### Representative Nelson T. Abbott proposes the following substitute bill:

INVOLUNTARY COMMITMENT AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
<b>Chief Sponsor: Nelson T. Abbott</b>
Senate Sponsor: Stephanie Pitcher
LONG TITLE
General Description:
This bill amends the criteria for involuntary civil commitment.
Highlighted Provisions:
This bill:
<ul> <li>in certain circumstances, provides for the court-ordered civil commitment of an</li> </ul>
individual who:
• has been charged with a crime;
• is incompetent to proceed;
• has a mental illness; and
• has a persistent unawareness of their mental illness or unreasonably refused to
undergo mental health treatment;
<ul> <li>provides a severability clause; and</li> </ul>
<ul> <li>makes technical and conforming changes.</li> </ul>
Money Appropriated in this Bill:
None
Other Special Clauses:
None
Utah Code Sections Affected:

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26	AMENDS:
27	<b>26B-5-332</b> , as renumbered and amended by Laws of Utah 2023, Chapter 308
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29	Be it enacted by the Legislature of the state of Utah:
30	Section 1. Section <b>26B-5-332</b> is amended to read:
31	26B-5-332. Involuntary commitment under court order Examination
32	Hearing Power of court Findings required Costs Severability.
33	(1) A responsible individual who has credible knowledge of an adult's mental illness
34	and the condition or circumstances that have led to the adult's need to be involuntarily
35	committed may initiate an involuntary commitment court proceeding by filing, in the court in
36	the county where the proposed patient resides or is found, a written application that includes:
37	(a) unless the court finds that the information is not reasonably available, the proposed
38	patient's:
39	(i) name;
40	(ii) date of birth; and
41	(iii) social security number;
42	(b) (i) a certificate of a licensed physician or a designated examiner stating that within
43	the seven-day period immediately preceding the certification, the physician or designated
44	examiner examined the proposed patient and is of the opinion that the proposed patient has a
45	mental illness and should be involuntarily committed; or
46	(ii) a written statement by the applicant that:
47	(A) the proposed patient has been requested to, but has refused to, submit to an
48	examination of mental condition by a licensed physician or designated examiner;
49	(B) is sworn to under oath; and
50	(C) states the facts upon which the application is based; and
51	(c) a statement whether the proposed patient has previously been under an assisted
52	outpatient treatment order, if known by the applicant.
53	(2) Before issuing a judicial order, the court:
54	(a) shall require the applicant to consult with the appropriate local mental health
55	authority at or before the hearing; and
56	(b) may direct a mental health professional from the local mental health authority to

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interview the applicant and the proposed patient to determine the existing facts and report theexisting facts to the court.

(3) The court may issue an order, directed to a mental health officer or peace officer, to immediately place a proposed patient in the custody of a local mental health authority or in a temporary emergency facility, as described in Section 26B-5-334, to be detained for the purpose of examination if:

(a) the court finds from the application, any other statements under oath, or any reports
from a mental health professional that there is a reasonable basis to believe that the proposed
patient has a mental illness that poses a danger to self or others and requires involuntary
commitment pending examination and hearing; or

(b) the proposed patient refuses to submit to an interview with a mental healthprofessional as directed by the court or to go to a treatment facility voluntarily.

69 (4) (a) The court shall provide notice of commencement of proceedings for involuntary 70 commitment, setting forth the allegations of the application and any reported facts, together 71 with a copy of any official order of detention, to a proposed patient before, or upon, placement 72 of the proposed patient in the custody of a local mental health authority or, with respect to any 73 proposed patient presently in the custody of a local mental health authority whose status is 74 being changed from voluntary to involuntary, upon the filing of an application for that purpose 75 with the court.

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(b) The place of detention shall maintain a copy of the order of detention.

(5) (a) The court shall provide notice of commencement of proceedings for involuntary
commitment as soon as practicable to the applicant, any legal guardian, any immediate adult
family members, legal counsel for the parties involved, the local mental health authority or the
local mental health authority's designee, and any other persons whom the proposed patient or
the court designates.

(b) Except as provided in Subsection (5)(c), the notice under Subsection (5)(a) shall
advise the persons that a hearing may be held within the time provided by law.

84 (c) If the proposed patient refuses to permit release of information necessary for 85 provisions of notice under this subsection, the court shall determine the extent of notice.

86 (6) Proceedings for commitment of an individual under 18 years old to a local mental
87 health authority may be commenced in accordance with Part 4, Commitment of Persons Under

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88	Age 18.
89	(7) (a) The court may, in the court's discretion, transfer the case to any other district
90	court within this state, if the transfer will not be adverse to the interest of the proposed patient.
91	(b) If a case is transferred under Subsection (7)(a), the parties to the case may be
92	transferred and the local mental health authority may be substituted in accordance with Utah
93	Rules of Civil Procedure, Rule 25.
94	(8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance
95	of a judicial order, or after commitment of a proposed patient to a local mental health authority
96	or the local mental health authority's designee under court order for detention or examination,
97	the court shall appoint two designated examiners:
98	(a) who did not sign the civil commitment application nor the civil commitment
99	certification under Subsection (1);
100	(b) one of whom is a licensed physician; and
101	(c) one of whom may be designated by the proposed patient or the proposed patient's
102	counsel, if that designated examiner is reasonably available.
103	(9) The court shall schedule a hearing to be held within 10 calendar days after the day
104	on which the designated examiners are appointed.
105	(10) (a) The designated examiners shall:
106	(i) conduct the examinations separately;
107	(ii) conduct the examinations at the home of the proposed patient, at a hospital or other
108	medical facility, or at any other suitable place, including through telehealth, that is not likely to
109	have a harmful effect on the proposed patient's health;
110	(iii) inform the proposed patient, if not represented by an attorney:
111	(A) that the proposed patient does not have to say anything;
112	(B) of the nature and reasons for the examination;
113	(C) that the examination was ordered by the court;
114	(D) that any information volunteered could form part of the basis for the proposed
115	patient's involuntary commitment;
116	(E) that findings resulting from the examination will be made available to the court;
117	and
118	(F) that the designated examiner may, under court order, obtain the proposed patient's

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119 mental health records; and

- 120 (iv) within 24 hours of examining the proposed patient, report to the court, orally or in 121 writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as 122 described in Section 26B-5-360, or has acceptable programs available to the proposed patient 123 without court proceedings.
- 124 (b) If a designated examiner reports orally under Subsection (10)(a), the designated 125 examiner shall immediately send a written report to the clerk of the court.
- 126 (11) If a designated examiner is unable to complete an examination on the first attempt 127 because the proposed patient refuses to submit to the examination, the court shall fix a 128 reasonable compensation to be paid to the examiner.
- 129 (12) If the local mental health authority, the local mental health authority's designee, or 130 a medical examiner determines before the court hearing that the conditions justifying the 131 findings leading to a commitment hearing no longer exist, the local mental health authority, the local mental health authority's designee, or the medical examiner shall immediately report the 132 133 determination to the court.
- 134 (13) The court may terminate the proceedings and dismiss the application at any time, 135 including before the hearing, if the designated examiners or the local mental health authority or 136 the local mental health authority's designee informs the court that the proposed patient:
- 137

(a) does not meet the criteria in Subsection (16):

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- (b) has agreed to voluntary commitment, as described in Section 26B-5-360;
- 139 (c) has acceptable options for treatment programs that are available without court 140 proceedings; or
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(d) meets the criteria for assisted outpatient treatment described in Section 26B-5-351.

142 (14) (a) Before the hearing, the court shall provide the proposed patient an opportunity 143 to be represented by counsel, and if neither the proposed patient nor others provide counsel, the 144 court shall appoint counsel and allow counsel sufficient time to consult with the proposed 145 patient before the hearing.

146 (b) In the case of an indigent proposed patient, the county in which the proposed 147 patient resides or is found shall make payment of reasonable attorney fees for counsel, as 148 determined by the court.

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(15) (a) (i) The court shall afford the proposed patient, the applicant, and any other

150	person to whom notice is required to be given an opportunity to appear at the hearing, to
151	testify, and to present and cross-examine witnesses.
152	(ii) The court may, in the court's discretion, receive the testimony of any other person.
153	(iii) The court may allow a waiver of the proposed patient's right to appear for good
154	cause, which cause shall be set forth in the record, or an informed waiver by the patient, which
155	shall be included in the record.
156	(b) The court is authorized to exclude any person not necessary for the conduct of the
157	proceedings and may, upon motion of counsel, require the testimony of each designated
158	examiner to be given out of the presence of any other designated examiners.
159	(c) The court shall conduct the hearing in as informal a manner as may be consistent
160	with orderly procedure, and in a physical setting that is not likely to have a harmful effect on
161	the mental health of the proposed patient, while preserving the due process rights of the
162	proposed patient.
163	(d) The court shall consider any relevant historical and material information that is
164	offered, subject to the rules of evidence, including reliable hearsay under Utah Rules of
165	Evidence, Rule 1102.
166	(e) (i) A local mental health authority or the local mental health authority's designee or
167	the physician in charge of the proposed patient's care shall, at the time of the hearing, provide
168	the court with the following information:
169	(A) the detention order;
170	(B) admission notes;
171	(C) the diagnosis;
172	(D) any doctors' orders;
173	(E) progress notes;
174	(F) nursing notes;
175	(G) medication records pertaining to the current commitment; and
176	(H) whether the proposed patient has previously been civilly committed or under an
177	order for assisted outpatient treatment.
178	(ii) The information described in Subsection (15)(e)(i) shall also be supplied to the
179	proposed patient's counsel at the time of the hearing, and at any time prior to the hearing upon
180	request.

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181	(16) (a) The court shall order commitment of an adult proposed patient to a local
182	mental health authority if, upon completion of the hearing and consideration of the information
183	presented, the court finds by clear and convincing evidence that:
184	(i) [(i)] (A) the proposed patient has a mental illness;
185	[(ii)] (B) because of the proposed patient's mental illness the proposed patient poses a
186	substantial danger to self or others;
187	[(iii)] (C) the proposed patient lacks the ability to engage in a rational decision-making
188	process regarding the acceptance of mental treatment as demonstrated by evidence of inability
189	to weigh the possible risks of accepting or rejecting treatment;
190	[(iv)] (D) there is no appropriate less-restrictive alternative to a court order of
191	commitment; and
192	[(v)] (E) the local mental health authority can provide the proposed patient with
193	treatment that is adequate and appropriate to the proposed patient's conditions and needs[-]; or
194	(ii) (A) the proposed patient has been charged with a criminal offense;
195	(B) with respect to the charged offense, the proposed patient is found incompetent to
196	proceed as a result of a mental illness;
197	(C) the proposed patient has a mental illness;
198	(D) the proposed patient has a persistent unawareness of their mental illness and the
199	negative consequences of that illness, or within the preceding six months has been requested or
200	ordered to undergo mental health treatment but has unreasonably refused to undergo that
201	treatment;
202	(E) there is no appropriate less-restrictive alternative to a court order of commitment;
203	and
204	(F) the local mental health authority can provide the proposed patient with treatment
205	that is adequate and appropriate to the proposed patient's conditions and needs.
206	(b) (i) If, at the hearing, the court determines that the proposed patient has a mental
207	illness but does not meet the other criteria described in Subsection (16)(a), the court may
208	consider whether the proposed patient meets the criteria for assisted outpatient treatment under
209	Section 26B-5-351.
210	(ii) The court may order the proposed patient to receive assisted outpatient treatment in
211	accordance with Section 26B-5-351 if, at the hearing, the court finds the proposed patient

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212 meets the criteria for assisted outpatient treatment under Section 26B-5-351.

(iii) If the court determines that neither the criteria for commitment under Subsection
(16)(a) nor the criteria for assisted outpatient treatment under Section 26B-5-351 are met, the
court shall dismiss the proceedings after the hearing.

216 (17) (a) (i) The order of commitment shall designate the period for which the patient217 shall be treated.

(ii) If the patient is not under an order of commitment at the time of the hearing, thepatient's treatment period may not exceed six months without a review hearing.

(iii) Upon a review hearing, to be commenced before the expiration of the previous
order of commitment, an order for commitment may be for an indeterminate period, if the court
finds by clear and convincing evidence that the criteria described in Subsection (16) will last
for an indeterminate period.

(b) (i) The court shall maintain a current list of all patients under the court's order of
 commitment and review the list to determine those patients who have been under an order of
 commitment for the court designated period.

(ii) At least two weeks before the expiration of the designated period of any order of
commitment still in effect, the court that entered the original order of commitment shall inform
the appropriate local mental health authority or the local mental health authority's designee of
the expiration.

(iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local
mental health authority or the local mental health authority's designee shall immediately
reexamine the reasons upon which the order of commitment was based.

(iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health
authority or the local mental health authority's designee determines that the conditions
justifying commitment no longer exist, the local mental health authority or the local mental
health authority's designee shall discharge the patient from involuntary commitment and
immediately report the discharge to the court.

(v) If, after reexamination under Subsection (17)(b)(iii), the local mental health
authority or the local mental health authority's designee determines that the conditions
justifying commitment continue to exist, the court shall immediately appoint two designated
examiners and proceed under Subsections (8) through (14).

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### 1<sup>st</sup> Sub. (Buff) H.B. 203

(c) (i) The local mental health authority or the local mental health authority's designee
responsible for the care of a patient under an order of commitment for an indeterminate period
shall, at six-month intervals, reexamine the reasons upon which the order of indeterminate
commitment was based.

(ii) If the local mental health authority or the local mental health authority's designee
determines that the conditions justifying commitment no longer exist, the local mental health
authority or the local mental health authority's designee shall discharge the patient from the
local mental health authority's or the local mental health authority designee's custody and
immediately report the discharge to the court.

(iii) If the local mental health authority or the local mental health authority's designee
determines that the conditions justifying commitment continue to exist, the local mental health
authority or the local mental health authority's designee shall send a written report of the
findings to the court.

(iv) A patient and the patient's counsel of record shall be notified in writing that the
involuntary commitment will be continued under Subsection (17)(c)(iii), the reasons for the
decision to continue, and that the patient has the right to a review hearing by making a request
to the court.

(v) Upon receiving a request under Subsection (17)(c)(iv), the court shall immediately
appoint two designated examiners and proceed under Subsections (8) through (14).

(18) (a) Any patient committed as a result of an original hearing or a patient's legally
designated representative who is aggrieved by the findings, conclusions, and order of the court
entered in the original hearing has the right to a new hearing upon a petition filed with the court
within 30 days after the day on which the court order is entered.

(b) The petition shall allege error or mistake in the findings, in which case the court
shall appoint three impartial designated examiners previously unrelated to the case to conduct
an additional examination of the patient.

269 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects,270 conduct the new hearing in the manner otherwise permitted.

(19) The county in which the proposed patient resides or is found shall pay the costs ofall proceedings under this section.

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(20) If any provision of Subsection (16)(a)(ii) or the application of any provision of

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- 274 <u>Subsection (16)(a)(ii) to any person or circumstance is held invalid by a court with jurisdiction</u>,
- 275 the remainder of Subsection (16)(a)(ii) shall be given effect without the invalid provision or
- 276 <u>application. The provisions of Subsection (16)(a)(ii) are severable.</u>
- 277 Section 2. Effective date.
- 278 This bill takes effect on May 1, 2024.