of a controlled substance at a correctional facility
4600 or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58,
4601 Chapter 37, Utah Controlled Substances Act.

4602 Section 131. Section **76-10-1312** is amended to read:

4603 **76-10-1312. Notice to offender of HIV positive test results.**

4604 (1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has
4605 tested positive for the HIV infection shall be notified of the test results in person at the sentencing
4606 hearing in the presence of the judge and counsel only.

4607 (2) Whenever practicable, prior to notification in the district court, the offender shall be
4608 served personally with written notice by the local law enforcement agency at a meeting with a local
4609 law enforcement officer and a person from the state or county health department.

4610 (a) At that meeting, the offender shall be informed of the test results and counseled on HIV
4611 infection and its effects.

4612 (b) The local law enforcement agency shall arrange the time and place of notification and
4613 counseling.

4614 (3) The notice shall contain the following information:

4615 (a) the date of the test;

- 4616 (b) the positive test results;
- 4617 (c) the name of the HIV positive individual; and
- 4618 (d) the following language:

4619 "A person who has been convicted of prostitution under Section 76-10-1302, patronizing
4620 a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 after being
4621 tested and diagnosed as an HIV positive individual and receiving actual notice and personal written
4622 notice of the positive test results shall be guilty of a felony of the third degree pursuant to Section
4623 76-10-1309."

4624 (4) Upon conviction under Section 76-10-1309, and as a condition of probation, the
4625 offender shall receive treatment and counseling for HIV infection and drug abuse as provided in
4626 Title 62A, Chapter [8] 15, Substance Abuse and Mental Health Act.

4627 Section 132. Section **77-15-5** is amended to read:

4628 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of defendant**
4629 **-- Scope of examination and report.**

4630 (1) When a petition is filed pursuant to Section 77-15-3 raising the issue of the defendant's
4631 competency to stand trial or when the court raises the issue of the defendant's competency pursuant
4632 to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. If the
4633 proceedings are in a court other than the district court in which the petition is filed, the district
4634 court shall notify that court of the filing of the petition. The district court in which the petition is
4635 filed shall pass upon the sufficiency of the allegations of incompetency. If a petition is opposed
4636 by either party, the court shall, prior to granting or denying the petition, hold a limited hearing
4637 solely for the purpose of determining the sufficiency of the petition. If the court finds that the
4638 allegations of incompetency raise a bona fide doubt as to the defendant's competency to stand trial,
4639 it shall enter an order for a hearing on the mental condition of the person who is the subject of the
4640 petition.

4641 (2) (a) After the granting of a petition and prior to a full competency hearing, the court may
4642 order the Department of Human Services to examine the person and to report to the court
4643 concerning the defendant's mental condition.

4644 (b) The defendant shall be examined by at least two mental health experts not involved in
4645 the current treatment of the defendant.

4646 (c) If the issue is sufficiently raised in the petition or if it becomes apparent that the

4647 defendant may be incompetent due to mental retardation, at least one expert experienced in mental
4648 retardation assessment shall evaluate the defendant. Upon appointment of the experts, the
4649 petitioner or other party as directed by the court shall provide information and materials to the
4650 examiners relevant to a determination of the defendant's competency and shall provide copies of
4651 the charging document, arrest or incident reports pertaining to the charged offense, known criminal
4652 history information, and known prior mental health evaluations and treatments.

4653 (d) The court may make the necessary orders to provide the information listed in
4654 Subsection (2)(c) to the examiners.

4655 (3) During the examination under Subsection (2), unless the court or the executive director
4656 of the department directs otherwise, the defendant shall be retained in the same custody or status
4657 he was in at the time the examination was ordered.

4658 (4) The experts shall in the conduct of their examination and in their report to the court
4659 consider and address, in addition to any other factors determined to be relevant by the experts:

4660 (a) the defendant's present capacity to:

4661 (i) comprehend and appreciate the charges or allegations against him;

4662 (ii) disclose to counsel pertinent facts, events, and states of mind;

4663 (iii) comprehend and appreciate the range and nature of possible penalties, if applicable,
4664 that may be imposed in the proceedings against him;

4665 (iv) engage in reasoned choice of legal strategies and options;

4666 (v) understand the adversary nature of the proceedings against him;

4667 (vi) manifest appropriate courtroom behavior; and

4668 (vii) testify relevantly, if applicable;

4669 (b) the impact of the mental disorder, or mental retardation, if any, on the nature and
4670 quality of the defendant's relationship with counsel;

4671 (c) if psychoactive medication is currently being administered:

4672 (i) whether the medication is necessary to maintain the defendant's competency; and

4673 (ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability
4674 to participate in the proceedings.

4675 (5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall
4676 indicate in the report:

4677 (a) which of the above factors contributes to the defendant's incompetency;

4678 (b) the nature of the defendant's mental disorder or mental retardation and its relationship
4679 to the factors contributing to the defendant's incompetency;

4680 (c) the treatment or treatments appropriate and available; and

4681 (d) the defendant's capacity to give informed consent to treatment to restore competency.

4682 (6) The experts examining the defendant shall provide an initial report to the court and the
4683 prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report
4684 shall inform the court of the examiner's opinion concerning the competency of the defendant to
4685 stand trial, or, in the alternative, the examiner may inform the court in writing that additional time
4686 is needed to complete the report. If the examiner informs the court that additional time is needed,
4687 the examiner shall have up to an additional 30 days to provide the report to the court and counsel.
4688 The examiner must provide the report within 60 days from the receipt of the court's order unless,
4689 for good cause shown, the court authorizes an additional period of time to complete the
4690 examination and provide the report.

4691 (7) Any written report submitted by the experts shall:

4692 (a) identify the specific matters referred for evaluation;

4693 (b) describe the procedures, techniques, and tests used in the examination and the purpose
4694 or purposes for each;

4695 (c) state the expert's clinical observations, findings, and opinions on each issue referred
4696 for examination by the court, and indicate specifically those issues, if any, on which the expert
4697 could not give an opinion; and

4698 (d) identify the sources of information used by the expert and present the basis for the
4699 expert's clinical findings and opinions.

4700 (8) (a) Any statement made by the defendant in the course of any competency examination,
4701 whether the examination is with or without the consent of the defendant, any testimony by the
4702 expert based upon such statement, and any other fruits of the statement may not be admitted in
4703 evidence against the defendant in any criminal proceeding except on an issue respecting mental
4704 condition on which the defendant has introduced evidence. The evidence may be admitted,
4705 however, where relevant to a determination of the defendant's competency.

4706 (b) Prior to examining the defendant, examiners should specifically advise the defendant
4707 of the limits of confidentiality as provided under this Subsection (8).

4708 (9) When the report is received the court shall set a date for a mental hearing which shall

4709 be held in not less than five and not more than 15 days, unless the court enlarges the time for good
4710 cause. The hearing shall be conducted according to the procedures outlined in Subsections
4711 [~~62A-12-234~~] 62A-15-631(9)(b) through (9)(f). Any person or organization directed by the
4712 department to conduct the examination may be subpoenaed to testify at the hearing. If the experts
4713 are in conflict as to the competency of the defendant, all experts should be called to testify at the
4714 hearing if reasonably available. The court may call any examiner to testify at the hearing who is
4715 not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine
4716 the expert.

4717 (10) A person shall be presumed competent unless the court, by a preponderance of the
4718 evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of
4719 incompetency at the hearing. An adjudication of incompetency to proceed shall not operate as an
4720 adjudication of incompetency to give informed consent for medical treatment or for any other
4721 purpose, unless specifically set forth in the court order.

4722 (11) (a) If the court finds the defendant incompetent to stand trial, its order shall contain
4723 findings addressing each of the factors in Subsections [~~77-15-5~~](4)(a) and (b) of this section. The
4724 order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where the
4725 defendant is committed or to the person who is responsible for assessing his progress toward
4726 competency shall be provided contemporaneously with the transportation and commitment order
4727 of the defendant, unless exigent circumstances require earlier commitment in which case the court
4728 shall forward the order within five working days of the order of transportation and commitment
4729 of the defendant.

4730 (b) The order finding the defendant incompetent to stand trial shall be accompanied by:

4731 (i) copies of the reports of the experts filed with the court pursuant to the order of
4732 examination if not provided previously;

4733 (ii) copies of any of the psychiatric, psychological, or social work reports submitted to the
4734 court relative to the mental condition of the defendant; and

4735 (iii) any other documents made available to the court by either the defense or the
4736 prosecution, pertaining to the defendant's current or past mental condition.

4737 (12) If the court finds it necessary to order the defendant transported prior to the
4738 completion of findings and compilation of documents required under Subsection (11), the
4739 transportation and commitment order delivering the defendant to the Utah State Hospital, or other

4740 mental health facility as directed by the executive director of the Department of Human Services
4741 or his designee, shall indicate that the defendant's commitment is based upon a finding of
4742 incompetency, and the mental health facility's copy of the order shall be accompanied by the
4743 reports of any experts filed with the court pursuant to the order of examination. The executive
4744 director of the Department of Human Services or his designee may refuse to accept a defendant
4745 as a patient unless he is accompanied by a transportation and commitment order which is
4746 accompanied by the reports.

4747 (13) Upon a finding of incompetency to stand trial by the court, the prosecuting and
4748 defense attorneys shall provide information and materials relevant to the defendant's competency
4749 to the facility where the defendant is committed or to the person responsible for assessing his
4750 progress towards competency. In addition to any other materials, the prosecuting attorney shall
4751 provide:

4752 (a) copies of the charging document and supporting affidavits or other documents used in
4753 the determination of probable cause;

4754 (b) arrest or incident reports prepared by a law enforcement agency pertaining to the
4755 charged offense; and

4756 (c) information concerning the defendant's known criminal history.

4757 (14) The court may make any reasonable order to insure compliance with this section.

4758 (15) Failure to comply with this section shall not result in the dismissal of criminal
4759 charges.

4760 Section 133. Section **77-15-6** is amended to read:

4761 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent**
4762 **hearings -- Notice to prosecuting attorneys.**

4763 (1) Except as provided in Subsection (5), if after hearing, the person is found to be
4764 incompetent to stand trial, the court shall order the defendant committed to the custody of the
4765 executive director of the Department of Human Services or his designee for the purpose of
4766 treatment intended to restore the defendant to competency. The court may recommend but not
4767 order placement of the defendant. The court may, however, order that the defendant be placed in
4768 a secure setting rather than a nonsecure setting. The director or his designee shall designate the
4769 specific placement of the defendant during the period of evaluation and treatment to restore
4770 competency.

4771 (2) The examiner or examiners designated by the executive director to assess the
4772 defendant's progress toward competency may not be involved in the routine treatment of the
4773 defendant. The examiner or examiners shall provide a full report to the court and prosecuting and
4774 defense attorneys within 90 days of receipt of the court's order. If any examiner is unable to
4775 complete the assessment within 90 days, that examiner shall provide to the court and counsel a
4776 summary progress report which informs the court that additional time is necessary to complete the
4777 assessment, in which case the examiner shall have up to an additional 90 days to provide the full
4778 report. The full report shall assess:

4779 (a) the facility's or program's capacity to provide appropriate treatment for the defendant;

4780 (b) the nature of treatments provided to the defendant;

4781 (c) what progress toward competency restoration has been made with respect to the factors
4782 identified by the court in its initial order;

4783 (d) the defendant's current level of mental disorder or mental retardation and need for
4784 treatment, if any; and

4785 (e) the likelihood of restoration of competency and the amount of time estimated to
4786 achieve it.

4787 (3) The court on its own motion or upon motion by either party or by the executive director
4788 may appoint additional mental health examiners to examine the defendant and advise the court on
4789 his current mental status and progress toward competency restoration.

4790 (4) Upon receipt of the full report, the court shall hold a hearing to determine the
4791 defendant's current status. At the hearing, the burden of proving that the defendant is competent
4792 is on the proponent of competency. Following the hearing, the court shall determine by a
4793 preponderance of evidence whether the defendant is:

4794 (a) competent to stand trial;

4795 (b) incompetent to stand trial with a substantial probability that the defendant may become
4796 competent in the foreseeable future; or

4797 (c) incompetent to stand trial without a substantial probability that the defendant may
4798 become competent in the foreseeable future.

4799 (5) (a) If the court enters a finding pursuant to Subsection (4)(a), the court shall proceed
4800 with the trial or such other procedures as may be necessary to adjudicate the charges.

4801 (b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that the

4802 defendant remain committed to the custody of the executive director of the Department of Human
4803 Services or his designee for the purpose of treatment intended to restore the defendant to
4804 competency.

4805 (c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the
4806 defendant released from the custody of the director unless the prosecutor informs the court that
4807 commitment proceedings pursuant to Title 62A, Chapter 5, Services to People with Disabilities,
4808 or Title 62A, Chapter [12,] 15, Substance Abuse and Mental Health Act, [~~or Title 62A, Chapter~~
4809 ~~5, Services to People with Disabilities,~~] will be initiated. These commitment proceedings must
4810 be initiated within seven days after the court's order entering the finding in Subsection (4)(c),
4811 unless the court enlarges the time for good cause shown. The defendant may be ordered to remain
4812 in the custody of the director until commitment proceedings have been concluded. If the defendant
4813 is committed, the court which entered the order pursuant to Subsection (4)(c), shall be notified by
4814 the director at least ten days prior to any release of the committed person.

4815 (6) If the defendant is recommitted to the department pursuant to Subsection (5)(b), the
4816 court shall hold a hearing one year following the recommitment.

4817 (7) At the hearing held pursuant to Subsection (6), except for defendants charged with the
4818 crimes listed in Subsection (8), a defendant who has not been restored to competency shall be
4819 ordered released or temporarily detained pending civil commitment proceedings under the same
4820 terms as provided in Subsection (5)(c).

4821 (8) If the defendant has been charged with aggravated murder, murder, attempted murder,
4822 manslaughter, or a first degree felony and the court determines that the defendant is making
4823 reasonable progress towards restoration of competency at the time of the hearing held pursuant to
4824 Subsection (6), the court may order the defendant recommitted for a period not to exceed 18
4825 months for the purpose of treatment to restore the defendant to competency with a mandatory
4826 review hearing at the end of the 18-month period.

4827 (9) Except for defendants charged with aggravated murder or murder, a defendant who has
4828 not been restored to competency at the time of the hearing held pursuant to Subsection (8) shall
4829 be ordered released or temporarily detained pending civil commitment proceedings under the same
4830 terms as provided in Subsection (5)(c).

4831 (10) If the defendant has been charged with aggravated murder or murder and the court
4832 determines that he is making reasonable progress towards restoration of competency at the time

4833 of the mandatory review hearing held pursuant to Subsection (8), the court may order the defendant
4834 recommitted for a period not to exceed 36 months for the purpose of treatment to restore him to
4835 competency.

4836 (11) If the defendant is recommitted to the department pursuant to Subsection (10), the
4837 court shall hold a hearing no later than at 18-month intervals following the recommitment for the
4838 purpose of determining the defendant's competency status.

4839 (12) A defendant who has not been restored to competency at the expiration of the
4840 additional 36-month commitment period ordered pursuant to Subsection (10) shall be ordered
4841 released or temporarily detained pending civil commitment proceedings under the same terms as
4842 provided in Subsection (5)(c).

4843 (13) In no event may the maximum period of detention under this section exceed the
4844 maximum period of incarceration which the defendant could receive if he were convicted of the
4845 charged offense. This Subsection (13) does not preclude pursuing involuntary civil commitment
4846 nor does it place any time limit on civil commitments.

4847 (14) Neither release from a pretrial incompetency commitment under the provisions of this
4848 section nor civil commitment requires dismissal of criminal charges. The court may retain
4849 jurisdiction over the criminal case and may order periodic reviews to assess the defendant's
4850 competency to stand trial.

4851 (15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services to
4852 People with Disabilities, or Title 62A, Chapter [12,] 15, Substance Abuse and Mental Health Act,
4853 [or Title 62A, Chapter 5, Services to People with Disabilities,] may still be adjudicated competent
4854 to stand trial under this chapter.

4855 (16) (a) The remedy for a violation of the time periods specified in this section, other than
4856 those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to compel the hearing,
4857 or mandamus, but not release from detention or dismissal of the criminal charges.

4858 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7), (9),
4859 (12), or (13) shall not be dismissal of the criminal charges.

4860 (17) In cases in which the treatment of the defendant is precluded by court order for a
4861 period of time, that time period may not be considered in computing time limitations under this
4862 section.

4863 (18) At any time that the defendant becomes competent to stand trial, the clinical director

4864 of the hospital or other facility or the executive director of the Department of Human Services shall
4865 certify that fact to the court. The court shall conduct a hearing within 15 working days of the
4866 receipt of the clinical director's or executive director's report, unless the court enlarges the time for
4867 good cause.

4868 (19) The court may order a hearing or rehearing at any time on its own motion or upon
4869 recommendations of the clinical director of the hospital or other facility or the executive director
4870 of the Department of Human Services.

4871 (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting
4872 attorney. If the hearing is held in the county where the defendant is confined, notice shall also be
4873 given to the prosecuting attorney for that county.

4874 Section 134. Section **77-16a-202** is amended to read:

4875 **77-16a-202. Person found guilty and mentally ill -- Commitment to department --**
4876 **Admission to Utah State Hospital.**

4877 (1) In sentencing and committing a mentally ill offender to the department under
4878 Subsection 77-16a-104(3)(a), the court shall:

4879 (a) sentence the offender to a term of imprisonment and order that he be committed to the
4880 department and admitted to the Utah State Hospital for care and treatment until transferred to UDC
4881 in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the
4882 Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

4883 (b) sentence the offender to a term of imprisonment and order that he be committed to the
4884 department for care and treatment for no more than 18 months, or until the offender's condition
4885 has been stabilized to the point that commitment to the department and admission to the Utah State
4886 Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first.
4887 At the expiration of that time, the court may recall the sentence and commitment, and resentence
4888 the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be
4889 specified in the sentencing order. If that specification is not included in the sentencing order, the
4890 offender shall be committed in accordance with Subsection (1)(a).

4891 (2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of a
4892 mentally ill offender who has been convicted of a capital felony. In capital cases, the court shall
4893 make the findings required by this section after the capital sentencing proceeding mandated by
4894 Section 76-3-207.

4895 (3) When an offender is committed to the department and admitted to the Utah State
4896 Hospital under Subsection (1)(b), the department shall provide the court with reports of the
4897 offender's mental health status every six months. Those reports shall be prepared in accordance
4898 with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent
4899 examiner to assess the mental health status of the offender.

4900 (4) The period of commitment to the department and admission to the Utah State Hospital,
4901 and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204
4902 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence,
4903 the administrator of the facility where the offender is located may initiate civil proceedings for
4904 involuntary commitment in accordance with Title 62A, Chapter 5, Services to People with
4905 Disabilities, or Title 62A, Chapter [12] 15, Substance Abuse and Mental Health Act [or Title 62A,
4906 Chapter 5].

4907 Section 135. Section **77-16a-204** is amended to read:

4908 **77-16a-204. UDC acceptance of transfer of guilty and mentally ill persons --**
4909 **Retransfer from UDC to department for admission to the Utah State Hospital.**

4910 (1) The UDC medical administrator shall designate a transfer team of at least three
4911 qualified staff members, including at least one licensed psychiatrist, to evaluate the
4912 recommendation made by the department's review team pursuant to Section 77-16a-203. If the
4913 offender is mentally retarded, the transfer team shall include at least one person who has expertise
4914 in testing and diagnosis of mentally retarded individuals.

4915 (2) The transfer team shall concur in the recommendation if it determines that UDC can
4916 provide the mentally ill offender with adequate mental health treatment.

4917 (3) The UDC transfer team and medical administrator shall recommend the facility in
4918 which the offender should be placed and the treatment to be provided in order for his mental
4919 condition to remain stabilized to the director of the Division of Institutional Operations, within the
4920 Department of Corrections.

4921 (4) In the event that the department and UDC do not agree on the transfer of a mentally
4922 ill offender, the administrator of the mental health facility where the offender is located shall notify
4923 the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall
4924 be provided with copies of all reports and recommendations. The board's mental health adviser
4925 shall make a recommendation to the board on the transfer and the board shall issue its decision

4926 within 30 days.

4927 (5) UDC shall notify the board whenever a mentally ill offender is transferred from the
4928 department to UDC.

4929 (6) When a mentally ill offender sentenced under Section 77-16a-202, who has been
4930 transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined
4931 that the offender's mental condition has deteriorated or that the offender has become mentally
4932 unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings
4933 and procedures described in Section [~~62A-12-204.6~~] 62A-15-605.5.

4934 (7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall
4935 remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.

4936 (8) A mentally ill offender who has been readmitted to the Utah State Hospital pursuant
4937 to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section
4938 77-16a-203.

4939 Section 136. Section **77-16a-302** is amended to read:

4940 **77-16a-302. Persons found not guilty by reason of insanity -- Disposition.**

4941 (1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing
4942 within ten days to determine whether the defendant is currently mentally ill. The defense counsel
4943 and prosecutors may request further evaluations and present testimony from those examiners.

4944 (2) After the hearing and upon consideration of the record, the court shall order the
4945 defendant committed to the department if it finds by clear and convincing evidence that:

4946 (a) the defendant is still mentally ill; and

4947 (b) because of that mental illness the defendant presents a substantial danger to himself
4948 or others.

4949 (3) The period of commitment described in Subsection (2) may not exceed the period for
4950 which the defendant could be incarcerated had he been convicted and received the maximum
4951 sentence for the crime of which he was accused. At the time that period expires, involuntary civil
4952 commitment proceedings may be instituted in accordance with Title 62A, Chapter [~~12~~] 15,
4953 Substance Abuse and Mental Health Act.

4954 Section 137. Section **77-18-1** is amended to read:

4955 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**
4956 **-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions --**

4957 **Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.**

4958 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in
4959 abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a,
4960 Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

4961 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime
4962 or offense, the court may suspend the imposition or execution of sentence and place the defendant
4963 on probation. The court may place the defendant:

4964 (i) on probation under the supervision of the Department of Corrections except in cases
4965 of class C misdemeanors or infractions;

4966 (ii) on probation with an agency of local government or with a private organization; or

4967 (iii) on bench probation under the jurisdiction of the sentencing court.

4968 (b) (i) The legal custody of all probationers under the supervision of the department is with
4969 the department.

4970 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court is
4971 vested as ordered by the court.

4972 (iii) The court has continuing jurisdiction over all probationers.

4973 (3) (a) The department shall establish supervision and presentence investigation standards
4974 for all individuals referred to the department. These standards shall be based on:

4975 (i) the type of offense;

4976 (ii) the demand for services;

4977 (iii) the availability of agency resources;

4978 (iv) the public safety; and

4979 (v) other criteria established by the department to determine what level of services shall
4980 be provided.

4981 (b) Proposed supervision and investigation standards shall be submitted to the Judicial
4982 Council and the Board of Pardons and Parole on an annual basis for review and comment prior to
4983 adoption by the department.

4984 (c) The Judicial Council and the department shall establish procedures to implement the
4985 supervision and investigation standards.

4986 (d) The Judicial Council and the department shall annually consider modifications to the
4987 standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

4988 (e) The Judicial Council and the department shall annually prepare an impact report and
4989 submit it to the appropriate legislative appropriations subcommittee.

4990 (4) Notwithstanding other provisions of law, the department is not required to supervise
4991 the probation of persons convicted of class B or C misdemeanors or infractions or to conduct
4992 presentence investigation reports on class C misdemeanors or infractions. However, the
4993 department may supervise the probation of class B misdemeanants in accordance with department
4994 standards.

4995 (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the
4996 defendant, continue the date for the imposition of sentence for a reasonable period of time for the
4997 purpose of obtaining a presentence investigation report from the department or information from
4998 other sources about the defendant.

4999 (b) The presentence investigation report shall include a victim impact statement according
5000 to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the
5001 victim's family.

5002 (c) The presentence investigation report shall include a specific statement of pecuniary
5003 damages, accompanied by a recommendation from the department regarding the payment of
5004 restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims
5005 Restitution Act.

5006 (d) The contents of the presentence investigation report, including any diagnostic
5007 evaluation report ordered by the court under Section 76-3-404, are protected and are not available
5008 except by court order for purposes of sentencing as provided by rule of the Judicial Council or for
5009 use by the department.

5010 (6) (a) The department shall provide the presentence investigation report to the defendant's
5011 attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review,
5012 three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation
5013 report, which have not been resolved by the parties and the department prior to sentencing, shall
5014 be brought to the attention of the sentencing judge, and the judge may grant an additional ten
5015 working days to resolve the alleged inaccuracies of the report with the department. If after ten
5016 working days the inaccuracies cannot be resolved, the court shall make a determination of
5017 relevance and accuracy on the record.

5018 (b) If a party fails to challenge the accuracy of the presentence investigation report at the

5019 time of sentencing, that matter shall be considered to be waived.

5020 (7) At the time of sentence, the court shall receive any testimony, evidence, or information
5021 the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.
5022 This testimony, evidence, or information shall be presented in open court on record and in the
5023 presence of the defendant.

5024 (8) While on probation, and as a condition of probation, the court may require that the
5025 defendant:

5026 (a) perform any or all of the following:

5027 (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

5028 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

5029 (iii) provide for the support of others for whose support he is legally liable;

5030 (iv) participate in available treatment programs;

5031 (v) serve a period of time, not to exceed one year, in a county jail designated by the
5032 department, after considering any recommendation by the court as to which jail the court finds
5033 most appropriate;

5034 (vi) serve a term of home confinement, which may include the use of electronic
5035 monitoring;

5036 (vii) participate in compensatory service restitution programs, including the compensatory
5037 service program provided in Section 78-11-20.7;

5038 (viii) pay for the costs of investigation, probation, and treatment services;

5039 (ix) make restitution or reparation to the victim or victims with interest in accordance with
5040 Title 77, Chapter 38a, Crime Victims Restitution Act; and

5041 (x) comply with other terms and conditions the court considers appropriate; and

5042 (b) if convicted on or after May 5, 1997:

5043 (i) complete high school classwork and obtain a high school graduation diploma, a GED
5044 certificate, or a vocational certificate at the defendant's own expense if the defendant has not
5045 received the diploma, GED certificate, or vocational certificate prior to being placed on probation;
5046 or

5047 (ii) provide documentation of the inability to obtain one of the items listed in Subsection
5048 (8)(b)(i) because of:

5049 (A) a diagnosed learning disability; or

5050 (B) other justified cause.

5051 (9) The department shall collect and disburse the account receivable as defined by Section
5052 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

5053 (a) the parole period and any extension of that period in accordance with Subsection
5054 77-27-6(4); and

5055 (b) the probation period in cases for which the court orders supervised probation and any
5056 extension of that period by the department in accordance with Subsection [~~77-18-1~~](10).

5057 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon
5058 completion without violation of 36 months probation in felony or class A misdemeanor cases, or
5059 12 months in cases of class B or C misdemeanors or infractions.

5060 (ii) (A) If, upon expiration or termination of the probation period under Subsection
5061 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
5062 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
5063 probation for the limited purpose of enforcing the payment of the account receivable.

5064 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
5065 judgments any unpaid balance not already recorded and immediately transfer responsibility to
5066 collect the account to the Office of State Debt Collection.

5067 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
5068 own motion, the court may require the defendant to show cause why his failure to pay should not
5069 be treated as contempt of court.

5070 (b) (i) The department shall notify the sentencing court, the Office of State Debt
5071 Collection, and the prosecuting attorney in writing in advance in all cases when termination of
5072 supervised probation will occur by law.

5073 (ii) The notification shall include a probation progress report and complete report of details
5074 on outstanding accounts receivable.

5075 (11) (a) (i) Any time served by a probationer outside of confinement after having been
5076 charged with a probation violation and prior to a hearing to revoke probation does not constitute
5077 service of time toward the total probation term unless the probationer is exonerated at a hearing
5078 to revoke the probation.

5079 (ii) Any time served in confinement awaiting a hearing or decision concerning revocation
5080 of probation does not constitute service of time toward the total probation term unless the

5081 probationer is exonerated at the hearing.

5082 (b) The running of the probation period is tolled upon the filing of a violation report with
5083 the court alleging a violation of the terms and conditions of probation or upon the issuance of an
5084 order to show cause or warrant by the court.

5085 (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing
5086 by the probationer or upon a hearing and a finding in court that the probationer has violated the
5087 conditions of probation.

5088 (ii) Probation may not be revoked except upon a hearing in court and a finding that the
5089 conditions of probation have been violated.

5090 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute
5091 violation of the conditions of probation, the court that authorized probation shall determine if the
5092 affidavit establishes probable cause to believe that revocation, modification, or extension of
5093 probation is justified.

5094 (ii) If the court determines there is probable cause, it shall cause to be served on the
5095 defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his
5096 probation should not be revoked, modified, or extended.

5097 (c) (i) The order to show cause shall specify a time and place for the hearing and shall be
5098 served upon the defendant at least five days prior to the hearing.

5099 (ii) The defendant shall show good cause for a continuance.

5100 (iii) The order to show cause shall inform the defendant of a right to be represented by
5101 counsel at the hearing and to have counsel appointed for him if he is indigent.

5102 (iv) The order shall also inform the defendant of a right to present evidence.

5103 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

5104 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall
5105 present evidence on the allegations.

5106 (iii) The persons who have given adverse information on which the allegations are based
5107 shall be presented as witnesses subject to questioning by the defendant unless the court for good
5108 cause otherwise orders.

5109 (iv) The defendant may call witnesses, appear and speak in his own behalf, and present
5110 evidence.

5111 (e) (i) After the hearing the court shall make findings of fact.

5112 (ii) Upon a finding that the defendant violated the conditions of probation, the court may
5113 order the probation revoked, modified, continued, or that the entire probation term commence
5114 anew.

5115 (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously
5116 imposed shall be executed.

5117 (13) The court may order the defendant to commit himself to the custody of the Division
5118 of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of
5119 probation or stay of sentence, only after the superintendent of the Utah State Hospital or his
5120 designee has certified to the court that:

5121 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;

5122 (b) treatment space at the hospital is available for the defendant; and

5123 (c) persons described in Subsection [~~62A-12-209~~] 62A-15-610(2)(g) are receiving priority
5124 for treatment over the defendants described in this Subsection (13).

5125 (14) Presentence investigation reports, including presentence diagnostic evaluations, are
5126 classified protected in accordance with Title 63, Chapter 2, Government Records Access and
5127 Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee
5128 may not order the disclosure of a presentence investigation report. Except for disclosure at the
5129 time of sentencing pursuant to this section, the department may disclose the presentence
5130 investigation only when:

5131 (a) ordered by the court pursuant to Subsection 63-2-202(7);

5132 (b) requested by a law enforcement agency or other agency approved by the department
5133 for purposes of supervision, confinement, and treatment of the offender;

5134 (c) requested by the Board of Pardons and Parole;

5135 (d) requested by the subject of the presentence investigation report or the subject's
5136 authorized representative; or

5137 (e) requested by the victim of the crime discussed in the presentence investigation report
5138 or the victim's authorized representative, provided that the disclosure to the victim shall include
5139 only information relating to statements or materials provided by the victim, to the circumstances
5140 of the crime including statements by the defendant, or to the impact of the crime on the victim or
5141 the victim's household.

5142 (15) (a) The court shall consider home confinement as a condition of probation under the

5143 supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

5144 (b) The department shall establish procedures and standards for home confinement,
5145 including electronic monitoring, for all individuals referred to the department in accordance with
5146 Subsection (16).

5147 (16) (a) If the court places the defendant on probation under this section, it may order the
5148 defendant to participate in home confinement through the use of electronic monitoring as described
5149 in this section until further order of the court.

5150 (b) The electronic monitoring shall alert the department and the appropriate law
5151 enforcement unit of the defendant's whereabouts.

5152 (c) The electronic monitoring device shall be used under conditions which require:

5153 (i) the defendant to wear an electronic monitoring device at all times; and

5154 (ii) that a device be placed in the home of the defendant, so that the defendant's compliance
5155 with the court's order may be monitored.

5156 (d) If a court orders a defendant to participate in home confinement through electronic
5157 monitoring as a condition of probation under this section, it shall:

5158 (i) place the defendant on probation under the supervision of the Department of
5159 Corrections;

5160 (ii) order the department to place an electronic monitoring device on the defendant and
5161 install electronic monitoring equipment in the residence of the defendant; and

5162 (iii) order the defendant to pay the costs associated with home confinement to the
5163 department or the program provider.

5164 (e) The department shall pay the costs of home confinement through electronic monitoring
5165 only for those persons who have been determined to be indigent by the court.

5166 (f) The department may provide the electronic monitoring described in this section either
5167 directly or by contract with a private provider.

5168 Section 138. Section **78-3a-104** is amended to read:

5169 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

5170 (1) Except as otherwise provided by law, the juvenile court has exclusive original
5171 jurisdiction in proceedings concerning:

5172 (a) a minor who has violated any federal, state, or local law or municipal ordinance or a
5173 person younger than 21 years of age who has violated any law or ordinance before becoming 18

5174 years of age, regardless of where the violation occurred, excluding traffic laws and boating and
5175 ordinances;

5176 (b) a person 21 years of age or older who has failed or refused to comply with an order of
5177 the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st
5178 birthday; however, the continuing jurisdiction is limited to causing compliance with existing
5179 orders;

5180 (c) a minor who is an abused child, neglected child, or dependent child, as those terms are
5181 defined in Section 78-3a-103;

5182 (d) a protective order for a minor who is alleged to be an abused child or neglected child,
5183 except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or
5184 stepparent of the minor against a natural parent or stepparent of the minor;

5185 (e) the determination of the custody of a minor or to appoint a guardian of the person or
5186 other guardian of a minor who comes within the court's jurisdiction under other provisions of this
5187 section;

5188 (f) the termination of the legal parent-child relationship in accordance with Part 4,
5189 Termination of Parental Rights Act, including termination of residual parental rights and duties;

5190 (g) the treatment or commitment of a mentally retarded minor;

5191 (h) a minor who is a habitual truant from school;

5192 (i) the judicial consent to the marriage of a minor under age 16 upon a determination of
5193 voluntariness or where otherwise required by law, employment, or enlistment of a minor when
5194 consent is required by law;

5195 (j) any parent or parents of a minor committed to a secure youth corrections facility, to
5196 order, at the discretion of the court and on the recommendation of a secure youth corrections
5197 facility, the parent or parents of a minor committed to a secure youth corrections facility for a
5198 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth
5199 corrections facility therapist, who has supervision of that parent's or parents' minor, or any other
5200 therapist the court may direct, for a period directed by the court as recommended by a secure youth
5201 corrections facility;

5202 (k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

5203 (l) the treatment or commitment of a mentally ill child. The court may commit a child to
5204 the physical custody of a local mental health authority or to the legal custody of the Division of

5205 Substance Abuse and Mental Health in accordance with the procedures and requirements of Title
5206 62A, Chapter [~~12~~] 15, Part [~~2A~~] 7, Commitment of Persons Under Age 18 to Division of
5207 Substance Abuse and Mental Health. The court may not commit a child directly to the Utah State
5208 Hospital;

5209 (m) the commitment of a minor in accordance with Section [~~62A-8-501~~] 62A-15-301;

5210 (n) de novo review of final agency actions resulting from an informal adjudicative
5211 proceeding as provided in Section 63-46b-15; and

5212 (o) adoptions conducted in accordance with the procedures described in Title 78, Chapter
5213 30, Adoption, when the juvenile court has previously entered an order terminating the rights of a
5214 parent and finds that adoption is in the best interest of the minor.

5215 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive
5216 jurisdiction over any traffic or boating offense committed by a minor under 16 years of age and
5217 concurrent jurisdiction over all other traffic or boating offenses committed by a minor 16 years of
5218 age or older, except that the court shall have exclusive jurisdiction over the following offenses
5219 committed by a minor under 18 years of age:

5220 (a) Section 76-5-207, automobile homicide;

5221 (b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

5222 (c) Section 41-6-45, reckless driving or Section 73-18-12, reckless operation;

5223 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer
5224 for an extended period of time; and

5225 (e) Section 41-6-13.5 or 73-18-20, fleeing a peace officer.

5226 (3) The court also has jurisdiction over traffic and boating offenses that are part of a single
5227 criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

5228 (4) The juvenile court has jurisdiction over questions of custody, support, parent-time, and
5229 visitation certified to it by the district court pursuant to Section 78-3a-105.

5230 (5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is
5231 referred to it by the Division of Child and Family Services or by public or private agencies that
5232 contract with the division to provide services to that minor where, despite earnest and persistent
5233 efforts by the division or agency, the minor has demonstrated that he:

5234 (a) is beyond the control of his parent, guardian, lawful custodian, or school authorities
5235 to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

5236 (b) has run away from home.

5237 (6) This section does not restrict the right of access to the juvenile court by private
5238 agencies or other persons.

5239 (7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising
5240 under Section 78-3a-602.

5241 (8) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated,
5242 or without merit, in accordance with Section 78-3a-320.

5243 Section 139. Section **78-3a-118** is amended to read:

5244 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
5245 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.**

5246 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
5247 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
5248 jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1),
5249 findings of fact are not necessary.

5250 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
5251 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to
5252 the school superintendent of the district in which the minor resides or attends school. Notice shall
5253 be made to the district superintendent within three days of the adjudication and shall include the
5254 specific offenses for which the minor was adjudicated.

5255 (2) Upon adjudication the court may make the following dispositions by court order:

5256 (a) (i) The court may place the minor on probation or under protective supervision in the
5257 minor's own home and upon conditions determined by the court, including compensatory service
5258 as provided in Section 78-11-20.7.

5259 (ii) The court may place the minor in state supervision with the probation department of
5260 the court, under the legal custody of:

5261 (A) his parent or guardian;

5262 (B) the Division of Youth Corrections; or

5263 (C) the Division of Child and Family Services.

5264 (iii) If the court orders probation or state supervision, the court shall direct that notice of
5265 its order be provided to designated persons in the local law enforcement agency and the school or
5266 transferee school, if applicable, which the minor attends. The designated persons may receive the

5267 information for purposes of the minor's supervision and student safety.

5268 (iv) Any employee of the local law enforcement agency and the school which the minor
5269 attends who discloses the court's order of probation is not:

5270 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in
5271 Section 63-30-4; and

5272 (B) civilly or criminally liable except when the disclosure constitutes a knowing violation
5273 of Section 63-2-801.

5274 (b) The court may place the minor in the legal custody of a relative or other suitable
5275 person, with or without probation or protective supervision, but the juvenile court may not assume
5276 the function of developing foster home services.

5277 (c) (i) The court may:

5278 (A) vest legal custody of the minor in the Division of Child and Family Services, Division
5279 of Youth Corrections, or the Division of Substance Abuse and Mental Health; and

5280 (B) order the Department of Human Services to provide dispositional recommendations
5281 and services.

5282 (ii) For minors who may qualify for services from two or more divisions within the
5283 Department of Human Services, the court may vest legal custody with the department.

5284 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
5285 Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter
5286 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter
5287 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

5288 (B) Prior to the court entering an order to place a minor in the custody of the Division of
5289 Child and Family Services on grounds other than abuse or neglect, the court shall provide the
5290 division with notice of the hearing no later than five days before the time specified for the hearing
5291 so the division may attend the hearing.

5292 (C) Prior to committing a minor to the custody of the Division of Child and Family
5293 Services, the court shall make a finding as to what reasonable efforts have been attempted to
5294 prevent the minor's removal from his home.

5295 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure
5296 confinement.

5297 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or

5298 dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth
5299 Corrections.

5300 (e) The court may commit the minor, subject to the court retaining continuing jurisdiction
5301 over him, to the temporary custody of the Division of Youth Corrections for observation and
5302 evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the
5303 request of the director of the Division of Youth Corrections.

5304 (f) (i) The court may commit the minor to a place of detention or an alternative to
5305 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction
5306 over the minor. This commitment may be stayed or suspended upon conditions ordered by the
5307 court.

5308 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

5309 (A) an act which if committed by an adult would be a criminal offense; or

5310 (B) contempt of court under Section 78-3a-901.

5311 (g) The court may vest legal custody of an abused, neglected, or dependent minor in the
5312 Division of Child and Family Services or any other appropriate person in accordance with the
5313 requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
5314 Proceedings.

5315 (h) The court may place the minor on a ranch or forestry camp, or similar facility for care
5316 and also for work, if possible, if the person, agency, or association operating the facility has been
5317 approved or has otherwise complied with all applicable state and local laws. A minor placed in
5318 a forestry camp or similar facility may be required to work on fire prevention, forestation and
5319 reforestation, recreational works, forest roads, and on other works on or off the grounds of the
5320 facility and may be paid wages, subject to the approval of and under conditions set by the court.

5321 (i) The court may order the minor to repair, replace, or otherwise make restitution for
5322 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section
5323 78-3a-318 and impose fines in limited amounts. If a minor has been returned to this state under
5324 the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs
5325 expended by any governmental entity for the return.

5326 (j) The court may issue orders necessary for the collection of restitution and fines ordered
5327 by the court, including garnishments, wage withholdings, and executions.

5328 (k) (i) The court may through its probation department encourage the development of

5329 employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i)
5330 and for other purposes considered desirable by the court.

5331 (ii) Consistent with the order of the court, the probation officer may permit the minor
5332 found to be within the jurisdiction of the court to participate in a program of work restitution or
5333 compensatory service in lieu of paying part or all of the fine imposed by the court.

5334 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition
5335 to any other disposition authorized by this section:

5336 (A) restrain the minor from driving for periods of time the court considers necessary; and

5337 (B) take possession of the minor's driver license.

5338 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
5339 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by
5340 Section 78-3a-506.

5341 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
5342 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
5343 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
5344 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no
5345 more than 100 hours, of compensatory service. Satisfactory completion of an approved substance
5346 abuse prevention or treatment program may be credited by the court as compensatory service
5347 hours.

5348 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
5349 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
5350 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
5351 minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in
5352 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
5353 abuse prevention or treatment program may be credited by the court as compensatory service
5354 hours.

5355 (n) The court may order that the minor be examined or treated by a physician, surgeon,
5356 psychiatrist, or psychologist or that he receive other special care. For these purposes the court may
5357 place the minor in a hospital or other suitable facility.

5358 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest
5359 of the minor, and may appoint as guardian a public or private institution or agency in which legal

5360 custody of the minor is vested.

5361 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
5362 private agency or institution, the court shall give primary consideration to the welfare of the minor.
5363 When practicable, the court may take into consideration the religious preferences of the minor and
5364 of the minor's parents.

5365 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
5366 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any
5367 other person who has been made a party to the proceedings. Conditions may include:

5368 (A) parent-time by the parents or one parent;

5369 (B) restrictions on the minor's associates;

5370 (C) restrictions on the minor's occupation and other activities; and

5371 (D) requirements to be observed by the parents or custodian.

5372 (ii) A minor whose parents or guardians successfully complete a family or other counseling
5373 program may be credited by the court for detention, confinement, or probation time.

5374 (q) The court may order the minor to be placed in the legal custody of the Division of
5375 Substance Abuse and Mental Health or committed to the physical custody of a local mental health
5376 authority, in accordance with the procedures and requirements of Title 62A, Chapter [12] 15, Part
5377 [2A] 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

5378 (r) (i) The court may make an order committing a minor within its jurisdiction to the Utah
5379 State Developmental Center if the minor has mental retardation in accordance with the provisions
5380 of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

5381 (ii) The court shall follow the procedure applicable in the district courts with respect to
5382 judicial commitments to the Utah State Developmental Center when ordering a commitment under
5383 Subsection (2)(r)(i).

5384 (s) The court may terminate all parental rights upon a finding of compliance with the
5385 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

5386 (t) The court may make any other reasonable orders for the best interest of the minor or
5387 as required for the protection of the public, except that a person younger than 18 years of age may
5388 not be committed to jail or prison.

5389 (u) The court may combine the dispositions listed in this section if they are compatible.

5390 (v) Before depriving any parent of custody, the court shall give due consideration to the

5391 rights of parents concerning their minor. The court may transfer custody of a minor to another
5392 person, agency, or institution in accordance with the requirements and procedures of Title 78,
5393 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

5394 (w) Except as provided in Subsection (2)(y)(i), an order under this section for probation
5395 or placement of a minor with an individual or an agency shall include a date certain for a review
5396 of the case by the court. A new date shall be set upon each review.

5397 (x) In reviewing foster home placements, special attention shall be given to making
5398 adoptable minors available for adoption without delay.

5399 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with
5400 a relative or individual of a minor where the court has previously acquired jurisdiction as a result
5401 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection
5402 78-3a-105(4).

5403 (ii) Orders under Subsection (2)(y)(i):

5404 (A) shall remain in effect until the minor reaches majority;

5405 (B) are not subject to review under Section 78-3a-119; and

5406 (C) may be modified by petition or motion as provided in Section 78-3a-903.

5407 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
5408 permanent orders of custody and guardianship do not expire with a termination of jurisdiction of
5409 the juvenile court.

5410 (3) In addition to the dispositions described in Subsection (2), when a minor comes within
5411 the court's jurisdiction he may be given a choice by the court to serve in the National Guard in lieu
5412 of other sanctions, provided:

5413 (a) the minor meets the current entrance qualifications for service in the National Guard
5414 as determined by a recruiter, whose determination is final;

5415 (b) the minor is not under the jurisdiction of the court for any act that:

5416 (i) would be a felony if committed by an adult;

5417 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

5418 (iii) was committed with a weapon; and

5419 (c) the court retains jurisdiction over the minor under conditions set by the court and
5420 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

5421 (4) (a) The court shall order that a DNA specimen shall be obtained from a minor who is

5422 under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall
5423 be obtained by designated employees of the court or, if the minor is in the legal custody of the
5424 Division of Youth Corrections, then by designated employees of the division under Subsection
5425 53-10-404(5)(b).

5426 (b) The court shall ensure that employees designated to collect the saliva DNA specimens
5427 receive appropriate training and that the specimens are obtained in accordance with accepted
5428 protocol.

5429 (c) The court shall order the minor to reimburse the agency obtaining the DNA specimen
5430 for \$75 toward the costs of obtaining the specimen, unless the court finds the minor is unable to
5431 pay the reimbursement. Reimbursements shall be placed in the DNA Specimen Restricted
5432 Account created in Section 53-10-407.

5433 (d) Payment of the reimbursement is second in priority to payments the minor is ordered
5434 to make for restitution under this section and treatment under Section 78-3a-318.

5435 Section 140. Section **78-3a-119** is amended to read:

5436 **78-3a-119. Period of operation of judgment, decree, or order -- Rights and**
5437 **responsibilities of agency or individual granted legal custody.**

5438 (1) A judgment, order, or decree of the juvenile court does not operate after the minor
5439 becomes 21 years of age, except for:

5440 (a) orders of commitment to the Utah State Developmental Center or to the custody of the
5441 Division of Substance Abuse and Mental Health;

5442 (b) adoption orders under Subsection 78-3a-104(1)(o);

5443 (c) orders permanently terminating the rights of a parent, guardian, or custodian, and
5444 permanent orders of custody and guardianships; and

5445 (d) unless terminated by the court, orders to pay any fine or restitution.

5446 (2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an
5447 order vesting legal custody or guardianship of a minor in an individual, agency, or institution may
5448 be for an indeterminate period. A review hearing shall be held, however, upon the expiration of
5449 12 months, and, with regard to petitions filed by the Division of Child and Family Services, no less
5450 than once every six months thereafter. The individual, agency, or institution involved shall file
5451 the petition for that review hearing. The court may terminate the order, or after notice and hearing,
5452 continue the order if it finds continuation of the order necessary to safeguard the welfare of the

5453 minor or the public interest. The findings of the court and its reasons shall be entered with the
5454 continuation order or with the order denying continuation.

5455 (b) Subsection (2)(a) does not apply to minors who are in the custody of the Division of
5456 Child and Family Services, and who are placed in foster care, a secure youth corrections facility,
5457 the Division of Substance Abuse and Mental Health, the Utah State Developmental Center, or any
5458 agency licensed for child placements and adoptions, in cases where all parental rights of the natural
5459 parents have been terminated by the court under Part 4, Termination of Parental Rights Act, and
5460 custody of the minor has been granted to the agency for adoption or other permanent placement.

5461 (3) (a) An agency granted legal custody may determine where and with whom the minor
5462 will live, provided that placement of the minor does not remove him from the state without court
5463 approval.

5464 (b) An individual granted legal custody shall personally exercise the rights and
5465 responsibilities involved in legal custody, unless otherwise authorized by the court.

5466 Section 141. Section **78-3a-121** is amended to read:

5467 **78-3a-121. Continuing jurisdiction of juvenile court -- Period of and termination of**
5468 **jurisdiction -- Notice of discharge from custody of Division of Substance Abuse and Mental**
5469 **Health or Utah State Developmental Center -- Transfer of continuing jurisdiction to other**
5470 **district.**

5471 (1) Jurisdiction of a minor obtained by the court through adjudication under Section
5472 78-3a-118 continues for purposes of this chapter until he becomes 21 years of age, unless
5473 terminated earlier. However, the court retains jurisdiction beyond the age of 21 of a person who
5474 has refused or failed to pay any fine or victim restitution ordered by the court, but only for the
5475 purpose of causing compliance with existing orders.

5476 (2) (a) The continuing jurisdiction of the court terminates:

5477 (i) upon order of the court;

5478 (ii) upon commitment to a secure youth corrections facility; or

5479 (iii) upon commencement of proceedings in adult cases under Section 78-3a-801.

5480 (b) The continuing jurisdiction of the court is not terminated by marriage.

5481 (3) When a minor has been committed by the court to the custody of the Division of
5482 Substance Abuse and Mental Health, a local mental health authority or its designee, or to the Utah
5483 State Developmental Center, the director of the Division of Substance Abuse and Mental Health,

5484 the local mental health authority or its designee, or the superintendent of the Utah State
5485 Developmental Center shall give the court written notice of its intention to discharge, release, or
5486 parole the minor not fewer than five days prior to the discharge, release, or parole.

5487 (4) Jurisdiction over a minor on probation or under protective supervision, or of a minor
5488 who is otherwise under the continuing jurisdiction of the court, may be transferred by the court to
5489 the court of another district, if the receiving court consents, or upon direction of the chair of the
5490 Board of Juvenile Court Judges. The receiving court has the same powers with respect to the
5491 minor that it would have if the proceedings originated in that court.

5492 Section 142. Section **78-3a-209** is amended to read:

5493 **78-3a-209. Mental health evaluations -- Duty of administrator.**

5494 (1) The administrator of the juvenile court, with the approval of the board, and the
5495 executive director of the Department of Health, and director of the Division of Substance Abuse
5496 and Mental Health shall from time to time agree upon an appropriate plan:

5497 [~~(1)~~] (a) for obtaining mental health services and health services for the juvenile court from
5498 the state and local health departments and programs of mental health; and

5499 [~~(2)~~] (b) for assistance by the Department of Health and the Division of Substance Abuse
5500 and Mental Health in securing for the juvenile court special health, mental health, and related
5501 services including community mental health services not already available from the Department
5502 of Health and the Division of Substance Abuse and Mental Health.

5503 [~~(3)~~] (2) The Legislature may provide an appropriation to the Department of Health and
5504 the Division of Substance Abuse and Mental Health for this purpose.

5505 Section 143. Section **78-3a-910** is amended to read:

5506 **78-3a-910. Cooperation of political subdivisions and public or private agencies and**
5507 **organizations.**

5508 Every county, municipality, and school district, the Division of Child and Family Services,
5509 the Department of Health, the Division of Substance Abuse and Mental Health, the State Board
5510 of Education, and state and local law enforcement officers, shall render all assistance and
5511 cooperation within their jurisdiction and power to further the objects of this chapter, and the
5512 juvenile courts are authorized to seek the cooperation of all agencies and organizations, public or
5513 private, whose object is the protection or aid of minors.

5514 Section 144. **Repealer.**

5515 This act repeals:
5516 Section **62A-12-101, Definitions.**
5517 Section **62A-12-102, Division of Mental Health -- Creation -- Responsibilities.**
5518 Section **62A-12-102.5, Fees for mental health services.**
5519 Section **62A-12-103, Director -- Qualifications.**
5520 Section **62A-12-104, Board of Mental Health -- Authority and responsibilities --**
5521 **Powers and duties of board.**
5522 Section **62A-12-105, Allocation of funds to local mental health authorities -- Formula.**
5523 Section 145. **Effective date.**
5524 This act takes effect on September 1, 2002.

Legislative Review Note
as of 7-8-02 1:50 PM

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

Office of Legislative Research and General Counsel