

HB0276S04 compared with HB0276S03

~~{Omitted text}~~ shows text that was in HB0276S03 but was omitted in HB0276S04

inserted text shows text that was not in HB0276S03 but was inserted into HB0276S04

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

1

Commitment Revisions

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor:Evan J. Vickers

2

3 LONG TITLE

4 General Description:

5 This bill addresses the commitment of individuals in relation to civil, criminal, and juvenile
6 proceedings.

7 Highlighted Provisions:

8 This bill:

- 9 ▸ defines terms;
- 10 ▸ amends the definitions of "intellectual disability" and "intermediate care facility for people with
an intellectual disability" as used in the Utah Code;
- 12 ▸ amends provisions relating to the rights and privileges to which an individual is entitled when
under commitment to the custody or to the treatment services of a local mental health authority;
- 15 ▸ provides that if a right of a patient of a local mental health authority is limited or denied,
including for the welfare of the patient or caretakers, the nature, extent, and reason for that limitation or
denial shall be entered in the patient's treatment record;
- 18 ▸ requires a designated examiner to conduct an examination of a proposed patient by telehealth
except in certain circumstances;

HB0276S03

HB0276S03 compared with HB0276S04

- 20 ▸ requires a court to hold a hearing on an application for involuntary commitment remotely unless
the court finds good cause not to hold the hearing remotely;
- 22 ▸ amends standards and processes related to the involuntary civil commitment of an individual
with an intellectual disability or related condition;
- 24 ▸ provides that a court may only order the Department of Health and Human Services (department)
to provide an initial evaluation and progress toward competency evaluation for a defendant or minor if
the defendant or minor is located within the state;
- 27 ▸ requires a court to dismiss a petition for involuntary civil commitment if both designated
examiners determine that the proposed patient does not meet the criteria for involuntary commitment;
- 30 ▸ provides that when there is a conflict in the opinions of forensic evaluators, if a party seeks an
additional competency evaluation then the party is responsible for selecting the evaluator and paying the
cost of the evaluator;
- 33 ▸ amends provisions regarding the release of a defendant determined to be incompetent to proceed
from a secured setting;
- 35 ▸ addresses when the department is required to provide an updated juvenile competency evaluation
after an extended attainment period; and
- 37 ▸ makes technical and conforming changes.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

43 **AMENDS:**

44 **26B-2-121** , as renumbered and amended by Laws of Utah 2023, Chapter 305 , as renumbered and
amended by Laws of Utah 2023, Chapter 305

45 **26B-2-122** , as last amended by Laws of Utah 2024, Chapter 240 , as last amended by Laws of Utah
2024, Chapter 240

46 **26B-5-301** , as renumbered and amended by Laws of Utah 2023, Chapter 308 , as renumbered and
amended by Laws of Utah 2023, Chapter 308

47 **26B-5-310** , as renumbered and amended by Laws of Utah 2023, Chapter 308 , as renumbered and
amended by Laws of Utah 2023, Chapter 308

HB0276S03 compared with HB0276S04

- 26B-5-322** , as last amended by Laws of Utah 2023, Chapter 184 and renumbered and amended by Laws of Utah 2023, Chapter 308 , as last amended by Laws of Utah 2023, Chapter 184 and renumbered and amended by Laws of Utah 2023, Chapter 308
- 50 **26B-5-332** , as last amended by Laws of Utah 2024, Chapters 287, 299 and 314 , as last amended by Laws of Utah 2024, Chapters 287, 299 and 314
- 51 **26B-5-362** , as renumbered and amended by Laws of Utah 2023, Chapter 308 , as renumbered and amended by Laws of Utah 2023, Chapter 308
- 52 **26B-5-371** , as last amended by Laws of Utah 2023, Chapter 184 and renumbered and amended by Laws of Utah 2023, Chapter 308 , as last amended by Laws of Utah 2023, Chapter 184 and renumbered and amended by Laws of Utah 2023, Chapter 308
- 54 **26B-6-401** , as last amended by Laws of Utah 2024, Chapter 240 , as last amended by Laws of Utah 2024, Chapter 240
- 55 **26B-6-606** , as renumbered and amended by Laws of Utah 2023, Chapter 308 , as renumbered and amended by Laws of Utah 2023, Chapter 308
- 56 **26B-6-607** , as last amended by Laws of Utah 2024, Chapter 299 , as last amended by Laws of Utah 2024, Chapter 299
- 57 **26B-6-608** , as last amended by Laws of Utah 2024, Chapter 299 , as last amended by Laws of Utah 2024, Chapter 299
- 58 **26B-6-613** , as renumbered and amended by Laws of Utah 2023, Chapter 308 , as renumbered and amended by Laws of Utah 2023, Chapter 308
- 59 **68-3-12.5** , as last amended by Laws of Utah 2024, Chapter 438 , as last amended by Laws of Utah 2024, Chapter 438
- 60 **77-15-2** , as last amended by Laws of Utah 2023, Chapter 171 , as last amended by Laws of Utah 2023, Chapter 171
- 61 **77-15-5** , as last amended by Laws of Utah 2023, Chapters 171, 417 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 417 , as last amended by Laws of Utah 2023, Chapters 171, 417 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 417
- 63 **77-15-6** , as last amended by Laws of Utah 2024, Chapter 174 , as last amended by Laws of Utah 2024, Chapter 174
- 64 **77-19-203** , as enacted by Laws of Utah 2004, Chapter 137 , as enacted by Laws of Utah 2004, Chapter 137

HB0276S03 compared with HB0276S04

65 **77-29-3** , as enacted by Laws of Utah 1980, Chapter 15 , as enacted by Laws of Utah 1980, Chapter
15

66 **80-6-402** , as last amended by Laws of Utah 2023, Chapter 330 , as last amended by Laws of Utah
2023, Chapter 330

67 **80-6-403** , as last amended by Laws of Utah 2023, Chapter 330 , as last amended by Laws of Utah
2023, Chapter 330

68
69 *Be it enacted by the Legislature of the state of Utah:*

70 Section 1. Section **26B-2-121** is amended to read:

71 **26B-2-121. Access to abuse and neglect information.**

72 (1) As used in this section:

73 (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.

74 (b) "Personal care attendant" means the same as that term is defined in Section [~~26B-6-401~~] 26B-6-101.

76 (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may
access only the Licensing Information System of the Division of Child and Family Services created
by Section 80-2-1002 and juvenile court records under Subsection 80-3-404(4), for the purpose of:

80 (a)

(i) determining whether a person associated with a licensee, with direct access to children:

82 (A) is listed in the Licensing Information System; or

83 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under
Subsections 80-3-404(1) and (2); and

85 (ii) informing a licensee that a person associated with the licensee:

86 (A) is listed in the Licensing Information System; or

87 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under
Subsections 80-3-404(1) and (2);

89 (b)

(i) determining whether a direct service worker:

90 (A) is listed in the Licensing Information System; or

91 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under
Subsections 80-3-404(1) and (2); and

HB0276S03 compared with HB0276S04

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker:

95 (A) is listed in the Licensing Information System; or

96 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); or

98 (c)

(i) determining whether a personal care attendant:

99 (A) is listed in the Licensing Information System; or

100 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and

102 (ii) informing a person described in Subsections 26B-6-101(9)(a)(i) through (iv) that a personal care attendant:

104 (A) is listed in the Licensing Information System; or

105 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2).

107 (3) Notwithstanding Subsection (2), the department may access the Division of Child and Family Services' Management Information System under Section 80-2-1001:

109 (a) for the purpose of licensing and monitoring foster parents;

110 (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and

111 (c) for the purpose described in Section 26B-1-211.

112 (4) The department shall receive and process personal identifying information under Subsection 26B-2-120(1) for the purposes described in Subsection (2).

114 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this part, defining the circumstances under which a person may have direct access or provide services to children when:

117 (a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002; or

119 (b) juvenile court records show that a court made a substantiated finding under Section 80-3-404, that the person committed a severe type of child abuse or neglect.

121 Section 2. Section **26B-2-122** is amended to read:

122 **26B-2-122. Access to vulnerable adult abuse and neglect information.**

HB0276S03 compared with HB0276S04

- 123 (1) For purposes of this section:
- 124 (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.
- 125 (b) "Personal care attendant" means the same as that term is defined in Section ~~[26B-6-401]~~ 26B-6-101.
- 127 (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access the database created by Section 26B-6-210 for the purpose of:
- 129 (a)
- (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:
- 131 (A) abuse;
- 132 (B) neglect; or
- 133 (C) exploitation; and
- 134 (ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:
- 136 (A) abuse;
- 137 (B) neglect; or
- 138 (C) exploitation;
- 139 (b)
- (i) determining whether a direct service worker has a supported or substantiated finding of:
- 141 (A) abuse;
- 142 (B) neglect; or
- 143 (C) exploitation; and
- 144 (ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:
- 146 (A) abuse;
- 147 (B) neglect; or
- 148 (C) exploitation; or
- 149 (c)
- (i) determining whether a personal care attendant has a supported or substantiated finding of:
- 151 (A) abuse;
- 152 (B) neglect; or
- 153 (C) exploitation; and

HB0276S03 compared with HB0276S04

- 154 (ii) informing a person described in Subsections 26B-6-401(9)(a)(i) through (iv) that a personal care
attendant has a supported or substantiated finding of:
- 156 (A) abuse;
- 157 (B) neglect; or
- 158 (C) exploitation.
- 159 (3) The department shall receive and process personal identifying information under Subsection
26B-2-120(2) for the purposes described in Subsection (2).
- 161 (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking
Act, consistent with this part and Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable
Adult, defining the circumstances under which a person may have direct access or provide services
to vulnerable adults when the person is listed in the statewide database of the Division of Aging
and Adult Services created by Section 26B-6-210 as having a supported or substantiated finding of
abuse, neglect, or exploitation.
- 168 Section 3. Section **26B-5-301** is amended to read:
- 169 **26B-5-301. Definitions.**
- As used in this part, Part 4, Commitment of Persons Under Age 18, and Part 5, Essential
- 171 Treatment and Intervention:
- 172 (1) "Adult" means an individual 18 years old or older.
- 173 (2) "Approved treatment facility or program" means a mental health or substance use treatment provider
that meets the goals and measurements described in Subsection 26B-5-102(2)(j).
- 176 (3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under
Section 26B-5-351.
- 178 (4) "Attending physician" means a physician licensed to practice medicine in this state who has primary
responsibility for the care and treatment of the declarant.
- 180 (5) "Attorney-in-fact" means an adult properly appointed under this part to make mental health
treatment decisions for a declarant under a declaration for mental health treatment.
- 182 (6) "Commitment to the custody of a local mental health authority" means that an adult is committed to
the custody of the local mental health authority that governs the mental health catchment area where
the adult resides or is found.

185

HB0276S03 compared with HB0276S04

- (7) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.
- 189 (8) "Designated examiner" means:
- 190 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness; or
- 193 (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.
- 196 (9) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.
- 200 (10) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.
- 203 (11) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in Subsections 76-5-406(2)(a) through (l):
- 206 (a) sexual intercourse;
- 207 (b) penetration, however slight, of the genital or anal opening of the individual;
- 208 (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or
- 210 (d) any sexual act causing substantial emotional injury or bodily pain.
- 211 (12) "Informed waiver" means the patient was informed of a right and, after being informed of that right and the patient's right to waive the right, expressly communicated his or her intention to waive that right.
- 214 (13) "Incapable" means that, in the opinion of the court in a guardianship proceeding under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.
- 219 (14) "Institution" means a hospital or a health facility licensed under Section 26B-2-206.

HB0276S03 compared with HB0276S04

- 220 (15) "Lay person" means an individual identified and authorized by a patient to participate in activities
221 related to the patient's commitment, including court appearances, discharge planning, and
222 grievances, except that a patient may revoke a lay person's authorization at any time.
- 224 (16) "Local substance abuse authority" means the same as that term is defined in Section 26B-5-101
and described in Section 17-43-201.
- 226 [(16)] (17) "Mental health facility" means the Utah State Hospital or other facility that provides mental
health services under contract with the division, a local mental health authority, a person that
contracts with a local mental health authority, or a person that provides acute inpatient psychiatric
services to a patient.
- 230 [(17)] (18) "Mental health officer" means an individual who is designated by a local mental health
authority as qualified by training and experience in the recognition and identification of mental
illness, to:
- 233 (a) apply for and provide certification for a temporary commitment; or
- 234 (b) assist in the arrangement of transportation to a designated mental health facility.
- 235 [(18)] (19) "Mental illness" means:
- 236 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or
related functioning; or
- 238 (b) the same as that term is defined in:
- 239 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
American Psychiatric Association; or
- 241 (ii) the current edition of the International Statistical Classification of Diseases and Related Health
Problems.
- 243 [(19)] (20) "Mental health treatment" means convulsive treatment, treatment with psychoactive
medication, or admission to and retention in a facility for a period not to exceed 17 days.
- 246 [(20)] (21) "Patient" means an individual who is:
- 247 (a) under commitment to the custody or to the treatment services of a local mental health authority; or
- 249 (b) undergoing essential treatment and intervention.
- 250 [(21)] (22) "Physician" means an individual who is:
- 251 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
- 252 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- 254

HB0276S03 compared with HB0276S04

[(22)] (23) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

258 [(23)] (24) "State hospital" means the Utah State Hospital established in Section 26B-5-302.

259 [(24)] (25) "Substantial danger" means that due to mental illness, an individual is at serious risk of:

261 (a) suicide;

262 (b) serious bodily self-injury;

263 (c) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter;

265 (d) causing or attempting to cause serious bodily injury to another individual;

266 (e) engaging in harmful sexual conduct; or

267 (f) if not treated, suffering severe and abnormal mental, emotional, or physical distress that:

269 (i) is associated with significant impairment of judgment, reason, or behavior; and

270 (ii) causes a substantial deterioration of the individual's previous ability to function independently.

272 [(25)] (26) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, or other medical treatments that are generally accepted medical or psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

276 Section 4. Section **26B-5-310** is amended to read:

277 **26B-5-310. Restrictions and limitations -- Rights and privileges.**

278 (1) Subject to the general rules of the division, subject to the requirement in Subsection (2) that the reason, nature, and extent of any limitation or denial of a patient's right shall be entered in the patient's treatment record, and except to the extent that the director or [his] the director's designee determines that it is necessary for the welfare of the patient or the patient's caretakers to impose restrictions, every patient is entitled to:

283 (a)

(i) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside the [facility] responsible mental health authority, local substance abuse authority, or approved treatment facility or program;

286 (ii) be provided with letter-writing materials, including postage; and

287

HB0276S03 compared with HB0276S04

- (iii) have staff of the responsible mental health authority, local substance abuse authority, or approved treatment facility or program assist the patient if the patient is unable to write, prepare, or mail correspondence;
- 290 (b) have frequent and consistent opportunities to receive visitors[; and] at reasonable times that do not interfere with clinical activities;
- 292 (c) speak or visit with the patient's attorney or clergy member within a reasonable period of time;
- 294 (d) exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity[-] ;
- 298 (e) while in an inpatient facility, have access to adequate water and food{~~-, and to~~} and have the patient's nutritional needs met in a manner that is consistent with recognized dietary practices;
- 300 (f) be treated fairly, with respect and recognition of the patient's dignity and individuality;
- 302 (g) not be discriminated against on the basis of a characteristic identified in Subsection 57-21-5(1);
- 304 (h) within 72 business hours after the patient's request, see and receive the services of a patient representative, including a peer specialist or patient advocate, who is not involved in the direct clinical care of the patient;
- 307 (i) have the patient's behavioral health orders for scope of treatment, declaration for mental health treatment, or other psychiatric advance directive reviewed and considered as the preferred treatment option for involuntary administration of medications by the responsible local mental health authority, local substance abuse authority, or approved treatment facility or program, unless by clear and convincing evidence the patient's directive does not qualify as effective participation in behavioral health decision-making;
- 314 (j) with the patient's consent, have the patient's information or records disclosed to an adult family member, the patient's lay person, or, in accordance with state and federal law, to a protection and advocacy system designated pursuant to 42 U.S.C. Sec. 10801 et seq.;
- 318 (k)
- (i) access to a telephone to make and receive private calls, unless determined a clinical or safety risk;
and
- 320 (ii) staff assistance to be able to communicate with others, if the patient does not have a contact list;
- 322

HB0276S03 compared with HB0276S04

(l) wear the patient's own clothes, keep and use the patient's own possessions, and keep and be allowed to spend a reasonable amount of the patient's own money, unless deemed a clinical or safety risk; and

325 (m) be told:

326 (i) the reason for the patient's detainment and the limitation of the patient's detainment, including a description of the patient's right to refuse medication unless the patient requires emergency medications; and

329 (ii) that the patient's commitment does not mean all treatment during commitment is mandatory.

331 (2)

(a) When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record.

333 (b) Information pertaining to a denial of any right of a patient shall be made available, upon request, to the patient, the patient's attorney, and the patient's lay person.

335 (c) Any continuing denial or limitation of any right of a patient shall be reviewed every 30 days and shall also be entered in [that] the patient's treatment record.

337 (d) Notice of [that] a continuing denial of any right of a patient in excess of 30 days shall be sent to the division, the [appropriate] responsible local mental health authority, the appropriate local substance abuse authority, or an approved treatment facility or program[, whichever is most applicable to the patient].

341 ~~[(3) Notwithstanding any limitations authorized under this section on the right of communication, each patient is entitled to communicate by sealed mail with the appropriate local mental health authority, the appropriate local substance abuse authority, an approved treatment facility or program, the division, the patient's attorney, and the court, if any, that ordered the patient's commitment or essential treatment. In no case may the patient be denied a visit with the legal counsel or clergy of the patient's choice.]~~

348 [(4)] (3) Local mental health authorities, local substance abuse authorities, and approved treatment facilities or programs shall provide reasonable means and arrangements for informing involuntary patients of their right to release as provided in this chapter, and for assisting them in making and presenting requests for release.

352

HB0276S03 compared with HB0276S04

[~~(5)~~] (4) [~~Mental~~] Local mental health facilities, local substance abuse authorities, and approved treatment facilities or programs shall post a statement, created by the division, describing a patient's rights under Utah law.

355 [~~(6)~~] (5) A local mental health authority, local substance abuse authority, or approved treatment facility or program may not intentionally retaliate or discriminate against a detained patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized pursuant to this section.

361 (6) Notwithstanding Section 53B-17-303, an individual committed under this chapter has the right to determine the final disposition of that individual's body after death.

359 Section 5. Section **26B-5-322** is amended to read:

360 **26B-5-322. Criminal's escape -- Penalty.**

Any person committed to the state hospital under the provisions of [~~Title 77, Chapter 15, Inquiry into Sanity of Defendant~~] Title 77, Chapter 15, Defendant's Competency to Proceed, or Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, who escapes or leaves the state hospital without proper legal authority is guilty of a class A misdemeanor.

365 Section 6. Section **26B-5-332** is amended to read:

366 **26B-5-332. Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs.**

372 (1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need to be involuntarily committed may initiate an involuntary commitment court proceeding by filing, in the court in the county where the proposed patient resides or is found, a written application that includes:

377 (a) unless the court finds that the information is not reasonably available, the proposed patient's:

379 (i) name;

380 (ii) date of birth; and

381 (iii) social security number;

382 (b)

(i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the

HB0276S03 compared with HB0276S04

proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or

386 (ii) a written statement by the applicant that:

387 (A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;

390 (B) is sworn to under oath; and

391 (C) states the facts upon which the application is based; and

392 (c) a statement whether the proposed patient has previously been under an assisted outpatient treatment order, if known by the applicant.

394 (2) Before issuing a judicial order, the court:

395 (a) shall require the applicant to consult with the appropriate local mental health authority at or before the hearing; and

397 (b) may direct a mental health professional from the local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report the existing facts to the court.

400 (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:

404 (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

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

410 (4)

(a) The court shall provide notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, to a proposed patient before, or upon, placement of the proposed patient in the custody of a local mental health authority or, with respect to any proposed patient presently

HB0276S03 compared with HB0276S04

in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court.

- 417 (b) The place of detention shall maintain a copy of the order of detention.
- 418 (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.
- 423 (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.
- 425 (c) If the proposed patient refuses to permit release of information necessary for provisions of notice under this subsection, the court shall determine the extent of notice.
- 428 (6) Proceedings for commitment of an individual under 18 years old to a local mental health authority may be commenced in accordance with Part 4, Commitment of Persons Under Age 18.
- 431 (7)
- (a) The court may, in the court's discretion, transfer the case to any other district court within this state, if the transfer will not be adverse to the interest of the proposed patient.
- 434 (b) If a case is transferred under Subsection (7)(a), the parties to the case may be transferred and the local mental health authority may be substituted in accordance with Utah Rules of Civil Procedure, Rule 25.
- 437 (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or the local mental health authority's designee under court order for detention or examination, the court shall appoint two designated examiners:
- 441 (a) who did not sign the civil commitment application nor the civil commitment certification under Subsection (1);
- 443 (b) one of whom is:
- 444 (i) a licensed physician; or
- 445 (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health clinical nurse specialist who:
- 447 (A) is nationally certified;

HB0276S03 compared with HB0276S04

- 448 (B) is doctorally trained; and
- 449 (C) has at least two years of inpatient mental health experience, regardless of the license the individual held at the time of that experience; and
- 451 (c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.
- 453 (9) The court shall schedule a hearing to be held within 10 calendar days after the day on which the designated examiners are appointed.
- 455 (10)
- (a) The designated examiners shall[;]
- 456 [(i)] _conduct the examinations separately[;] _.
- 457 [(ii)] ~~(b) [conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place, including]~~ The designated examiners shall conduct the examinations:
- 460 (i) through telehealth[;] unless the designated examiner determines that:
- 461 (A) a telehealth examination would not be sufficient to properly assess the proposed patient;
- 463 (B) a telehealth examination would have a harmful effect on the proposed patient's health; or
- 465 (C) an in-person examination can be conducted as effectively, conveniently, and timely as an examination through telehealth; and
- 467 (ii) if the designated examiner determines, pursuant to Subsection (10)(b)(i), that the examination should be conducted in person, at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the proposed patient's health[;] _.
- 471 [(iii)] (c) The designated examiners shall inform the proposed patient, if not represented by an attorney:
- 473 [(A)] (i) that the proposed patient does not have to say anything;
- 474 [(B)] (ii) of the nature and reasons for the examination;
- 475 [(C)] (iii) that the examination was ordered by the court;
- 476 [(D)] (iv) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment;
- 478 [(E)] (v) that findings resulting from the examination will be made available to the court; and
- 480 [(F)] (vi) that the designated examiner may, under court order, obtain the proposed patient's mental health records[; and] _.

HB0276S03 compared with HB0276S04

- 482 ~~[(iv)]~~ (d) ~~[within]~~ Within 24 hours of examining the proposed patient, a designated examiner shall
report to the court, orally or in writing, whether the proposed patient is mentally ill, has agreed to
voluntary commitment, as described in Section 26B-5-360, or has acceptable programs available to
the proposed patient without court proceedings.
- 487 ~~[(b)]~~ (e) If a designated examiner reports orally under Subsection ~~[(-10)(a)]~~ (10)(d), the designated
examiner shall immediately send a written report to the clerk of the court.
- 489 (11) If a designated examiner is unable to complete an examination on the first attempt because the
proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation
to be paid to the examiner.
- 492 (12) If the local mental health authority, the local mental health authority's designee, or a medical
examiner determines before the court hearing that the conditions justifying the 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 determination to the
court.
- 497 (13)
(a) The court shall terminate the proceedings and dismiss the application before the hearing if both
designated examiners inform the court that the proposed patient does not meet the criteria in
Subsection (16).
- 500 (b) The court may terminate the proceedings and dismiss the application at any time, including before
the hearing, if the designated examiners or the local mental health authority or the local mental
health authority's designee informs the court that the proposed patient:
- 504 ~~[(a) does not meet the criteria in Subsection (16);]~~
- 505 ~~[(b)]~~ (i) has agreed to voluntary commitment, as described in Section 26B-5-360;
- 506 ~~[(c)]~~ (ii) has acceptable options for treatment programs that are available without court proceedings; or
- 508 ~~[(d)]~~ (iii) meets the criteria for assisted outpatient treatment described in Section 26B-5-351.
- 510 (14)
(a) Before the hearing, the court shall provide the proposed patient an opportunity to be represented
by counsel, and if neither the proposed patient nor others provide counsel, the court shall appoint
counsel and allow counsel sufficient time to consult with the proposed patient before the hearing.
- 514 (b) In the case of an indigent proposed patient, the county in which the proposed patient resides or is
found shall make payment of reasonable attorney fees for counsel, as determined by the court.

HB0276S03 compared with HB0276S04

517 (15)

(a)

(i) The court shall afford the proposed patient, the applicant, and any other person to whom notice is required to be given an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.

520 (ii) The court may, in the court's discretion, receive the testimony of any other person.

521 (iii) The court may allow a waiver of the proposed patient's right to appear for good cause, which cause shall be set forth in the record, or an informed waiver by the patient, which shall be included in the record.

524 (b) The court is authorized to exclude any person not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each designated examiner to be given out of the presence of any other designated examiners.

528 (c) The court shall:

529 (i) conduct the hearing in as informal a manner as may be consistent with orderly procedure~~[-and]~~ ; and

531 (ii) while preserving the due process rights of the proposed patient:

532 (A) conduct the hearing remotely, in accordance with Utah Rules of Civil Procedure, Rule 87, unless the court finds good cause under Rule 87 not to conduct the hearing remotely; or

535 (B) if the court finds good cause under Rule 87 not to conduct the hearing remotely, conduct the hearing in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient~~[-while preserving the due process rights of the proposed patient]~~.

539 (d) The court shall consider any relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Utah Rules of Evidence, Rule 1102.

542 (e)

(i) A local mental health authority or the local mental health authority's designee or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:

545 (A) the detention order;

546 (B) admission notes;

547 (C) the diagnosis;

548 (D) any doctors' orders;

549 (E) progress notes;

HB0276S03 compared with HB0276S04

- 550 (F) nursing notes;
- 551 (G) medication records pertaining to the current commitment; and
- 552 (H) whether the proposed patient has previously been civilly committed or under an order for
assisted outpatient treatment.
- 554 (ii) The local mental health authority or the local mental health authority's designee or the physician in
charge of the proposed patient's care shall also supply the information described in Subsection (15)
(e)(i) ~~[shall also be supplied]~~ to the proposed patient's counsel at the time of the hearing, and at any
time prior to the hearing upon request by the proposed patient's counsel.
- 559 (16)
- (a) The court shall order commitment of an adult proposed patient to a local mental health authority if,
upon completion of the hearing and consideration of the information presented, the court finds by
clear and convincing evidence that:
- 562 (i)
- (A) the proposed patient has a mental illness;
- 563 (B) because of the proposed patient's mental illness the proposed patient poses a substantial danger to
self or others;
- 565 (C) the proposed patient lacks the ability to engage in a rational decision-making process regarding the
acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks
of accepting or rejecting treatment;
- 569 (D) there is no appropriate less-restrictive alternative to a court order of commitment; and
- 571 (E) the local mental health authority can provide the proposed patient with treatment that is adequate
and appropriate to the proposed patient's conditions and needs; or
- 574 (ii)
- (A) the proposed patient has been charged with a criminal offense;
- 575 (B) with respect to the charged offense, the proposed patient is found incompetent to proceed as a result
of a mental illness;
- 577 (C) the proposed patient has a mental illness;
- 578 (D) the proposed patient has a persistent unawareness of their mental illness and the negative
consequences of that illness, or within the preceding six months has been requested or ordered to
undergo mental health treatment but has unreasonably refused to undergo that treatment;
- 582 (E) there is no appropriate less-restrictive alternative to a court order of commitment; and

HB0276S03 compared with HB0276S04

- 584 (F) the local mental health authority can provide the proposed patient with treatment that is adequate
and appropriate to the proposed patient's conditions and needs.
- 587 (b)
- (i) If, at the hearing, the court determines that the proposed patient has a mental illness but does not
meet the other criteria described in Subsection (16)(a), the court may consider whether the proposed
patient meets the criteria for assisted outpatient treatment under Section 26B-5-351.
- 591 (ii) The court may order the proposed patient to receive assisted outpatient treatment in accordance
with Section 26B-5-351 if, at the hearing, the court finds the proposed patient meets the criteria for
assisted outpatient treatment under Section 26B-5-351.
- 595 (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.
- 598 (17)
- (a)
- (i) The order of commitment shall designate the period for which the patient shall be treated.
- 600 (ii) If the patient is not under an order of commitment at the time of the hearing, the patient's
treatment period may not exceed six months without a review hearing.
- 602 (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.
- 606 (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.
- 609 (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.
- 613 (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.

HB0276S03 compared with HB0276S04

- 617 (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.
- 622 (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).
- 626 (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.
- 630 (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.
- 636 (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.
- 640 (iv) [A] The local mental health authority or the local mental health authority's designee shall notify
the 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.
- 645 (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).
- 648 (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 filing a petition ~~[filed]~~ with the court within 30
days after the day on which the court entered the order ~~[is entered]~~.

HB0276S03 compared with HB0276S04

- 653 (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.
- 656 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects, conduct the new
hearing in the manner otherwise permitted.
- 658 (19) The county in which the proposed patient resides or is found shall pay the costs of all proceedings
under this section.
- 660 (20)
- (a) A local mental health authority shall provide discharge instructions to each individual committed
under this section at or before the time the individual is discharged from the local mental health
authority's custody, regardless of the circumstances under which the individual is discharged.
- 664 (b) Discharge instructions provided under Subsection (20)(a) shall include:
- 665 (i) a summary of why the individual was committed to the local mental health authority;
- 667 (ii) detailed information about why the individual is being discharged from the local mental health
authority's custody;
- 669 (iii) a safety plan for the individual based on the individual's mental illness or mental or emotional state;
- 671 (iv) notification to the individual's primary care provider, if applicable;
- 672 (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate
services, if such services exist in the individual's community;
- 675 (vi) the phone number to call or text for a crisis services hotline, and information about the availability
of peer support services;
- 677 (vii) a copy of any psychiatric advance directive presented to the local mental health authority, if
applicable;
- 679 (viii) information about how to establish a psychiatric advance directive if one was not presented to the
local mental health authority;
- 681 (ix) as applicable, information about medications that were changed or discontinued during the
commitment;
- 683 (x) a list of any screening or diagnostic tests conducted during the commitment;
- 684 (xi) a summary of therapeutic treatments provided during the commitment;
- 685 (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during
the commitment; and

HB0276S03 compared with HB0276S04

- 687 (xiii) information about how to contact the local mental health authority if needed.
- 688 (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection (20)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.
- 693 (d) If an individual refuses to accept discharge instructions, the local mental health authority shall document the refusal in the individual's medical record.
- 695 (e) If an individual's discharge instructions include referrals to services under Subsection (20)(b)(v), the local mental health authority shall document those referrals in the individual's medical record.
- 698 (f) The local mental health authority shall attempt to follow up with a discharged individual at least 48 hours after discharge, and may use peer support professionals when performing follow-up care or developing a continuing care plan.
- 701 (21) If any provision of Subsection (16)(a)(ii) or the application of any provision of Subsection (16)(a)(ii) to any person or circumstance is held invalid by a court with jurisdiction, the remainder of Subsection (16)(a)(ii) shall be given effect without the invalid provision or application. The provisions of Subsection (16)(a)(ii) are severable.
- 701 Section 7. Section **26B-5-362** is amended to read:
- 702 **26B-5-362. Commitment and care of criminally insane.**
- Nothing contained in this part may be construed to alter or change the method presently employed for the commitment and care of the criminally insane as provided in [~~Title 77,~~
- 705 ~~Chapter 15, Inquiry into Sanity of Defendant]~~Title 77, Chapter 15, Defendant's Competency to Proceed.
- 707 Section 8. Section **26B-5-371** is amended to read:
- 708 **26B-5-371. Utah Forensic Mental Health Facility -- Design and operation -- Security.**
- 714 (1) The forensic mental health facility is a secure treatment facility.
- 715 (2)
- (a) The forensic mental health facility accommodates the following populations:
- 716 (i) prison inmates displaying mental illness necessitating treatment in a secure mental health facility;
- 718

HB0276S03 compared with HB0276S04

(ii) criminally adjudicated persons found guilty with a mental illness or guilty with a mental condition at the time of the offense undergoing evaluation for a mental condition under Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition;

(iii) criminally adjudicated persons undergoing evaluation for competency or found guilty with a mental condition or guilty with a mental condition at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, who also have an intellectual disability;

(iv) persons undergoing evaluation for competency or found by a court to be incompetent to proceed in accordance with [~~Title 77, Chapter 15, Inquiry into Sanity of Defendant~~] Title 77, Chapter 15, Defendant's Competency to Proceed, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

(v) persons who are civilly committed to the custody of a local mental health authority in accordance with this part, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or the superintendent's designee; and

(vi) persons ordered to commit themselves to the custody of the division for treatment at the Utah State Hospital as a condition of probation or stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

(b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's status as established by the court at the time of adjudication.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for the allocation of beds to the categories described in Subsection (2)(a).

(3) The department shall:

(a) own and operate the forensic mental health facility;

(b) provide and supervise administrative and clinical staff; and

(c) provide security staff who are trained as psychiatric technicians.

(4) Pursuant to Subsection 26B-5-303(3) the executive director shall designate individuals to perform security functions for the state hospital.

Section 9. Section **26B-6-401** is amended to read:

26B-6-401. Definitions.

HB0276S03 compared with HB0276S04

As used in this part:

- 752 (1) "Approved provider" means a person approved by the division to provide home-and community-
based services.
- 754 (2) "Board" means the Utah State Developmental Center Board created under Section 26B-1-429.
- 756 (3)
- (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a
cerebral vascular accident.
- 758 (b) "Brain injury" does not include a deteriorating disease.
- 759 (4) "Designated intellectual disability professional" means:
- 760 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:
- 761 (i)
- (A) has at least one year of specialized training in working with persons with an intellectual disability;
or
- 763 (B) has at least one year of clinical experience with persons with an intellectual disability; and
- 765 (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an
intellectual disability; or
- 767 (b) a clinical social worker, certified social worker, marriage and family therapist, or professional
counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:
- 770 (i) has at least two years of clinical experience with persons with an intellectual disability; and
- 772 (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an
intellectual disability.
- 774 (5) "Deteriorating disease" includes:
- 775 (a) multiple sclerosis;
- 776 (b) muscular dystrophy;
- 777 (c) Huntington's chorea;
- 778 (d) Alzheimer's disease;
- 779 (e) ataxia; or
- 780 (f) cancer.
- 781 (6) "Developmental center" means the Utah State Developmental Center, established in accordance
with Part 5, Utah State Developmental Center.
- 783 (7) "Director" means the director of the Division of Services for People with Disabilities.

HB0276S03 compared with HB0276S04

- 784 (8) "Direct service worker" means a person who provides services to a person with a disability:
786 (a) when the services are rendered in:
787 (i) the physical presence of the person with a disability; or
788 (ii) a location where the person rendering the services has access to the physical presence of the person
with a disability; and
790 (b)
(i) under a contract with the division;
791 (ii) under a grant agreement with the division; or
792 (iii) as an employee of the division.
793 (9)
(a) "Disability" means a severe, chronic disability that:
794 (i) is attributable to:
795 (A) an intellectual disability;
796 (B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. Sec.
435.1010;
798 (C) a physical disability; or
799 (D) a brain injury;
800 (ii) is likely to continue indefinitely;
801 (iii)
(A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a substantial functional
limitation in three or more of the following areas of major life activity:
804 (I) self-care;
805 (II) receptive and expressive language;
806 (III) learning;
807 (IV) mobility;
808 (V) self-direction;
809 (VI) capacity for independent living; or
810 (VII) economic self-sufficiency; or
811 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial limitation in three or
more of the following areas:
813 (I) memory or cognition;

HB0276S03 compared with HB0276S04

- 814 (II) activities of daily life;
815 (III) judgment and self-protection;
816 (IV) control of emotions;
817 (V) communication;
818 (VI) physical health; or
819 (VII) employment; and
820 (iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or
other services that:
822 (A) may continue throughout life; and
823 (B) must be individually planned and coordinated.
824 (b) "Disability" does not include a condition due solely to:
825 (i) mental illness;
826 (ii) personality disorder;
827 (iii) deafness or being hard of hearing;
828 (iv) visual impairment;
829 (v) learning disability;
830 (vi) behavior disorder;
831 (vii) substance abuse; or
832 (viii) the aging process.
833 (10) "Division" means the Division of Services for People with Disabilities.
834 (11) "Eligible to receive division services" or "eligibility" means qualification, based on criteria
established by the division, to receive services that are administered by the division.
837 (12) "Endorsed program" means a facility or program that:
838 (a) is operated:
839 (i) by the division; or
840 (ii) under contract with the division; or
841 (b) provides services to a person committed to the division under Part 6, Admission to an Intermediate
Care Facility for People with an Intellectual Disability.
843 (13) "Licensed physician" means:
844 (a) an individual licensed to practice medicine under:
845 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

HB0276S03 compared with HB0276S04

- 846 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
847 (b) a medical officer of the United States Government while in this state in the performance of official
duties.
- 849 (14) "Limited support services" means services that are administered by the division to individuals with
a disability:
- 851 (a) under a waiver authorized under 42 U.S.C. Sec. 1396n(c) by the Centers for Medicare and Medicaid
Services that permits the division to limit services to an individual who is eligible to receive division
services; and
- 854 (b) through a program that:
- 855 (i) was not operated by the division on or before January 1, 2020; and
856 (ii)
- (A) limits the kinds of services that an individual may receive; or
- 857 (B) sets a maximum total dollar amount for program services provided to each individual.
- 859 (15) "Physical disability" means a medically determinable physical impairment that has resulted in the
functional loss of two or more of a person's limbs.
- 861 (16) "Public funds" means state or federal funds that are disbursed by the division.
- 862 (17)
- (a) "Related condition" means a severe, chronic condition that:
- 863 (i) manifests before the day on which an individual turns 22 years old;
864 (ii) is likely to continue indefinitely;
865 (iii) results in substantial functional limitations;
866 (iv) is closely related to an intellectual disability because the condition results in the impairment of:
867 (A) general intellectual functioning, similar to that of an individual with an intellectual disability; or
870 (B) adaptive behavior, similar to that of an individual with an intellectual disability; and
872 (v) requires treatment or services similar to the treatment or services required for an individual with
an intellectual disability.
- 874 (b) "Related condition" does not include mental illness, as that term is defined in Section 26B-5-301.
- 876 [(17)] (18) "Resident" means an individual under observation, care, or treatment in an intermediate care
facility for people with an intellectual disability.
- 878 (19) "Substantial danger" means that because of an intellectual disability or related condition, an
individual is at risk of:

HB0276S03 compared with HB0276S04

- 880 (a) suicide;
881 (b) serious bodily self-injury;
882 (c) serious bodily injury because the individual lacks capacity to provide the basic necessities of life,
such as food, clothing, or shelter;
884 (d) causing or attempting to cause serious bodily injury or serious emotional harm to another individual;
886 (e) engaging in harmful sexual conduct, as that term is defined in Section 26B-5-301; or
887 (f) suffering serious physical harm or serious emotional harm as a result of being exploited, abused, or
neglected.
- 889 [(18)] (20) "Sustainability fund" means the Utah State Developmental Center Long-Term Sustainability
Fund created in Section 26B-1-331.
- 887 Section 10. Section **26B-6-606** is amended to read:
888 **26B-6-606. Involuntary commitment.**
An individual with an intellectual disability or related condition may not be involuntarily
committed to [an intermediate care facility for people with an intellectual disability] the division
except in accordance with Sections 26B-6-607 and 26B-6-608.
- 892 Section 11. Section **26B-6-607** is amended to read:
893 **26B-6-607. Temporary emergency commitment -- Observation and evaluation.**
898 (1) ~~[The director of the division or his designee may temporarily commit an individual to the division~~
~~and therefore, as a matter of course, to an intermediate care facility for people with an intellectual~~
~~disability for observation and evaluation]~~ An individual with an intellectual disability or related
condition may be committed to the division on an emergency basis upon[:]
- 903 ~~[(a) written application by a responsible person who has reason to know that the individual is in need of~~
~~commitment, stating:]~~
- 905 ~~[(i) a belief that the individual has an intellectual disability and is likely to cause serious injury to self or~~
~~others if not immediately committed;]~~
- 907 ~~[(ii) personal knowledge of the individual's condition; and]~~
- 908 ~~[(iii) the circumstances supporting that belief; or]~~
- 909 ~~[(b)]~~ _certification by a [licensed physician or]designated intellectual disability professional stating that
the [physician or]designated intellectual disability professional:
- 912 ~~[(i)]~~ (a) has examined the individual within a three-day period, excluding Saturdays, Sundays, and state
holidays, immediately preceding the certification; and

HB0276S03 compared with HB0276S04

- 914 ~~[(ii)]~~ (b) is of the opinion that the individual has an intellectual disability or related condition, and
that because of the individual's intellectual disability ~~[is likely to injure]~~ or related condition is a
substantial danger to self or others~~[if not immediately committed]~~.
- 918 (2) If the individual in need of commitment is not placed in the custody of the director or the director's
designee by the person submitting the ~~[application, the director's]~~ certification, the director or the
director's designee may certify, either in writing or orally that the individual is in need of immediate
commitment to prevent ~~[injury]~~ posing substantial danger to self or others.
- 923 (3) Upon receipt of the ~~[application]~~ certification required by Subsection ~~[(1)(a) and the certifications~~
~~required by Subsections (1)(b) and (2)]~~ (2), a peace officer ~~[may take the individual named in~~
~~the application and certificates into custody, and]~~ may transport the individual to a ~~[designated~~
~~intermediate care facility for people with an intellectual disability]~~ placement designated by the
division.
- 928 (4)
- (a) An individual committed under this section may be held for a maximum of ~~[72 hours, excluding~~
~~Saturdays, Sundays, and legal holidays. At the expiration of that time,]~~ 10 days, after which the
individual shall be released unless proceedings for involuntary commitment have been commenced
under Section 26B-6-608.
- 932 (b) ~~[After]~~ If proceedings for involuntary commitment have been commenced~~[the individual shall~~
~~be released unless an order of detention is issued in accordance with Section 26B-6-608]~~ , an
emergency order under this section remains in effect until:
- 935 (i) the division determines that the conditions justifying commitment no longer exist; or
- 937 (ii) a court order is issued pursuant to Section 26B-6-608.
- 938 (5)
- (a) If an individual is committed to the division under this section~~[on the application of any person~~
~~other than the individual's legal guardian, spouse, parent, or next of kin]~~, the director or ~~[his]~~ the
director's designee shall immediately give notice of the commitment to the individual's legal
guardian~~[, spouse, parent, or next of kin]~~, if known.
- 943 (b)
- (i) Immediately after an individual is committed to the division under this section, the division shall
inform the individual, orally and in writing, of the individual's right to communicate with an
attorney.

HB0276S03 compared with HB0276S04

- 946 (ii) If the individual desires to communicate with an attorney, the division shall take immediate steps to
949 assist the individual in contacting and communicating with an attorney.
- 949 (6)
- (a) The division [~~or an intermediate care facility~~] shall provide discharge instructions to each individual committed under this section at or before the time the individual is discharged from the custody of the division [~~or intermediate care facility~~], regardless of whether the individual is discharged by being released or under other circumstances.
- 954 (b) Discharge instructions provided under Subsection (6)(a) shall include:
- 955 (i) a summary of why the individual was committed;
- 956 (ii) detailed information about why the individual is being discharged;
- 957 (iii) a safety plan for the individual based on the individual's intellectual disability and condition;
- 959 (iv) notification to the individual's primary care provider, if applicable;
- 960 (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual's community;
- 963 (vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;
- 965 (vii) a copy of any advance directive presented to the local mental health authority, if applicable;
- 967 (viii) information about how to establish an advance directive if one was not presented to the division [~~or intermediate care facility~~];
- 969 (ix) as applicable, information about medications that were changed or discontinued during the commitment;
- 971 (x) a list of any screening or diagnostic tests conducted during the commitment;
- 972 (xi) a summary of therapeutic treatments provided during the commitment;
- 973 (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
- 975 (xiii) information about how to contact the division [~~or intermediate care facility~~] if needed.
- 977 (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection (6)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.

HB0276S03 compared with HB0276S04

- 982 (d) If an individual refuses to accept discharge instructions, the division~~[-or intermediate care facility]~~
shall document the refusal in the individual's medical record.
- 984 (e) If an individual's discharge instructions include referrals to services under Subsection (6)(b)(v), the
division~~[-or intermediate care facility]~~ shall document those referrals in the individual's medical
record.
- 987 (f) The division shall attempt to follow up with a discharged individual at least 48 hours after discharge,
and may use peer support professionals when performing follow-up care or developing a continuing
care plan.

986 Section 12. Section **26B-6-608** is amended to read:

987 **26B-6-608. Involuntary commitment -- Procedures -- Necessary findings -- Periodic review.**

- 993 [(1) Any responsible person who has reason to know that an individual is in need of commitment, who
has a belief that the individual has an intellectual disability, and who has personal knowledge of the
conditions and circumstances supporting that belief, may commence proceedings for involuntary
commitment by filing a written petition with the district court, or if the subject of the petition is less
than 18 years old with the juvenile court, of the county in which the individual to be committed is
physically located at the time the petition is filed. ~~The application shall be accompanied by:]~~
- 1000 [(a) a certificate of a licensed physician or a designated intellectual disability professional, stating that
within a seven-day period immediately preceding the certification, the physician or designated
intellectual disability professional examined the individual and believes that the individual has an
intellectual disability and is in need of involuntary commitment; or]
- 1005 [(b) a written statement by the petitioner that:]
- 1006 [(i) states that the individual was requested to, but refused to, submit to an examination for an
intellectual disability by a licensed physician or designated intellectual disability professional, and
that the individual refuses to voluntarily go to the division or an intermediate care facility for people
with an intellectual disability recommended by the division for treatment;]
- 1011 [(ii) is under oath; and]
- 1012 [(iii) sets forth the facts on which the statement is based.]
- 1013 [(2) Before issuing a detention order, the court may require the petitioner to consult with personnel
at the division or at an intermediate care facility for people with an intellectual disability and may
direct a designated intellectual disability professional to interview the petitioner and the individual
to be committed, to determine the existing facts, and to report them to the court.]

HB0276S03 compared with HB0276S04

- 1018 ~~[(3) The court may issue a detention order and may direct a peace officer to immediately take the individual to an intermediate care facility for people with an intellectual disability to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated intellectual disability professionals that there is a reasonable basis to believe that the individual to be committed:]~~
- 1024 ~~[(a) poses an immediate danger of physical injury to self or others;]~~
- 1025 ~~[(b) requires involuntary commitment pending examination and hearing;]~~
- 1026 ~~[(c) the individual was requested but refused to submit to an examination by a licensed physician or designated intellectual disability professional; or]~~
- 1028 ~~[(d) the individual refused to voluntarily go to the division or to an intermediate care facility for people with an intellectual disability recommended by the division.]~~
- 1030 ~~[(4)~~
- ~~(a) If the court issues a detention order based on an application that did not include a certification by a designated intellectual disability professional or physician in accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:]~~
- 1036 ~~[(i) whether the director or his designee believes that the individual has an intellectual disability; and]~~
- 1038 ~~[(ii) whether appropriate treatment programs are available and will be used by the individual without court proceedings.]~~
- 1040 ~~[(b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.]~~
- 1043 ~~[(5) Immediately after an individual is involuntarily committed under a detention order or under Section 26B-6-607, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.]~~
- 1048 (1)
- (a) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability or related condition, and who

HB0276S03 compared with HB0276S04

has personal knowledge of the conditions and circumstances supporting that belief, may make a referral to the division to conduct an assessment to determine if the individual meets the criteria for involuntary commitment under this section.

1054 (b)

(i) To conduct an assessment of an individual who may be in need of commitment under this section, the division shall have two designated intellectual disability professionals examine the individual.

1057 (ii) The examinations described in Subsection (1)(b)(i) shall be conducted separately and at a suitable location not likely to have a harmful effect on the individual being examined.

1060 (c) If the designated intellectual disability professionals who conduct the examinations described in Subsection (1)(b)(i) both believe the examined individual meets the criteria for involuntary commitment under this section, the division may file a written petition to commence involuntary commitment proceedings with the district court, or with the juvenile court if the subject of the petition is less than 18 years old, of the county in which the subject of the petition is physically located at the time the petition is filed.

1067 (d)

(i) The division shall include with a petition described in Subsection (1)(c) a certification from each of the designated intellectual disability professionals who examined the subject of the petition.

1070 (ii) A designated intellectual disability professional's certification shall state that:

1071 (A) within a seven-day period immediately preceding the filing of the petition, the designated intellectual disability professional examined the subject of the petition separate from the other designated intellectual disability professional; and

1075 (B) it is the designated intellectual disability professional's belief that the subject of the petition has an intellectual disability or related condition and meets the criteria for involuntary commitment under this section.

1078 (2)

(a) If, pursuant to Title 77, Chapter 15, Defendant's Competency to Proceed, or Title 80, Chapter 6, Part 4, Competency, a prosecutor informs a court that commitment proceedings will be initiated, the prosecutor shall make a referral to the division pursuant to Subsection (1).

1082 (b) If a prosecutor makes a referral to the division pursuant to Subsection (1), the division shall complete an assessment as described in Subsection (1)(b) within seven days after the day on which the prosecutor makes the referral unless the court enlarges the time for good cause shown.

HB0276S03 compared with HB0276S04

- 1086 (c) Upon completion of the assessment described in Subsection (2)(b), if the designated intellectual
1087 disability professionals who examine the individual who is the subject of the referral both certify
1088 that they believe the individual meets the criteria for involuntary commitment under this section, the
1089 division may file a petition to commence involuntary commitment proceedings in accordance with
1090 Subsections (1)(c) and (d).
- 1092 ~~[(6)]~~ (3)
- 1093 (a) Immediately after ~~[commencement of proceedings]~~ the division files a petition for involuntary
1094 commitment under this section, the court shall:
- 1095 (i) schedule a hearing on the petition for no later than 10 days after the day on which the division
1096 filed the petition; and
- 1097 (ii) give notice of commencement of the proceedings to:
- 1098 ~~[(i)]~~ (A) the individual to be committed;
- 1099 ~~[(ii)]~~ (B) the ~~[applicant]~~ referent under Subsection (1)(a) or (2)(a), if applicable;
- 1100 ~~[(iii)]~~ (C) any legal guardian of the individual;
- 1101 ~~[(iv)]~~ (D) adult members of the individual's immediate family;
- 1102 ~~[(v)]~~ (E) legal counsel of the individual to be committed, if any;
- 1103 ~~[(vi)]~~ (F) the division; and
- 1104 ~~[(vii)]~~ (G) any other person to whom the individual requests, or the court designates, notice to be given.
- 1105 (b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of
1106 notice shall be determined by the court.
- 1107 ~~[(7)]~~ (4) ~~[That notice]~~ The notice described in Subsection (3) shall:
- 1108 (a) set forth the allegations of the petition and all supporting facts;
- 1109 (b) be accompanied by a copy of ~~[any detention]~~ an emergency order issued under [Subsection
1110 (3)] Section 26B-6-607, if applicable; and
- 1111 (c) state that a hearing will be held within the time provided by law, and give the time and place for that
1112 hearing.
- 1113 ~~[(8)]~~ (5) The court may transfer the case and the custody of the individual to be committed to any other
1114 district court within the state~~[, if:]~~ if the individual resides in another jurisdiction within the state.
- 1115 ~~[(a) there are no appropriate facilities for persons with an intellectual disability within the judicial~~
1116 ~~district; and]~~
- 1117 ~~[(b) the transfer will not be adverse to the interests of the individual.]~~

HB0276S03 compared with HB0276S04

1119 [(9)

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

1125 [(i) separately;]

1126 [(ii) at the home of the individual to be committed, a hospital, an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and]

1129 [(iii) within a reasonable period of time after appointment of the examiners by the court.]

1131 [(b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:]

1135 [(i) the individual does not have an intellectual disability; or]

1136 [(ii) treatment programs are available and will be used by the individual without court proceedings.]

1138 [(10)] (6)

(a)

(i) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings.

1140 (ii) If neither the individual nor others provide counsel, [-]the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.

1143 (b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorney fees as determined by the court.

1146 [(11)] (7) [~~The division or a designated intellectual disability professional in charge of the individual's care~~] Upon order of the court, the division or the division's designee shall provide all [documented information on] relevant documentation on the individual to be committed [and-]to the court [at the time of the hearing. The] and the individual's attorney[shall have access to all documented information on the individual at the time of and prior to the hearing].

1152 [(12)] (8)

HB0276S03 compared with HB0276S04

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

1155 (b) The court may, in its discretion:

1156 (i) receive the testimony of any other person;

1157 (ii) allow a waiver of the right to appear only for good cause shown;

1158 (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and

1160 (iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.

1162 (c)

(i) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the individual.

1165 (ii) The Utah Rules of Evidence apply, and the hearing shall be a matter of court record.

1167 (iii) A verbatim record of the proceedings shall be maintained.

1168 [(13)] (9) The court may order commitment if, upon completion of the hearing and consideration of the record, [it] the court finds by clear and convincing evidence that all of the following conditions are met:

1171 (a) the individual to be committed has an intellectual disability or a related condition;

1172 (b) because of the individual's intellectual disability or related condition, one or more of the following conditions exist:

1174 (i) the individual poses [~~an immediate danger of physical injury~~] substantial danger to self or others;

1176 (ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; [~~or~~]

1178 (iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a [~~threat of serious physical or psychological injury to the individual, and~~] risk of substantial danger to self or others; or

1182 (iv) the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;

1186 (c) there is no appropriate, less restrictive alternative reasonably available; and

1187

HB0276S03 compared with HB0276S04

(d) the division ~~[or the intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed]~~ can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.

1191 ~~[(14)]~~ (10) In the absence of any of the required findings by the court, described in Subsection
1193 ~~[(13)]~~ (9), the court shall dismiss the proceedings.

1193 ~~[(15)]~~ (11)

(a) The order of commitment shall designate the period for which the individual will be committed.

1195 (b) An initial commitment may not exceed six months. ~~[-Before the end of the initial commitment period, the administrator of the intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual.]~~

1198 ~~[(b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.]~~

1200 ~~[(16)]~~ (12)

(a) An individual committed under this part has the right to a rehearing ~~[, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the]~~ if, within 15 days after the court enters the order of commitment, the individual files a petition with the court alleging error or mistake in the court's findings.

1205 (b) Upon a request for rehearing filed in accordance with Subsection (12)(a), the court shall:

1207 (i) appoint ~~[one impartial licensed physician and]~~ two impartial designated intellectual disability professionals who have not previously been involved in the case to examine the individual ~~[-]~~ ; and

1210 (ii) schedule a rehearing to be held within 30 days after the court entered the order of commitment.

1212 (c) ~~[The]~~ In all other respects, the rehearing shall ~~[-in all other respects,]~~ be conducted in accordance with this part.

1214 ~~[(17)]~~ (13)

(a)

(i) The court shall maintain a current list of all individuals under its orders of commitment.

1216 (ii) ~~[That list shall be reviewed in order]~~ The court shall review the list described in Subsection (13)(a)(i) to determine those patients who have been under an order of commitment for the designated period.

HB0276S03 compared with HB0276S04

- 1219 (b) At least two weeks prior to the expiration of the designated period of any commitment order still
in effect, the court that entered the original order shall ~~[inform the director of the division of the~~
~~impending expiration of the designated commitment period]~~ commence and send notice to all
parties of a review hearing for the committed individual.
- 1224 (c) Prior to the review hearing, a division-designated intellectual disability professional shall reexamine
the basis for the order of commitment and provide a report of that reexamination to the court.
- 1227 (d) At the conclusion of a review hearing, the court may:
- 1228 (i) issue an order of commitment for up to a one-year period; or
- 1229 (ii) discharge the individual from involuntary commitment if the conditions justifying commitment no
longer exist.
- 1231 ~~[(e) The staff of the division shall immediately:]~~
- 1232 ~~[(i) reexamine the reasons upon which the order of commitment was based and report the results of the~~
~~examination to the court;]~~
- 1234 ~~[(ii) discharge the resident from involuntary commitment if the conditions justifying commitment no~~
~~longer exist; and]~~
- 1236 ~~[(iii) immediately inform the court of any discharge.]~~
- 1237 ~~[(d)] (e) [If the director of the division reports to the court that the conditions justifying commitment~~
~~no longer exist, and the administrator of the intermediate care facility for people with an intellectual~~
~~disability does not discharge the individual at the end of the designated period, the court shall~~
~~order the immediate discharge of the individual, unless involuntary commitment proceedings are~~
~~again commenced in accordance with this section] If at any time during the commitment period the~~
~~director or the director's designee determines that the conditions justifying commitment no longer~~
~~exist, the division shall immediately discharge the individual from the commitment and notify the~~
~~court.~~
- 1246 (f) If the division does not discharge an individual at the end of the designated period of a commitment
order, the court shall order the immediate discharge of the individual unless involuntary
commitment proceedings are commenced again in accordance with this section.
- 1250 ~~[(e) If the director of the division, or the director's designee reports to the court that the conditions~~
~~designated in Subsection (13) still exist, the court may extend the commitment order for up to~~
~~one year. At the end of any extension, the individual must be reexamined in accordance with this~~
~~section, or discharged.]~~

HB0276S03 compared with HB0276S04

- 1254 [(18)] (14) When a resident is discharged under this [subsection] section, the division shall [~~provide any further support services available and~~] continue to provide division services for which the individual is eligible and as required to meet the resident's needs.
- 1257 [(19)] (15)
- (a) The division[~~or an intermediate care facility~~] shall provide discharge instructions to each individual committed under this section at or before the time the individual is discharged from the custody of the division[~~or intermediate care facility~~], regardless of whether the individual is discharged by being released or under other circumstances.
- 1262 (b) Discharge instructions provided under Subsection [(19)(a)] (15)(a) shall include:
- 1263 (i) a summary of why the individual was committed;
- 1264 (ii) detailed information about why the individual is being discharged;
- 1265 (iii) a safety plan for the individual based on the individual's intellectual disability and condition;
- 1267 (iv) notification to the individual's primary care provider, if applicable;
- 1268 (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual's community;
- 1271 (vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;
- 1273 (vii) a copy of any advance directive presented to the local mental health authority, if applicable;
- 1275 (viii) information about how to establish an advance directive if one was not presented to the division[~~or intermediate care facility~~];
- 1277 (ix) as applicable, information about medications that were changed or discontinued during the commitment;
- 1279 (x) a list of any screening or diagnostic tests conducted during the commitment;
- 1280 (xi) a summary of therapeutic treatments provided during the commitment;
- 1281 (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
- 1283 (xiii) information about how to contact the division[~~or intermediate care facility~~] if needed.
- 1285 (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection [(19)(a)] (15) (a) shall include a clinically appropriate supply of medications, as determined by a licensed health

HB0276S03 compared with HB0276S04

care provider, to allow the individual time to access another health care provider or follow-up appointment.

1290 (d) If an individual refuses to accept discharge instructions, the division~~[-or intermediate care facility]~~ shall document the refusal in the individual's medical record.

1292 (e) If an individual's discharge instructions include referrals to services under Subsection [(19)(b) (v)] (15)(b)(v), the division~~[-or intermediate care facility]~~ shall document those referrals in the individual's medical record.

1295 (f) The division shall attempt to follow up with a discharged individual at least 48 hours after discharge, and may use peer support professionals when performing follow-up care or developing a continuing care plan.

1294 Section 13. Section **26B-6-613** is amended to read:

1295 **26B-6-613. Involuntary treatment with medication -- Committee -- Findings.**

1300 (1) If, after commitment, a resident elects to refuse treatment with medication, the director, the administrator of the intermediate care facility for people with an intellectual disability, or a designee, shall submit documentation regarding the resident's proposed treatment to a committee composed of:

1304 (a) a licensed physician experienced in treating persons with an intellectual disability, who is not directly involved in the resident's treatment or diagnosis, and who is not biased toward any one facility;

1307 (b) a psychologist who is a designated intellectual disability professional who is not directly involved in the resident's treatment or diagnosis; and

1309 (c) another designated intellectual disability professional of the facility for persons with an intellectual disability, or a designee.

1311 (2) Based upon the court's finding, under Subsection [~~26B-6-608(13)~~] 26B-6-608(9), that the resident lacks the ability to engage in a rational decision-making process regarding the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment, the committee may authorize involuntary treatment with medication if it determines that:

1316 (a) the proposed treatment is in the medical best interest of the resident, taking into account the possible side effects as well as the potential benefits of the medication; and

1319 (b) the proposed treatment is in accordance with prevailing standards of accepted medical practice.

HB0276S03 compared with HB0276S04

- 1321 (3) In making the determination described in Subsection (2), the committee shall consider the resident's
general history and present condition, the specific need for medication and its possible side effects,
and any previous reaction to the same or comparable medication.
- 1324 (4) Any authorization of involuntary treatment under this section shall be periodically reviewed in
accordance with rules promulgated by the division.
- 1322 Section 14. Section **68-3-12.5** is amended to read:
- 1323 **68-3-12.5. Definitions for Utah Code.**
- 1328 (1) The definitions listed in this section apply to the Utah Code, unless:
- 1329 (a) the definition is inconsistent with the manifest intent of the Legislature or repugnant to the context
of the statute; or
- 1331 (b) a different definition is expressly provided for the respective title, chapter, part, section, or
subsection.
- 1333 (2) "Adjudicative proceeding" means:
- 1334 (a) an action by a board, commission, department, officer, or other administrative unit of the state that
determines the legal rights, duties, privileges, immunities, or other legal interests of one or more
identifiable persons, including an action to grant, deny, revoke, suspend, modify, annul, withdraw,
or amend an authority, right, or license; and
- 1339 (b) judicial review of an action described in Subsection (2)(a).
- 1340 (3) "Administrator" includes "executor" when the subject matter justifies the use.
- 1341 (4) "Advisory board," "advisory commission," and "advisory council" mean a board, commission,
committee, or council that:
- 1343 (a) is created by, and whose duties are provided by, statute or executive order;
- 1344 (b) performs its duties only under the supervision of another person as provided by statute; and
- 1346 (c) provides advice and makes recommendations to another person that makes policy for the benefit of
the general public.
- 1348 (5) "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, Space Force, and
Coast Guard.
- 1350 (6) "County executive" means:
- 1351 (a) the county commission, in the county commission or expanded county commission form of
government established under Title 17, Chapter 52a, Changing Forms of County Government;
- 1354

HB0276S03 compared with HB0276S04

- (b) the county executive, in the county executive-council optional form of government authorized by Section 17-52a-203; or
- 1356 (c) the county manager, in the council-manager optional form of government authorized by Section 17-52a-204.
- 1358 (7) "County legislative body" means:
- 1359 (a) the county commission, in the county commission or expanded county commission form of government established under Title 17, Chapter 52a, Changing Forms of County Government;
- 1362 (b) the county council, in the county executive-council optional form of government authorized by Section 17-52a-203; and
- 1364 (c) the county council, in the council-manager optional form of government authorized by Section 17-52a-204.
- 1366 (8) "Depose" means to make a written statement made under oath or affirmation.
- 1367 (9)
- (a) "Equal" means, with respect to biological sex, of the same value.
- 1368 (b) "Equal" does not mean, with respect to biological sex:
- 1369 (i) a characteristic of being the same or identical; or
- 1370 (ii) a requirement that biological sexes be ignored or co-mingled in every circumstance.
- 1372 (10) "Executor" includes "administrator" when the subject matter justifies the use.
- 1373 (11) "Father" means a parent who is of the male sex.
- 1374 (12) "Female" means the characteristic of an individual whose biological reproductive system is of the general type that functions in a way that could produce ova.
- 1376 (13) "Guardian" includes a person who:
- 1377 (a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment; or
- 1379 (b) is appointed by a court to manage the estate of a minor or incapacitated person.
- 1380 (14) "Highway" includes:
- 1381 (a) a public bridge;
- 1382 (b) a county way;
- 1383 (c) a county road;
- 1384 (d) a common road; and
- 1385 (e) a state road.

HB0276S03 compared with HB0276S04

- 1386 (15) "Intellectual disability" [~~means a significant, subaverage general intellectual functioning~~
1390 ~~that;~~] means the same as that term is defined in the most recent edition of the Diagnostic and
1391 Statistical Manual of Mental Disorders published by the American Psychiatric Association.
- 1390 [(a) ~~exists concurrently with deficits in adaptive behavior; and~~]
1391 [(b) ~~is manifested during the developmental period as defined in the current edition of the Diagnostic~~
~~and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.~~]
- 1394 (16) "Intermediate care facility for people with an intellectual disability" means an [~~intermediate-care~~
~~facility for the mentally retarded, as defined in Title XIX of the Social Security Act~~] institution or
distinct part thereof for people with an intellectual disability or related conditions, if the institution
or distinct part thereof meets the requirements described in 42 U.S.C. Secs. 1396d(d)(1) through (3).
- 1399 (17) "Land" includes:
1400 (a) land;
1401 (b) a tenement;
1402 (c) a hereditament;
1403 (d) a water right;
1404 (e) a possessory right; and
1405 (f) a claim.
- 1406 (18) "Male" means the characteristic of an individual whose biological reproductive system is of the
general type that functions to fertilize the ova of a female.
- 1408 (19) "Man" means an adult human male.
- 1409 (20) "Month" means a calendar month, unless otherwise expressed.
- 1410 (21) "Mother" means a parent who is of the female sex.
- 1411 (22) "Oath" includes "affirmation."
- 1412 (23) "Person" means:
1413 (a) an individual;
1414 (b) an association;
1415 (c) an institution;
1416 (d) a corporation;
1417 (e) a company;
1418 (f) a trust;
1419 (g) a limited liability company;

HB0276S03 compared with HB0276S04

- 1420 (h) a partnership;
- 1421 (i) a political subdivision;
- 1422 (j) a government office, department, division, bureau, or other body of government; and
- 1423 (k) any other organization or entity.
- 1424 (24) "Personal property" includes:
- 1425 (a) money;
- 1426 (b) goods;
- 1427 (c) chattels;
- 1428 (d) effects;
- 1429 (e) evidences of a right in action;
- 1430 (f) a written instrument by which a pecuniary obligation, right, or title to property is created,
acknowledged, transferred, increased, defeated, discharged, or diminished; and
- 1433 (g) a right or interest in an item described in Subsections (24)(a) through (f).
- 1434 (25) "Personal representative," "executor," and "administrator" include:
- 1435 (a) an executor;
- 1436 (b) an administrator;
- 1437 (c) a successor personal representative;
- 1438 (d) a special administrator; and
- 1439 (e) a person who performs substantially the same function as a person described in Subsections (25)(a)
through (d) under the law governing the person's status.
- 1441 (26) "Policy board," "policy commission," or "policy council" means a board, commission, or council
that:
- 1443 (a) is authorized to make policy for the benefit of the general public;
- 1444 (b) is created by, and whose duties are provided by, the constitution or statute; and
- 1445 (c) performs its duties according to its own rules without supervision other than under the general
control of another person as provided by statute.
- 1447 (27) "Population" is shown by the most recent state or national census, unless expressly provided
otherwise.
- 1449 (28) "Process" means a writ or summons issued in the course of a judicial proceeding.
- 1450 (29) "Property" includes both real and personal property.
- 1451 (30) "Real estate" or "real property" includes:

HB0276S03 compared with HB0276S04

- 1452 (a) land;
1453 (b) a tenement;
1454 (c) a hereditament;
1455 (d) a water right;
1456 (e) a possessory right; and
1457 (f) a claim.
- 1458 (31) "Review board," "review commission," and "review council" mean a board, commission, committee, or council that:
- 1460 (a) is authorized to approve policy made for the benefit of the general public by another body or person;
1462 (b) is created by, and whose duties are provided by, statute; and
1463 (c) performs its duties according to its own rules without supervision other than under the general control of another person as provided by statute.
- 1465 (32) "Road" includes:
- 1466 (a) a public bridge;
1467 (b) a county way;
1468 (c) a county road;
1469 (d) a common road; and
1470 (e) a state road.
- 1471 (33) "Sex" means, in relation to an individual, the individual's biological sex, either male or female, at birth, according to distinct reproductive roles as manifested by:
- 1473 (a) sex and reproductive organ anatomy;
1474 (b) chromosomal makeup; and
1475 (c) endogenous hormone profiles.
- 1476 (34) "Signature" includes a name, mark, or sign written with the intent to authenticate an instrument or writing.
- 1478 (35) "State," when applied to the different parts of the United States, includes a state, district, or territory of the United States.
- 1480 (36) "Swear" includes "affirm."
- 1481 (37) "Testify" means to make an oral statement under oath or affirmation.
- 1482 (38) "Uniformed services" means:
- 1483 (a) the armed forces;

HB0276S03 compared with HB0276S04

- 1484 (b) the commissioned corps of the National Oceanic and Atmospheric Administration; and
1486 (c) the commissioned corps of the United States Public Health Service.
- 1487 (39) "United States" includes each state, district, and territory of the United States of America.
- 1489 (40) "Utah Code" means the 1953 recodification of the Utah Code, as amended, unless the text
expressly references a portion of the 1953 recodification of the Utah Code as it existed:
- 1492 (a) on the day on which the 1953 recodification of the Utah Code was enacted; or
1493 (b)
(i) after the day described in Subsection (40)(a); and
1494 (ii) before the most recent amendment to the referenced portion of the 1953 recodification of the Utah
Code.
- 1496 (41) "Vessel," when used with reference to shipping, includes a steamboat, canal boat, and every
structure adapted to be navigated from place to place.
- 1498 (42)
(a) "Veteran" means an individual who:
1499 (i) has served in the United States Armed Forces for at least 180 days:
1500 (A) on active duty; or
1501 (B) in a reserve component, to include the National Guard; or
1502 (ii) has incurred an actual service-related injury or disability while in the United States Armed
Forces regardless of whether the individual completed 180 days; and
1504 (iii) was separated or retired under conditions characterized as honorable or general.
- 1505 (b) This definition is not intended to confer eligibility for benefits.
- 1506 (43) "Will" includes a codicil.
- 1507 (44) "Woman" means an adult human female.
- 1508 (45) "Writ" means an order or precept in writing, issued in the name of:
1509 (a) the state;
1510 (b) a court; or
1511 (c) a judicial officer.
- 1512 (46) "Writing" includes:
1513 (a) printing;
1514 (b) handwriting; and
1515

HB0276S03 compared with HB0276S04

- (c) information stored in an electronic or other medium if the information is retrievable in a perceivable format.

1513 Section 15. Section **77-15-2** is amended to read:

1514 **77-15-2. Definitions.**

As used in this chapter:

1520 (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to determine if an individual is competent to stand trial.

1522 (2) "Competent to stand trial" means that a defendant has:

1523 (a) a rational and factual understanding of the criminal proceedings against the defendant and of the punishment specified for the offense charged; and

1525 (b) the ability to consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense.

1527 (3) "Department" means the Department of Health and Human Services.

1528 (4) "Forensic evaluator" means a licensed mental health professional who:

1529 (a) is not involved in the defendant's treatment;

1530 (b) is trained and qualified by the department to conduct a competency evaluation, a restoration screening, and a progress toward competency evaluation, based on knowledge, experience, or education relating to:

1533 (i) intellectual functioning or psychopathology; and

1534 (ii) the legal system and the rights of a defendant in a criminal trial; and

1535 (c) if under contract with the department, demonstrates ongoing education and training relating to forensic mental health in accordance with rules established by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1539 (5) "Incompetent to proceed" means that a defendant is not competent to stand trial as a result of:

1541 (a) mental illness; or

1542 (b) intellectual disability.

1543 [~~(6) "Intellectual disability" means an intellectual disability as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.~~]

1546 [(7)] (6) "Mental illness" means the same as that term is defined in Section 26B-5-301.

1547

HB0276S03 compared with HB0276S04

[~~(8)~~] (7) "Petition" means a petition to request a court to determine whether a defendant is competent to stand trial.

1549 [~~(9)~~] (8) "Progress toward competency evaluation" means an evaluation to determine whether an individual who is receiving restoration treatment is:

1551 (a) competent to stand trial;

1552 (b) incompetent to proceed but has a substantial probability of becoming competent to stand trial in the foreseeable future; or

1554 (c) incompetent to proceed and does not have a substantial probability of becoming competent to stand trial in the foreseeable future.

1556 [~~(10)~~] (9) "Restoration treatment" means training and treatment that is:

1557 (a) provided to an individual who is incompetent to proceed;

1558 (b) tailored to the individual's particular impairment to competency; and

1559 (c) limited to the purpose of restoring the individual to competency.

1556 Section 16. Section **77-15-5** is amended to read:

1561

CHAPTER 15. DEFENDANT'S COMPETENCY TO PROCEED

1558 **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.**

1564 (1) A court in which criminal proceedings are pending shall stay all criminal proceedings, if:

1565 (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or

1566 (b) the court raises the issue of the defendant's competency under Section 77-15-4.

1567 (2) The court in which the petition described in Subsection (1)(a) is filed:

1568 (a) shall inform the court in which criminal proceedings are pending of the petition, if the petition is not filed in the court in which criminal proceedings are pending;

1570 (b) shall review the allegations of incompetency;

1571 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of the petition, if the court finds the petition is not clearly sufficient on its face;

1573 (d) shall hold a hearing, if the petition is opposed by either party; and

1574 (e) may not order an examination of the defendant or order a hearing on the mental condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial.

1577 (3)

HB0276S03 compared with HB0276S04

(a) If the court finds that there is a bona fide doubt as to the defendant's competency to stand trial, the court shall order the department to have one or two forensic evaluators complete a competency evaluation for the defendant in accordance with Subsection (3)(b) and provide a report to the court regarding the competency of the defendant to stand trial.

1582 (b) The court shall order the department to have the defendant evaluated by one forensic evaluator unless:

1584 (i) the defendant is charged with a capital felony; or

1585 (ii) the defendant is charged with a felony that is not a capital felony, and the court determines, based on the allegations in the petition, that good cause exists to order two competency evaluations.

1588 (c)

(i) This section does not prohibit a party from seeking an additional forensic evaluator to conduct a competency evaluation of the defendant.

1590 (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c), the party shall:

1592 (A) select the additional forensic evaluator; and

1593 (B) pay the costs of the additional forensic evaluator.

1594 (d) The stipulation by parties to a bona fide doubt as to the defendant's competency to stand trial alone may not take the place of a competency evaluation ordered under this Subsection (3).

1597 (e) In accordance with state licensing laws, the court may only order the department to provide an initial evaluation and progress toward competency evaluation for a defendant who is located within the state.

1600 (4)

(a) If the petition or other information sufficiently raises concerns that the defendant may have an intellectual disability, at least one forensic evaluator who is experienced in assessments of intellectual disabilities shall conduct a competency evaluation.

1603 (b) The petitioner or other party, as directed by the court or requested by the department, shall provide to the forensic evaluator nonmedical information and materials relevant to a determination of the defendant's competency, including the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

1608

HB0276S03 compared with HB0276S04

(c) For purposes of a competency evaluation, a custodian of mental health records pertaining to the defendant, including the defendant's prior mental health evaluations or records relating to the defendant's substance use disorder, may provide the records to:

- 1612 (i) with the defendant's consent, a forensic evaluator or the department on the department's request; or
1614 (ii) a forensic evaluator by court order.

1615 (d) A court order under Subsection (4)(c) shall include a protective order that expires 180 days after the day on which:

- 1617 (i) the defendant is found guilty;
1618 (ii) the defendant enters a guilty plea;
1619 (iii) the court sentences the defendant; or
1620 (iv) if the case is appealed, the day on which the final appeal is resolved.

1621 (e)
(i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f), the court shall order the forensic evaluator to destroy all records subject to the protective order within the 180 day period described in Subsection (4)(d).

1624 (ii) A forensic evaluator is not required to destroy the records subject to the protective order if destroying the records is a violation of ethical standards to which the forensic evaluator is subject for occupational licensing.

1627 (f) The court may extend the protective order described in Subsection (4)(d) if:

- 1628 (i) the court finds the defendant incompetent to proceed without a substantial probability that the defendant will become competent in the foreseeable future;
1630 (ii) the prosecutor or another individual indicates to the court that the prosecutor or other individual will seek civil commitment of the defendant under Section 77-15-6; and
1633 (iii) the court orders the records be maintained and used only for the purposes of examining the defendant in connection with the petition for civil commitment.

1635 (g) An order for a competency evaluation may not contain an order for any other inquiry into the mental state of the defendant that is not described in this Subsection (4).

1637 (5) Pending a competency evaluation, unless the court or the department directs otherwise, the defendant shall be retained in the same custody or status that the defendant was in at the time the examination was ordered.

1640

HB0276S03 compared with HB0276S04

(6) In the conduct of a competency evaluation and in a report to the court, a forensic evaluator shall consider and address, in addition to any other factors determined to be relevant by the forensic evaluator:

1643 (a)

[(+)] the impact of the defendant's mental illness or intellectual disability on the defendant's present ability to:

1645 [(A)] (i) rationally and factually understand the criminal proceedings against the defendant; and

1647 [(B)] (ii) consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense;

1649 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator shall consider, as applicable[.]

1651 [(+)] the defendant's present ability to:

1652 [(A)] (i) understand the charges or allegations against the defendant;

1653 [(B)] (ii) communicate facts, events, and states of mind;

1654 [(C)] (iii) understand the range of possible penalties associated with the charges or allegations against the defendant;

1656 [(D)] (iv) engage in reasoned choice of legal strategies and options;

1657 [(E)] (v) understand the adversarial nature of the proceedings against the defendant;

1658 [(F)] (vi) manifest behavior sufficient to allow the court to proceed; and

1659 [(G)] (vii) testify relevantly, if applicable; and

1660 (c) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.

1662 (7) Upon a determination that the defendant is incompetent to proceed, the forensic evaluator shall indicate in the report to the court:

1664 (a) the factors that contribute to the defendant's incompetency, including the nature of the defendant's mental illness or intellectual disability, if any, and its relationship to the factors contributing to the defendant's incompetency;

1667 (b) whether there is a substantial probability that:

1668 (i) restoration treatment may bring the defendant to competency to stand trial in the foreseeable future;
or

1670 (ii) the defendant cannot become competent to stand trial in the foreseeable future;

HB0276S03 compared with HB0276S04

- 1671 (c) whether the defendant would benefit from restoration treatment; and
- 1672 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c), an explanation
of the reason for the determination and a summary of the treatment provided to the defendant in the
past.
- 1675 (8)
- (a) A forensic evaluator shall provide an initial report to the court and the prosecuting and defense
attorneys within 30 days of the receipt of the court's order. The report shall inform the court of the
examiner's opinion concerning the competency of the defendant to stand trial.
- 1679 (b)
- (i) If the forensic evaluator is unable to complete the report in the time specified in Subsection (8)(a),
the forensic evaluator shall give written notice to the court.
- 1681 (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i) shall receive a 15-
day extension, giving the forensic evaluator a total of 45 days after the day on which the forensic
evaluator received the court's order to conduct a competency evaluation and file a report.
- 1685 (iii) The court may further extend the deadline for completion of the evaluation and report if the court
determines that there is good cause for the extension.
- 1687 (iv) Upon receipt of an extension described in Subsection (8)(b)(iii), the forensic evaluator shall file the
report as soon as reasonably possible.
- 1689 (9) Any written report submitted by a forensic evaluator shall:
- 1690 (a) identify the case ordered for evaluation by the case number;
- 1691 (b) describe the procedures, techniques, and tests used in the examination and the purpose or
purposes for each, the time spent by the forensic evaluator with the defendant for purposes of the
examination, and the compensation to be paid to the evaluator for the report;
- 1695 (c) state the forensic evaluator's clinical observations, findings, and opinions on each factor described in
Subsection (6); and
- 1697 (d) identify the sources of information used by the forensic evaluator and present the basis for the
forensic evaluator's clinical findings and opinions.
- 1699 (10)
- (a) Any statement made by the defendant in the course of any competency examination, whether the
examination is with or without the consent of the defendant, any testimony by a forensic evaluator
based upon the statement, and any other fruits of the statement may not be admitted in evidence

HB0276S03 compared with HB0276S04

against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence, unless the evidence is relevant to a determination of the defendant's competency.

1706 (b) Before examining the defendant, the forensic evaluator shall specifically advise the defendant of the
limits of confidentiality as provided under Subsection (10)(a).

1708 (11)

(a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a competency hearing.
The hearing shall be held not less than five and not more than 15 days after the day on which the
court received the forensic evaluators' reports, unless for good cause the court sets a later date.

1712 (b) Any person directed by the department to conduct the competency evaluation may be subpoenaed to
testify at the hearing.

1714 (c) The court may call any forensic evaluator to testify at the hearing who is not called by the parties.
[-]If the court calls a forensic evaluator, counsel for the parties may cross-examine the forensic
evaluator.

1717 (d)

(i) If the forensic evaluators are in conflict as to the competency of the defendant, all forensic evaluators
should be called to testify at the hearing if reasonably available.

1720 (ii) A conflict in the opinions of the forensic evaluators does not require the appointment of an
additional forensic evaluator unless the court finds good cause for the appointment.

1723 (iii) If a party seeks an additional competency evaluation under this Subsection (11), that party shall:

1725 (A) select the additional forensic evaluator; and

1726 (B) pay the costs of the additional forensic evaluator.

1727 (12)

(a)

(i) A defendant shall be presumed competent to stand trial unless the court, by a preponderance of
the evidence, finds the defendant incompetent to proceed.

1729 (ii) The burden of proof is upon the proponent of incompetency at the hearing.

1730 (b) An adjudication of incompetent to proceed does not operate as an adjudication of incompetency to
give informed consent for medical treatment or for any other purpose, unless specifically set forth in
the court order.

1733

HB0276S03 compared with HB0276S04

(13) In determining the defendant's competency to stand trial, the court shall consider the totality of the circumstances, including:

- 1735 (a) the petition;
- 1736 (b) the defendant's criminal and arrest history;
- 1737 (c) prior mental health evaluations and treatments provided to the court by the defendant;
- 1738 (d) subject to Subsection (15), whether the defendant was found incompetent to proceed in a criminal action unrelated to the charged offense for which the petition is filed;
- 1740 (e) the testimony of lay witnesses, if any;
- 1741 (f) the forensic evaluator's testimony and report;
- 1742 (g) the materials on which the forensic evaluator's report is based; and
- 1743 (h) any other relevant evidence or consideration bearing on the competency of the defendant.
- 1745 (14) If the court finds the defendant incompetent to proceed:
 - 1746 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:
 - 1747 (i) include findings addressing each of the factors in Subsection (6)(a);
 - 1748 (ii) include a transportation order, if necessary;
 - 1749 (iii) be accompanied by the forensic evaluators' reports, any psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant, and any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition; and
 - 1754 (iv) be sent by the court to the department; and
- 1755 (b) the prosecuting attorney shall provide to the department:
 - 1756 (i) the charging document and probable cause statement, if any;
 - 1757 (ii) arrest or incident reports prepared by law enforcement and pertaining to the charged offense; and
 - 1759 (iii) additional supporting documents.
- 1760 (15) The court may not find the defendant incompetent to proceed based solely on a court having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6 in an unrelated criminal action if the court in the unrelated criminal action ordered the release more than one year before the day on which the petition described in Subsection (13)(a) is filed.
- 1765 (16) The court may make any reasonable order to ensure compliance with this section.
- 1766 (17) Failure to comply with this section does not result in the dismissal of criminal charges.
- 1763 Section 17. Section **77-15-6** is amended to read:

HB0276S03 compared with HB0276S04

- 1764 **77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent hearings --**
1765 **Notice to prosecuting attorneys.**
- 1770 (1)
- 1771 (a) Except as provided in Subsection (5), if after a hearing a court finds a defendant to be incompetent
1772 to proceed, the court shall order the defendant committed to the department for restoration
1773 treatment.
- 1774 (b)
- 1775 (i) Except as provided in Subsection (1)(b)(ii), the court may recommend but may not order placement
1776 of a defendant who is found incompetent to proceed.
- 1777 (ii) The court may order that the defendant be placed in a secure setting rather than a nonsecure setting.
- 1778 (c) Following restoration screening, the department's designee shall designate and inform the court of
1779 the specific placement and restoration treatment program for the defendant.
- 1780 (d) Restoration treatment shall be of sufficient scope and duration to:
- 1781 (i) restore the defendant to competency; or
- 1782 (ii) determine whether the defendant can be restored to competency in the foreseeable future.
- 1783 (e) A defendant who a court determines is incompetent to proceed may not be held for restoration
1784 treatment longer than:
- 1785 (i) the time reasonably necessary to determine that the defendant cannot become competent to stand
1786 trial in the foreseeable future; and
- 1787 (ii) the maximum period of incarceration that the defendant could receive if the defendant were
1788 convicted of the most severe offense of the offenses charged.
- 1789 (2)
- 1790 (a) A defendant who is receiving restoration treatment shall receive a progress toward competency
1791 evaluation, by:
- 1792 (i) a forensic evaluator, designated by the department; and
- 1793 (ii) an additional forensic evaluator, if requested by a party and paid for by the requesting party.
- 1794 (b) A forensic evaluator shall complete a progress toward competency evaluation and submit a report
1795 within 90 days after the day on which the forensic evaluator receives the commitment order from the
1796 department.
- 1797 (c) The report shall:
- 1798 (i) assess whether the defendant is exhibiting false or exaggerated physical or psychological symptoms;
- 1799 (ii) assess whether the defendant is exhibiting any other behavior that may indicate a risk of harm to the
1800 public or the defendant.

HB0276S03 compared with HB0276S04

- 1801 (ii) describe any diagnostic instruments, methods, and observations used by the evaluator to make the
determination;
- 1803 (iii) describe the defendant's current mental illness or intellectual disability, if any;
- 1804 (iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated symptoms on the
defendant's competency to stand trial;
- 1806 (v) assess the facility's or program's capacity to provide appropriate restoration treatment for the
defendant;
- 1808 (vi) assess the nature of restoration treatment provided to the defendant;
- 1809 (vii) assess what progress the defendant has made toward competency restoration, with respect to the
factors identified by the court in its initial order;
- 1811 (viii) assess whether the defendant can reasonably be restored to competency in the foreseeable future
given the restoration treatment currently being provided and the facility's or program's capacity to
provide appropriate restoration treatment for the defendant;
- 1815 (ix) assess the likelihood of restoration to competency, the amount of time estimated to achieve
competency, or the amount of time estimated to determine whether restoration to competency may
be achieved; and
- 1818 (x) include a statement by the facility's treating physician regarding:
 - 1819 (A) whether the defendant is taking any antipsychotic medication as prescribed;
 - 1820 (B) whether ongoing administration of antipsychotic medication is necessary to maintain the
defendant's competency to stand trial;
 - 1822 (C) whether antipsychotic medication is substantially likely to maintain the defendant's competency to
stand trial;
 - 1824 (D) whether antipsychotic medication is substantially unlikely to produce side effects which would
significantly interfere with the defendant's ability to assist in the defendant's defense;
 - 1827 (E) that no less intrusive means are available, and whether any of those means have been attempted to
render the defendant competent; and
 - 1829 (F) whether antipsychotic medication is medically appropriate and in the defendant's best medical
interest in light of the defendant's medical condition.
- 1831 (3)
 - (a) The court on its own motion or upon motion by either party or the department may appoint an
additional forensic evaluator to conduct a progress toward competency evaluation.

HB0276S03 compared with HB0276S04

- 1834 (b) If the court appoints an additional forensic evaluator upon motion of a party, that party shall pay the
costs of the additional forensic evaluator.
- 1836 (4)
- (a) Within 15 days after the day on which the court receives the forensic evaluator's report of the
progress toward competency evaluation, the court shall hold a hearing to review the defendant's
competency.
- 1839 (b) At the hearing, the burden of proving that the defendant is competent to stand trial is on the
proponent of competency.
- 1841 (c) Following the hearing, the court shall determine by a preponderance of evidence whether the
defendant:
- 1843 (i) is competent to stand trial;
- 1844 (ii) is competent, but requires the ongoing administration of antipsychotic medication in order to
maintain the defendant's competency to stand trial;
- 1846 (iii) is incompetent to proceed, with a substantial probability that the defendant may become competent
in the foreseeable future; or
- 1848 (iv) is incompetent to proceed, without a substantial probability that the defendant may become
competent in the foreseeable future.
- 1850 (5)
- (a) If at any time the court determines that the defendant is competent to stand trial, the court shall:
- 1852 (i) proceed with the trial or other procedures as may be necessary to adjudicate the charges;
- 1854 (ii) order that the defendant be returned to the placement and status that the defendant was in at
the time when the petition for the adjudication of competency was filed or raised by the court,
unless the court determines that placement of the defendant in a less restrictive environment is
more appropriate;
- 1858 (iii) order the ongoing administration of antipsychotic medication to the defendant for the
purpose of maintaining the defendant's competency to stand trial, if the court finds that the
administration of antipsychotic medication is necessary to maintain the defendant's competency
to stand trial under Subsection (4)(c)(ii); and
- 1862 (iv) require the agency, jail, or prison with custody over the defendant to report to the court
any noncompliance with the court's orders under this Subsection (5) within 48 hours of the
noncompliance.

HB0276S03 compared with HB0276S04

- 1865 (b) If the court determines that the defendant is incompetent to proceed with a substantial probability
that the defendant may become competent in the foreseeable future, the court may order that the
defendant remain committed to the department or the department's designee for the purpose of
restoration treatment.
- 1869 (c)
- (i) If the court determines that the defendant is incompetent to proceed without a substantial probability
that the defendant may become competent in the foreseeable future, the court shall order the
defendant released from commitment to the department, unless the prosecutor or another individual
informs the court that civil commitment proceedings pursuant to Title 26B, Chapter 5, Health Care
- Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People
with Disabilities, will be initiated.
- 1876 (ii) The commitment proceedings must be initiated by a petition filed within seven days after the day on
which the court makes the determination described in Subsection (4)(c)(iv), unless the court finds
that there is good cause to delay the initiation of the civil commitment proceedings.
- 1880 (iii) The court may order the defendant to remain committed to the department until the civil
commitment proceedings conclude.
- 1882 (iv) If the defendant is civilly committed and admitted to a secure setting, the department shall provide
notice to the court that adjudicated the defendant incompetent to proceed and to the prosecution
agency that prosecuted the case at least [60] 15 days before any proposed release of the committed
individual from the secure setting.
- 1887 (v) If the prosecution agency that prosecuted the case intends to refile charges against the committed
individual:
- 1889 (A) the prosecution agency shall provide written notice of that intent to the department within 15 days
after the department provides the notice described in Subsection (5)(c)(iv); and
- 1892 (B) the department shall postpone release of the committed individual for at least 30 days after the day
on which the department receives the written notice of intent from the prosecution agency.
- 1895 (vi) If the prosecution agency that prosecuted the case refiles charges against the committed individual
and the individual's competency is raised, the department shall postpone release of the individual
until the competency proceedings conclude.
- 1899 (6)

HB0276S03 compared with HB0276S04

- (a) At any time following the court's order under Subsection (5)(a)(iii), the defendant, the prosecuting attorney, the department, the treating physician, or the agency, jail, or prison with custody over the defendant, may notify the court of the need to review the medication order under Subsection (5)(a)(iii) for continued appropriateness and feasibility.
- 1904 (b) The court shall set the matter for a hearing if the notification under Subsection (6)(a) establishes good cause to review the matter.
- 1906 (7) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall schedule a competency review hearing for the earlier of:
- 1908 (a) the department's best estimate of when the defendant may be restored to competency; or
- 1910 (b) three months after the day on which the court determined under Subsection (5)(b) to extend the defendant's commitment.
- 1912 (8) Unless the defendant is charged with a crime listed in Subsection (9), if a defendant is incompetent to proceed by the day of the competency review hearing that follows the extension of a defendant's commitment, the court shall:
- 1915 (a) order the defendant be:
- 1916 (i) released or temporarily detained pending civil commitment proceedings as described in Subsection (5)(c); and
- 1918 (ii) terminate the defendant's commitment to the department for restoration treatment; or
- 1920 (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment up to 45 additional days.
- 1924 (9) If the defendant is charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (7), the court may extend the commitment for a period not to exceed nine months for the purpose of restoration treatment, with a mandatory review hearing at the end of the nine-month period.
- 1930 (10) Unless the defendant is charged with aggravated murder or murder, if, at the nine-month review hearing described in Subsection (9), the court determines that the defendant is incompetent to proceed, the court shall:
- 1933 (a)

HB0276S03 compared with HB0276S04

- (i) order the defendant be released or temporarily detained pending civil commitment proceedings as provided in Subsection (5)(c); and
- 1935 (ii) terminate the defendant's commitment to the department for restoration treatment; or
- 1937 (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment for up to 135 additional days.
- 1941 (11) If the defendant is charged with aggravated murder or murder and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the nine-month review hearing described in Subsection (9), the court may extend the commitment for a period not to exceed 24 months for the purpose of restoration treatment.
- 1946 (12) If the court extends the defendant's commitment term under Subsection (11), the court shall hold a hearing no less frequently than at 12-month intervals following the extension for the purpose of determining the defendant's competency status.
- 1949 (13) If, at the end of the 24-month commitment period described in Subsection (11), the court determines that the defendant is incompetent to proceed, the court shall:
- 1951 (a)
- (i) order the defendant be released or temporarily detained pending civil commitment proceedings as provided in Subsection (5)(c); and
- 1953 (ii) terminate the defendant's commitment to the department for restoration treatment; or
- 1955 (b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment for up to 12 additional months.
- 1959 (14)
- (a) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges.
- 1961 (b) The court may retain jurisdiction over the criminal case and may order periodic reviews.
- 1963 (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5, Health Care - Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, may still be adjudicated competent to stand trial under this chapter.
- 1967 (16)

HB0276S03 compared with HB0276S04

- (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (8), (10), or (13), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.
- 1971 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (8), (9), or (13), or is not dismissal of the criminal charges.
- 1973 (17) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.
- 1976 (18)
- (a) If, at any time, the defendant becomes competent to stand trial while the defendant is committed to the department, the clinical director of the Utah State Hospital, the department, or the department's designee shall certify that fact to the court.
- 1980 (b) The court shall conduct a competency review hearing:
- 1981 (i) within 15 working days after the day on which the court receives the certification described in Subsection (18)(a); or
- 1983 (ii) within 30 working days after the day on which the court receives the certification described in Subsection (18)(a), if the court determines that more than 15 working days are necessary for good cause related to the defendant's competency.
- 1986 (19) The court may order a hearing at any time on the court's own motion or upon recommendations of the clinical director of the Utah State Hospital or other facility or the department.
- 1989 (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney and all counsel of record.
- 1987 Section 18. Section **77-19-203** is amended to read:
- 1988 **77-19-203. Petition for inquiry as to competency to be executed -- Filing -- Contents -- Successive petitions.**
- 1994 (1) If an inmate who has been sentenced to death is or becomes incompetent to be executed, a petition under Subsection (2) may be filed in the district court of the county where the inmate is confined.
- 1997 (2) The petition shall:
- 1998 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to believe the inmate is incompetent to be executed; and
- 2000 (b) contain a specific recital of the facts, observations, and conversations with the inmate that form the basis for the petition.

HB0276S03 compared with HB0276S04

- 2002 (3) The petition may be based upon knowledge or information and belief and may be filed by the
inmate alleged to be incompetent, legal counsel for the inmate, or by an attorney representing the
state.
- 2005 (4) Before ruling on a petition filed by an inmate or his counsel alleging that the inmate is incompetent
to be executed, the court shall give the state and the Department of Corrections an opportunity to
respond to the allegations of incompetency.
- 2008 (5) If a petition is filed after an inmate has previously been found competent under either this chapter or
under [~~Title 77, Chapter 15, Inquiry into Sanity of Defendant~~] Chapter 15, Defendant's Competency
to Proceed, no further hearing on competency may be granted unless the successive petition:
- 2012 (a) alleges with specificity a substantial change of circumstances subsequent to the previous
determination of competency; and
- 2014 (b) is sufficient to raise a significant question about the inmate's competency to be executed.
- 2012 Section 19. Section **77-29-3** is amended to read:
- 2013 **77-29-3. Chapter inapplicable to incompetent persons.**
The provisions of this chapter shall not apply to any person while adjudged to be
incompetent to proceed under [~~Chapter 15, Inquiry into Sanity of Defendant~~]Chapter 15,
Defendant's Competency to Proceed.
- 2017 Section 20. Section **80-6-402** is amended to read:
- 2018 **80-6-402. Procedure -- Standard.**
- 2023 (1) When a written motion is filed in accordance with Section 80-6-401 [-]raising the issue of a minor's
competency to proceed, or when the juvenile [-]court raises the issue of a minor's competency to
proceed, the juvenile court shall stay all proceedings under this chapter .
- 2027 (2)
- (a) If a motion for inquiry is opposed by either party, the juvenile [-]court shall, before granting or
denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of
the motion.
- 2030 (b) If the juvenile [-]court finds that the allegations of incompetency raise a bona fide doubt as to the
minor's competency to proceed, the juvenile court shall:
- 2032 (i) enter an order for an evaluation of the minor's competency to proceed; and
- 2033 (ii) set a date for a hearing on the issue of the minor's competency.
- 2034 (3)

HB0276S03 compared with HB0276S04

- (a) After the granting of a motion, and before a full competency hearing, the juvenile [-]court may order the department to evaluate the minor and to report to the juvenile [-]court concerning the minor's mental condition.
- 2037 (b) In accordance with state licensing laws, the court may only order the department to provide an initial evaluation and progress toward competency evaluation for a minor who is located within the state.
- 2040 (4) The minor shall be evaluated by a forensic evaluator who:
- 2041 (a) has experience in juvenile forensic evaluations and juvenile brain development;
- 2042 (b) if it becomes apparent that the minor is not competent due to an intellectual disability or related condition, has experience in intellectual disability or related conditions; and
- 2044 (c) is not involved in the current treatment of the minor.
- 2045 (5) The petitioner or other party, as directed by the juvenile court, shall provide all information and materials relevant to a determination of the minor's competency to the department within seven days of the juvenile court's order, including:
- 2048 (a) the motion;
- 2049 (b) the arrest or incident reports pertaining to the charged offense;
- 2050 (c) the minor's known delinquency history information;
- 2051 (d) the minor's probation record relevant to competency;
- 2052 (e) known prior mental health evaluations and treatments; and
- 2053 (f) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the minor's education.
- 2055 (6)
- (a) The minor's parent or guardian, the prosecuting attorney, the defense attorney, and the attorney guardian ad litem, shall cooperate, by executing releases of information when necessary, in providing the relevant information and materials to the forensic evaluator, including:
- 2059 (i) medical records;
- 2060 (ii) prior mental evaluations; or
- 2061 (iii) records of diagnosis or treatment of substance abuse disorders.
- 2062 (b) The minor shall cooperate, by executing a release of information when necessary, in providing the relevant information and materials to the forensic evaluator regarding records of diagnosis or treatment of a substance abuse disorder.
- 2065 (7)

HB0276S03 compared with HB0276S04

- (a) In conducting the evaluation and in the report determining if a minor is competent to proceed, the forensic evaluator shall inform the juvenile court of the forensic evaluator's opinion whether:
- 2068 (i) the minor has a present ability to consult with counsel with a reasonable degree of rational understanding; and
- 2070 (ii) the minor has a rational as well as factual understanding of the proceedings.
- 2071 (b) In evaluating the minor, the forensic evaluator shall consider the minor's present ability to:
- 2073 (i) understand the charges or allegations against the minor;
- 2074 (ii) communicate facts, events, and states of mind;
- 2075 (iii) understand the range of possible penalties associated with the allegations against the minor;
- 2077 (iv) engage in reasoned choice of legal strategies and options;
- 2078 (v) understand the adversarial nature of the proceedings against the minor;
- 2079 (vi) manifest behavior sufficient to allow the juvenile court to proceed;
- 2080 (vii) testify relevantly; and
- 2081 (viii) any other factor determined to be relevant to the forensic evaluator.
- 2082 (8)
- (a) The forensic evaluator shall provide an initial report to the juvenile court, the prosecuting and defense attorneys, and the attorney guardian ad litem, if applicable, within 30 days of the receipt of the juvenile court's order.
- 2085 (b) If the forensic evaluator informs the juvenile court that additional time is needed, the juvenile court may grant, taking into consideration the custody status of the minor, up to an additional 15 days to provide the report to the juvenile court and counsel.
- 2088 (c) The forensic evaluator must provide the report within 45 days from the receipt of the juvenile court's order unless, for good cause shown, the juvenile court authorizes an additional period of time to complete the evaluation and provide the report.
- 2091 (d) The report shall inform the juvenile court of the forensic evaluator's opinion concerning the minor's competency.
- 2093 (9) If the forensic evaluator's opinion is that the minor is not competent to proceed, the report shall indicate:
- 2095 (a) the nature of the minor's:
- 2096 (i) mental illness;
- 2097 (ii) intellectual disability or related condition; or

HB0276S03 compared with HB0276S04

- 2098 (iii) developmental immaturity;
- 2099 (b) the relationship of the minor's mental illness, intellectual disability, related condition, or
developmental immaturity to the minor's incompetence;
- 2101 (c) whether there is a substantial likelihood that the minor may attain competency in the foreseeable
future;
- 2103 (d) the amount of time estimated for the minor to achieve competency if the minor undergoes
competency attainment treatment, including medication;
- 2105 (e) the sources of information used by the forensic evaluator; and
- 2106 (f) the basis for clinical findings and opinions.
- 2107 (10) Regardless of whether a minor consents to a competency evaluation, any statement made by the
minor in the course of the competency evaluation, any testimony by the forensic evaluator based
upon any statement made by the minor in the competency evaluation, and any other fruits of the
statement made by the minor in the competency evaluation:
- 2112 (a) may not be admitted in evidence against the minor in a proceeding under this chapter, except the
statement may be admitted on an issue respecting the mental condition on which the minor has
introduced evidence; and
- 2115 (b) may be admitted where relevant to a determination of the minor's competency.
- 2116 (11) Before evaluating the minor for a competency evaluation, a forensic evaluator shall specifically
advise the minor, and the minor's parent or guardian if reasonably available, of the limits of
confidentiality as provided under Subsection (10).
- 2119 (12) When the report is received, the juvenile court shall set a date for a competency hearing that shall
be held in not less than five and not more than 15 days, unless the juvenile court enlarges the time
for good cause.
- 2122 (13)
- (a) A minor shall be presumed competent unless the juvenile court, by a preponderance of the evidence,
finds the minor not competent to proceed.
- 2124 (b) The burden of proof is upon the proponent of incompetency to proceed.
- 2125 (14)
- (a) Following the hearing, the juvenile court shall determine by a preponderance of evidence whether
the minor is:
- 2127 (i) competent to proceed;

HB0276S03 compared with HB0276S04

- 2128 (ii) not competent to proceed with a substantial probability that the minor may attain competency in
the foreseeable future; or
- 2130 (iii) not competent to proceed without a substantial probability that the minor may attain
competency in the foreseeable future.
- 2132 (b) If the juvenile court enters a finding described in Subsection (14)(a)(i), the juvenile court shall
proceed with the proceedings in the minor's case.
- 2134 (c) If the juvenile court enters a finding described in Subsection (14)(a)(ii), the juvenile court shall
proceed in accordance with Section 80-6-403.
- 2136 (d)
- (i) If the juvenile court enters a finding described in Subsection (14)(a)(iii), the juvenile court shall
terminate the competency proceeding, dismiss the charges against the minor without prejudice, and
release the minor from any custody order related to the pending proceeding, unless the prosecutor
informs the court that commitment proceedings will be initiated in accordance with:
- 2141 (A) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for People with an
Intellectual Disability;
- 2143 (B) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State Hospital and Other
Mental Health Facilities; or
- 2145 (C) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18.
- 2147 (ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated within seven days
after the day on which the juvenile court enters the order under Subsection (14)(a), unless the court
enlarges the time for good cause shown.
- 2150 (iii) The juvenile court may order the minor to remain in custody until the commitment proceedings
have been concluded.
- 2152 (15) If the juvenile court finds the minor not competent to proceed, the juvenile court's order shall
contain findings addressing each of the factors in Subsection (7)(b).
- 2150 Section 21. Section **80-6-403** is amended to read:
- 2151 **80-6-403. Disposition on finding of not competent to proceed -- Subsequent hearings --**
Notice to prosecuting attorneys.
- 2157 (1) If the juvenile court determines that the minor is not competent to proceed, and there is a substantial
likelihood that the minor may attain competency in the foreseeable future, the juvenile court shall

HB0276S03 compared with HB0276S04

notify the department of the finding and allow the department 30 days to develop an attainment plan for the minor.

2161 (2) The attainment plan shall include:

2162 (a) any services or treatment the minor has been or is currently receiving that are necessary to attain competency;

2164 (b) any additional services or treatment the minor may require to attain competency;

2165 (c) an assessment of the parent, custodian, or guardian's ability to access or provide any recommended treatment or services;

2167 (d) any special conditions or supervision that may be necessary for the safety of the minor or others during the attainment period; and

2169 (e) the likelihood that the minor will attain competency and the amount of time likely required for the minor to attain competency.

2171 (3) The department shall provide the attainment plan to the juvenile court, the prosecuting attorney, the defense attorney, and the attorney guardian ad litem at least three days before the competency disposition hearing.

2174 (4)

(a) During the attainment period, the minor shall remain in the least restrictive appropriate setting.

2176 (b) A finding of not competent to proceed does not grant authority for a juvenile court to place a minor in the custody of a division of the department, or create eligibility for services from the Division of Services for People With Disabilities.

2179 (c) If the juvenile court orders the minor to be held in detention during the attainment period, the juvenile court shall make the following findings on the record:

2181 (i) the placement is the least restrictive appropriate setting;

2182 (ii) the placement is in the best interest of the minor;

2183 (iii) the minor will have access to the services and treatment required by the attainment plan in the placement; and

2185 (iv) the placement is necessary for the safety of the minor or others.

2186 (d) A juvenile court shall terminate an order of detention related to the pending proceeding for a minor who is not competent to proceed in that matter if:

2188 (i) the most severe allegation against the minor if committed by an adult is a class B misdemeanor;

2190

HB0276S03 compared with HB0276S04

- (ii) more than 60 days have passed after the day on which the juvenile court adjudicated the minor not competent to proceed; and
- 2192 (iii) the minor has not attained competency.
- 2193 (5)
 - (a) At any time that the minor becomes competent to proceed during the attainment period, the department shall notify the juvenile court, the prosecuting attorney, the defense attorney, and the attorney guardian ad litem.
 - 2196 (b) The juvenile court shall hold a hearing with 15 business days of notice from the department described in Subsection (5)(a).
 - 2198 (6)
 - (a) If at any time during the attainment period the juvenile court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future, the juvenile court shall terminate the competency proceeding, dismiss the petition or information without prejudice, and release the minor from any custody order related to the pending proceeding, unless the prosecuting attorney or any other individual informs the juvenile court that commitment proceedings will be initiated in accordance with:
 - 2205 (i) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability;
 - 2207 (ii) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State Hospital and Other Mental Health Facilities; or
 - 2209 (iii) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18.
 - 2211 (b) The prosecuting attorney shall initiate the proceedings described in Subsection (6)(a) within seven days after the juvenile court's order, unless the juvenile court enlarges the time for good cause shown.
 - 2214 (7) During the attainment period, the juvenile court may order a hearing or rehearing at anytime on the juvenile court's own motion or upon recommendation of any interested party or the department.
 - 2217 (8)
 - (a) Within three months of the juvenile court's approval of the attainment plan, the department shall provide a report on the minor's progress towards competence.
 - 2219 (b) The report described in Subsection (8)(a) shall address the minor's:
 - 2220 (i) compliance with the attainment plan;

HB0276S03 compared with HB0276S04

- 2221 (ii) progress towards competency based on the issues identified in the original competency evaluation;
and
- 2223 (iii) current mental illness, intellectual disability or related condition, or developmental immaturity,
and need for treatment, if any, and whether there is substantial likelihood of the minor attaining
competency within six months.
- 2226 (9)
- (a) Within 30 days of receipt of the report, the juvenile court shall hold a hearing to determine the
minor's current status.
- 2228 (b) At the hearing, the burden of proving the minor is competent is on the proponent of competency.
- 2230 (c) The juvenile court shall determine by a preponderance of the evidence whether the minor is
competent to proceed.
- 2232 (10) If the minor has not attained competency after the initial three month attainment period but is
showing reasonable progress towards attainment of competency, the juvenile court may extend the
attainment period up to an additional three months.
- 2235 (11) The department shall provide an updated juvenile competency evaluation at the conclusion of the
[six-month] extended attainment period under Subsection (10) to advise the juvenile court on the
minor's current competency status.
- 2238 (12) If the minor does not attain competency within six months after the juvenile court initially finds
the minor not competent to proceed, the court shall terminate the competency proceedings and
dismiss the petition or information filed without prejudice, unless good cause is shown that there is
a substantial likelihood the minor will attain competency within one year from the initial finding of
not competent to proceed.
- 2243 (13) In the event a minor has an unauthorized leave lasting more than 24 hours, the attainment period
shall toll until the minor returns.
- 2245 (14)
- (a) Regardless of whether a minor consents to attainment, any statement made by the minor in the
course of attainment, any testimony by the forensic evaluator based upon any statement made by
the minor in the course of attainment, and any other fruits of a statement made by the minor in the
course of attainment:
- 2249

HB0276S03 compared with HB0276S04

(i) may not be admitted in evidence against the minor in a proceeding under this chapter, except the statement may be admitted on an issue respecting the mental condition on which the minor has introduced evidence; and

2252 (ii) may be admitted where relevant to a determination of the minor's competency.

2253 (b) Before evaluating the minor during the attainment period, a forensic evaluator shall specifically advise the minor, and the minor's parent or guardian if reasonably available, of the limits of confidentiality provided in Subsection (14)(a).

2252 Section 22. **Effective date.**

This bill takes effect on May 7, 2025.

2-25-25 5:17 PM