

Nelson T. Abbott proposes the following substitute bill:

Commitment Revisions

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor:

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
11 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
13 when under commitment to the custody or to the treatment services of a local mental
14 health authority;
- 15 ▶ requires a designated examiner to conduct an examination of a proposed patient by
16 telehealth except in certain circumstances;
- 17 ▶ requires a court to hold a hearing on an application for involuntary commitment remotely
18 unless the court finds good cause not to hold the hearing remotely;
- 19 ▶ amends standards and processes related to the involuntary civil commitment of an
20 individual with an intellectual disability or related condition;
- 21 ▶ provides that a court may only order the Department of Health and Human Services
22 (department) to provide an initial evaluation and progress toward competency evaluation
23 for a defendant if the defendant is located within the state;
- 24 ▶ requires a court to dismiss a petition for involuntary civil commitment if both designated
25 examiners determine that the proposed patient does not meet the criteria for involuntary
26 commitment;
- 27 ▶ provides that when there is a conflict in the opinions of forensic evaluators, if a party
28 seeks an additional competency evaluation then the party is responsible for selecting the

- 29 evaluator and paying the cost of the evaluator;
- 30 ▸ amends provisions regarding the release of a defendant determined to be incompetent to
- 31 proceed from a secured setting;
- 32 ▸ addresses when the department is required to provide an updated juvenile competency
- 33 evaluation after an attainment period; and
- 34 ▸ makes technical and conforming changes.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **26B-2-121**, as renumbered and amended by Laws of Utah 2023, Chapter 305
- 42 **26B-2-122**, as last amended by Laws of Utah 2024, Chapter 240
- 43 **26B-5-301**, as renumbered and amended by Laws of Utah 2023, Chapter 308
- 44 **26B-5-310**, as renumbered and amended by Laws of Utah 2023, Chapter 308
- 45 **26B-5-322**, as last amended by Laws of Utah 2023, Chapter 184 and renumbered and
- 46 amended by Laws of Utah 2023, Chapter 308
- 47 **26B-5-332**, as last amended by Laws of Utah 2024, Chapters 287, 299 and 314
- 48 **26B-5-362**, as renumbered and amended by Laws of Utah 2023, Chapter 308
- 49 **26B-5-371**, as last amended by Laws of Utah 2023, Chapter 184 and renumbered and
- 50 amended by Laws of Utah 2023, Chapter 308
- 51 **26B-6-401**, as last amended by Laws of Utah 2024, Chapter 240
- 52 **26B-6-606**, as renumbered and amended by Laws of Utah 2023, Chapter 308
- 53 **26B-6-607**, as last amended by Laws of Utah 2024, Chapter 299
- 54 **26B-6-608**, as last amended by Laws of Utah 2024, Chapter 299
- 55 **26B-6-613**, as renumbered and amended by Laws of Utah 2023, Chapter 308
- 56 **68-3-12.5**, as last amended by Laws of Utah 2024, Chapter 438
- 57 **77-15-2**, as last amended by Laws of Utah 2023, Chapter 171
- 58 **77-15-5**, as last amended by Laws of Utah 2023, Chapters 171, 417 and last amended by
- 59 Coordination Clause, Laws of Utah 2023, Chapter 417
- 60 **77-15-6**, as last amended by Laws of Utah 2024, Chapter 174
- 61 **77-19-203**, as enacted by Laws of Utah 2004, Chapter 137
- 62 **77-29-3**, as enacted by Laws of Utah 1980, Chapter 15

63 **80-6-403**, as last amended by Laws of Utah 2023, Chapter 330

64

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

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

67 **26B-2-121 . Access to abuse and neglect information.**

68 (1) As used in this section:

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

70 (b) "Personal care attendant" means the same as that term is defined in Section [

71 ~~26B-6-401~~] 26B-6-101.

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

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

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

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

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

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
84 or neglect under Subsections 80-3-404(1) and (2);

85 (b)(i) determining whether a direct service worker:

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
88 or neglect under Subsections 80-3-404(1) and (2); and

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

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

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

94 (c)(i) determining whether a personal care attendant:

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

- 97 or neglect under Subsections 80-3-404(1) and (2); and
- 98 (ii) informing a person described in Subsections 26B-6-101(9)(a)(i) through (iv) that
- 99 a personal care attendant:
- 100 (A) is listed in the Licensing Information System; or
- 101 (B) has a substantiated finding by a juvenile court of a severe type of child abuse
- 102 or neglect under Subsections 80-3-404(1) and (2).
- 103 (3) Notwithstanding Subsection (2), the department may access the Division of Child and
- 104 Family Services' Management Information System under Section 80-2-1001:
- 105 (a) for the purpose of licensing and monitoring foster parents;
- 106 (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and
- 107 (c) for the purpose described in Section 26B-1-211.
- 108 (4) The department shall receive and process personal identifying information under
- 109 Subsection 26B-2-120(1) for the purposes described in Subsection (2).
- 110 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
- 111 Rulemaking Act, consistent with this part, defining the circumstances under which a
- 112 person may have direct access or provide services to children when:
- 113 (a) the person is listed in the Licensing Information System of the Division of Child and
- 114 Family Services created by Section 80-2-1002; or
- 115 (b) juvenile court records show that a court made a substantiated finding under Section
- 116 80-3-404, that the person committed a severe type of child abuse or neglect.
- 117 Section 2. Section **26B-2-122** is amended to read:
- 118 **26B-2-122 . Access to vulnerable adult abuse and neglect information.**
- 119 (1) For purposes of this section:
- 120 (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.
- 121 (b) "Personal care attendant" means the same as that term is defined in Section [
- 122 ~~26B-6-401~~] 26B-6-101.
- 123 (2) With respect to a licensee, a direct service worker, or a personal care attendant, the
- 124 department may access the database created by Section 26B-6-210 for the purpose of:
- 125 (a)(i) determining whether a person associated with a licensee, with direct access to
- 126 vulnerable adults, has a supported or substantiated finding of:
- 127 (A) abuse;
- 128 (B) neglect; or
- 129 (C) exploitation; and
- 130 (ii) informing a licensee that a person associated with the licensee has a supported or

- 131 substantiated finding of:
- 132 (A) abuse;
- 133 (B) neglect; or
- 134 (C) exploitation;
- 135 (b)(i) determining whether a direct service worker has a supported or substantiated
- 136 finding of:
- 137 (A) abuse;
- 138 (B) neglect; or
- 139 (C) exploitation; and
- 140 (ii) informing a direct service worker or the direct service worker's employer that the
- 141 direct service worker has a supported or substantiated finding of:
- 142 (A) abuse;
- 143 (B) neglect; or
- 144 (C) exploitation; or
- 145 (c)(i) determining whether a personal care attendant has a supported or substantiated
- 146 finding of:
- 147 (A) abuse;
- 148 (B) neglect; or
- 149 (C) exploitation; and
- 150 (ii) informing a person described in Subsections 26B-6-401(9)(a)(i) through (iv) that
- 151 a personal care attendant has a supported or substantiated finding of:
- 152 (A) abuse;
- 153 (B) neglect; or
- 154 (C) exploitation.
- 155 (3) The department shall receive and process personal identifying information under
- 156 Subsection 26B-2-120(2) for the purposes described in Subsection (2).
- 157 (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
- 158 Rulemaking Act, consistent with this part and Chapter 6, Part 2, Abuse, Neglect, or
- 159 Exploitation of a Vulnerable Adult, defining the circumstances under which a person
- 160 may have direct access or provide services to vulnerable adults when the person is listed
- 161 in the statewide database of the Division of Aging and Adult Services created by Section
- 162 26B-6-210 as having a supported or substantiated finding of abuse, neglect, or
- 163 exploitation.
- 164 Section 3. Section **26B-5-301** is amended to read:

165 **26B-5-301 . Definitions.**

166 As used in this part, Part 4, Commitment of Persons Under Age 18, and Part 5, Essential
167 Treatment and Intervention:

- 168 (1) "Adult" means an individual 18 years old or older.
- 169 (2) "Approved treatment facility or program" means a mental health or substance use
170 treatment provider that meets the goals and measurements described in Subsection
171 26B-5-102(2)(j).
- 172 (3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment
173 ordered under Section 26B-5-351.
- 174 (4) "Attending physician" means a physician licensed to practice medicine in this state who
175 has primary responsibility for the care and treatment of the declarant.
- 176 (5) "Attorney-in-fact" means an adult properly appointed under this part to make mental
177 health treatment decisions for a declarant under a declaration for mental health treatment.
- 178 (6) "Commitment to the custody of a local mental health authority" means that an adult is
179 committed to the custody of the local mental health authority that governs the mental
180 health catchment area where the adult resides or is found.
- 181 (7) "Community mental health center" means an entity that provides treatment and services
182 to a resident of a designated geographical area, that operates by or under contract with a
183 local mental health authority, and that complies with state standards for community
184 mental health centers.
- 185 (8) "Designated examiner" means:
- 186 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as
187 specially qualified by training or experience in the diagnosis of mental or related
188 illness; or
- 189 (b) a licensed mental health professional designated by the division as specially qualified
190 by training and who has at least five years' continual experience in the treatment of
191 mental illness.
- 192 (9) "Designee" means a physician who has responsibility for medical functions including
193 admission and discharge, an employee of a local mental health authority, or an employee
194 of a person that has contracted with a local mental health authority to provide mental
195 health services under Section 17-43-304.
- 196 (10) "Essential treatment" and "essential treatment and intervention" mean court-ordered
197 treatment at a local substance abuse authority or an approved treatment facility or
198 program for the treatment of an adult's substance use disorder.

- 199 (11) "Harmful sexual conduct" means the following conduct upon an individual without the
200 individual's consent, including the nonconsensual circumstances described in
201 Subsections 76-5-406(2)(a) through (l):
- 202 (a) sexual intercourse;
 - 203 (b) penetration, however slight, of the genital or anal opening of the individual;
 - 204 (c) any sexual act involving the genitals or anus of the actor or the individual and the
205 mouth or anus of either individual, regardless of the gender of either participant; or
 - 206 (d) any sexual act causing substantial emotional injury or bodily pain.
- 207 (12) "Informed waiver" means the patient was informed of a right and, after being informed
208 of that right and the patient's right to waive the right, expressly communicated his or her
209 intention to waive that right.
- 210 (13) "Incapable" means that, in the opinion of the court in a guardianship proceeding under
211 Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's
212 ability to receive and evaluate information effectively or communicate decisions is
213 impaired to such an extent that the person currently lacks the capacity to make mental
214 health treatment decisions.
- 215 (14) "Institution" means a hospital or a health facility licensed under Section 26B-2-206.
- 216 (15) "Lay person" means an individual identified and authorized by a patient to participate
217 in activities related to the patient's commitment, including court appearances, discharge
218 planning, and grievances, except that a patient may revoke a lay person's authorization at
219 any time.
- 220 (16) "Local substance abuse authority" means the same as that term is defined in Section
221 26B-5-101 and described in Section 17-43-201.
- 222 [(16)] (17) "Mental health facility" means the Utah State Hospital or other facility that
223 provides mental health services under contract with the division, a local mental health
224 authority, a person that contracts with a local mental health authority, or a person that
225 provides acute inpatient psychiatric services to a patient.
- 226 [(17)] (18) "Mental health officer" means an individual who is designated by a local mental
227 health authority as qualified by training and experience in the recognition and
228 identification of mental illness, to:
- 229 (a) apply for and provide certification for a temporary commitment; or
 - 230 (b) assist in the arrangement of transportation to a designated mental health facility.
- 231 [(18)] (19) "Mental illness" means:
- 232 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,

- 233 behavioral, or related functioning; or
- 234 (b) the same as that term is defined in:
- 235 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
- 236 published by the American Psychiatric Association; or
- 237 (ii) the current edition of the International Statistical Classification of Diseases and
- 238 Related Health Problems.
- 239 ~~[(19)]~~ (20) "Mental health treatment" means convulsive treatment, treatment with
- 240 psychoactive medication, or admission to and retention in a facility for a period not to
- 241 exceed 17 days.
- 242 ~~[(20)]~~ (21) "Patient" means an individual who is:
- 243 (a) under commitment to the custody or to the treatment services of a local mental health
- 244 authority; or
- 245 (b) undergoing essential treatment and intervention.
- 246 ~~[(21)]~~ (22) "Physician" means an individual who is:
- 247 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
- 248 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
- 249 Practice Act.
- 250 ~~[(22)]~~ (23) "Serious bodily injury" means bodily injury that involves a substantial risk of
- 251 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
- 252 protracted loss or impairment of the function of a bodily member, organ, or mental
- 253 faculty.
- 254 ~~[(23)]~~ (24) "State hospital" means the Utah State Hospital established in Section 26B-5-302.
- 255 ~~[(24)]~~ (25) "Substantial danger" means that due to mental illness, an individual is at serious
- 256 risk of:
- 257 (a) suicide;
- 258 (b) serious bodily self-injury;
- 259 (c) serious bodily injury because the individual is incapable of providing the basic
- 260 necessities of life, including food, clothing, or shelter;
- 261 (d) causing or attempting to cause serious bodily injury to another individual;
- 262 (e) engaging in harmful sexual conduct; or
- 263 (f) if not treated, suffering severe and abnormal mental, emotional, or physical distress
- 264 that:
- 265 (i) is associated with significant impairment of judgment, reason, or behavior; and
- 266 (ii) causes a substantial deterioration of the individual's previous ability to function

267 independently.

268 [~~(25)~~] (26) "Treatment" means psychotherapy, medication, including the administration of
 269 psychotropic medication, or other medical treatments that are generally accepted
 270 medical or psychosocial interventions for the purpose of restoring the patient to an
 271 optimal level of functioning in the least restrictive environment.

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

273 **26B-5-310 . Restrictions and limitations -- Rights and privileges.**

274 (1) Subject to the general rules of the division, and except to the extent that the director or [
 275 his] the director's designee determines that it is necessary for the welfare of the patient to
 276 impose restrictions, every patient is entitled to:

277 (a)(i) communicate, by sealed mail or otherwise, with persons, including official
 278 agencies, inside or outside the [facility] responsible mental health authority, local
 279 substance abuse authority, or approved treatment facility or program;
 280 (ii) be provided with letter-writing materials, including postage; and
 281 (iii) have staff of the responsible mental health authority, local substance abuse
 282 authority, or approved treatment facility or program assist the patient if the patient
 283 is unable to write, prepare, or mail correspondence;

284 (b) have frequent and consistent opportunities to receive visitors at reasonable times that
 285 do not interfere with clinical activities;[-and]

286 (c) speak or visit with the patient's attorney or clergy member within a reasonable period
 287 of time;

288 (d) exercise all civil rights, including the right to dispose of property, execute
 289 instruments, make purchases, enter contractual relationships, and vote, unless the
 290 patient has been adjudicated to be incompetent and has not been restored to legal
 291 capacity[-:] ;

292 (e) have access to adequate water and food, and to have the patient's nutritional needs
 293 met in a manner that is consistent with recognized dietary practices;

294 (f) be treated fairly, with respect and recognition of the patient's dignity and
 295 individuality;

296 (g) not be discriminated against on the basis of a characteristic identified in Subsection
 297 57-21-5(1);

298 (h) within 72 business hours after the patient's request, see and receive the services of a
 299 patient representative, including a peer specialist or patient advocate, who is not
 300 involved in the direct clinical care of the patient;

- 301 (i) have the patient's behavioral health orders for scope of treatment, declaration for
302 mental health treatment, or other psychiatric advance directive reviewed and
303 considered as the preferred treatment option for involuntary administration of
304 medications by the responsible local mental health authority, local substance abuse
305 authority, or approved treatment facility or program, unless by clear and convincing
306 evidence the patient's directive does not qualify as effective participation in
307 behavioral health decision-making;
- 308 (j) with the patient's consent, have the patient's information or records disclosed to an
309 adult family member, the patient's lay person, or, in accordance with state and federal
310 law, to a protection and advocacy system designated pursuant to 42 U.S.C. Sec.
311 10801 et seq.;
- 312 (k)(i) access to a telephone to make and receive private calls, unless determined a
313 clinical or safety risk; and
- 314 (ii) staff assistance to be able to communicate with others, if the patient does not have
315 a contact list;
- 316 (l) wear the patient's own clothes, keep and use the patient's own possessions, and keep
317 and be allowed to spend a reasonable amount of the patient's own money, unless
318 deemed a clinical or safety risk; and
- 319 (m) be told:
- 320 (i) the reason for the patient's detainment and the limitation of the patient's
321 detainment, including a description of the patient's right to refuse medication
322 unless the patient requires emergency medications; and
- 323 (ii) that the patient's commitment does not mean all treatment during commitment is
324 mandatory.
- 325 (2)(a) When any right of a patient is limited or denied, the nature, extent, and reason for
326 that limitation or denial shall be entered in the patient's treatment record.
- 327 (b) Information pertaining to a denial of any right of a patient shall be made available,
328 upon request, to the patient, the patient's attorney, and the patient's lay person.
- 329 (c) Any continuing denial or limitation of any right of a patient shall be reviewed every
330 30 days and shall also be entered in [~~that~~] the patient's treatment record.
- 331 (d) Notice of [~~that~~] a continuing denial of any right of a patient in excess of 30 days shall
332 be sent to the division, the [~~appropriate~~] responsible local mental health authority, the
333 appropriate local substance abuse authority, or an approved treatment facility or
334 program[, ~~whichever is most applicable to the patient~~].

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

342 [(4)] (3) Local mental health authorities, local substance abuse authorities, and approved
 343 treatment facilities or programs shall provide reasonable means and arrangements for
 344 informing involuntary patients of their right to release as provided in this chapter, and
 345 for assisting them in making and presenting requests for release.

346 [(5)] (4) ~~[Mental]~~ Local mental health facilities, local substance abuse authorities, and
 347 approved treatment facilities or programs shall post a statement, created by the division,
 348 describing a patient's rights under Utah law.

349 [(6)] (5) A local mental health authority, local substance abuse authority, or approved
 350 treatment facility or program may not intentionally retaliate or discriminate against a
 351 detained patient or employee for contacting or providing information to any official or to
 352 an employee of any state protection and advocacy agency or for initiating, participating
 353 in, or testifying in a grievance procedure or in an action for any remedy authorized
 354 pursuant to this section.

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

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

358 **26B-5-322 . Criminal's escape -- Penalty.**

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

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

364 **26B-5-332 . Involuntary commitment under court order -- Examination --**
 365 **Hearing -- Power of court -- Findings required -- Costs.**

366 (1) A responsible individual who has credible knowledge of an adult's mental illness and
 367 the condition or circumstances that have led to the adult's need to be involuntarily
 368 committed may initiate an involuntary commitment court proceeding by filing, in the

- 369 court in the county where the proposed patient resides or is found, a written application
370 that includes:
- 371 (a) unless the court finds that the information is not reasonably available, the proposed
372 patient's:
- 373 (i) name;
- 374 (ii) date of birth; and
- 375 (iii) social security number;
- 376 (b)(i) a certificate of a licensed physician or a designated examiner stating that within
377 the seven-day period immediately preceding the certification, the physician or
378 designated examiner examined the proposed patient and is of the opinion that the
379 proposed patient has a mental illness and should be involuntarily committed; or
380 (ii) a written statement by the applicant that:
- 381 (A) the proposed patient has been requested to, but has refused to, submit to an
382 examination of mental condition by a licensed physician or designated
383 examiner;
- 384 (B) is sworn to under oath; and
- 385 (C) states the facts upon which the application is based; and
- 386 (c) a statement whether the proposed patient has previously been under an assisted
387 outpatient treatment order, if known by the applicant.
- 388 (2) Before issuing a judicial order, the court:
- 389 (a) shall require the applicant to consult with the appropriate local mental health
390 authority at or before the hearing; and
- 391 (b) may direct a mental health professional from the local mental health authority to
392 interview the applicant and the proposed patient to determine the existing facts and
393 report the existing facts to the court.
- 394 (3) The court may issue an order, directed to a mental health officer or peace officer, to
395 immediately place a proposed patient in the custody of a local mental health authority or
396 in a temporary emergency facility, as described in Section 26B-5-334, to be detained for
397 the purpose of examination if:
- 398 (a) the court finds from the application, any other statements under oath, or any reports
399 from a mental health professional that there is a reasonable basis to believe that the
400 proposed patient has a mental illness that poses a danger to self or others and requires
401 involuntary commitment pending examination and hearing; or
- 402 (b) the proposed patient refuses to submit to an interview with a mental health

- 403 professional as directed by the court or to go to a treatment facility voluntarily.
- 404 (4)(a) The court shall provide notice of commencement of proceedings for involuntary
405 commitment, setting forth the allegations of the application and any reported facts,
406 together with a copy of any official order of detention, to a proposed patient before,
407 or upon, placement of the proposed patient in the custody of a local mental health
408 authority or, with respect to any proposed patient presently in the custody of a local
409 mental health authority whose status is being changed from voluntary to involuntary,
410 upon the filing of an application for that purpose with the court.
- 411 (b) The place of detention shall maintain a copy of the order of detention.
- 412 (5)(a) The court shall provide notice of commencement of proceedings for involuntary
413 commitment as soon as practicable to the applicant, any legal guardian, any
414 immediate adult family members, legal counsel for the parties involved, the local
415 mental health authority or the local mental health authority's designee, and any other
416 persons whom the proposed patient or the court designates.
- 417 (b) Except as provided in Subsection (5)(c), the notice under Subsection (5)(a) shall
418 advise the persons that a hearing may be held within the time provided by law.
- 419 (c) If the proposed patient refuses to permit release of information necessary for
420 provisions of notice under this subsection, the court shall determine the extent of
421 notice.
- 422 (6) Proceedings for commitment of an individual under 18 years old to a local mental health
423 authority may be commenced in accordance with Part 4, Commitment of Persons Under
424 Age 18.
- 425 (7)(a) The court may, in the court's discretion, transfer the case to any other district court
426 within this state, if the transfer will not be adverse to the interest of the proposed
427 patient.
- 428 (b) If a case is transferred under Subsection (7)(a), the parties to the case may be
429 transferred and the local mental health authority may be substituted in accordance
430 with Utah Rules of Civil Procedure, Rule 25.
- 431 (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a
432 judicial order, or after commitment of a proposed patient to a local mental health
433 authority or the local mental health authority's designee under court order for detention
434 or examination, the court shall appoint two designated examiners:
- 435 (a) who did not sign the civil commitment application nor the civil commitment
436 certification under Subsection (1);

- 437 (b) one of whom is:
- 438 (i) a licensed physician; or
- 439 (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health
- 440 clinical nurse specialist who:
- 441 (A) is nationally certified;
- 442 (B) is doctorally trained; and
- 443 (C) has at least two years of inpatient mental health experience, regardless of the
- 444 license the individual held at the time of that experience; and
- 445 (c) one of whom may be designated by the proposed patient or the proposed patient's
- 446 counsel, if that designated examiner is reasonably available.
- 447 (9) The court shall schedule a hearing to be held within 10 calendar days after the day on
- 448 which the designated examiners are appointed.
- 449 (10)(a) The designated examiners shall[;]
- 450 [(i)] conduct the examinations separately[;] .
- 451 [(ii)] ~~(b) [conduct the examinations at the home of the proposed patient, at a hospital or~~
- 452 ~~other medical facility, or at any other suitable place, including] The designated~~
- 453 examiners shall conduct the examinations:
- 454 (i) through telehealth[;] unless the designated examiner determines that:
- 455 (A) a telehealth examination would not be sufficient to properly assess the
- 456 proposed patient;
- 457 (B) a telehealth examination would have a harmful effect on the proposed patient's
- 458 health; or
- 459 (C) an in-person examination can be conducted as effectively, conveniently, and
- 460 timely as an examination through telehealth; and
- 461 (ii) if the designated examiner determines, pursuant to Subsection (10)(b)(i), that the
- 462 examination should be conducted in person, at the home of the proposed patient,
- 463 at a hospital or other medical facility, or at any other suitable place that is not
- 464 likely to have a harmful effect on the proposed patient's health[;] .
- 465 [(iii)] (c) The designated examiners shall inform the proposed patient, if not represented
- 466 by an attorney:
- 467 ~~[(A)]~~ (i) that the proposed patient does not have to say anything;
- 468 ~~[(B)]~~ (ii) of the nature and reasons for the examination;
- 469 ~~[(C)]~~ (iii) that the examination was ordered by the court;
- 470 ~~[(D)]~~ (iv) that any information volunteered could form part of the basis for the

- 471 proposed patient's involuntary commitment;
- 472 ~~[(E)]~~ (v) that findings resulting from the examination will be made available to the
- 473 court; and
- 474 ~~[(F)]~~ (vi) that the designated examiner may, under court order, obtain the proposed
- 475 patient's mental health records~~;~~ ~~and~~ .
- 476 ~~[(iv)]~~ (d) ~~[within]~~ Within 24 hours of examining the proposed patient, a designated
- 477 examiner shall report to the court, orally or in writing, whether the proposed patient
- 478 is mentally ill, has agreed to voluntary commitment, as described in Section
- 479 26B-5-360, or has acceptable programs available to the proposed patient without
- 480 court proceedings.
- 481 ~~[(b)]~~ (e) If a designated examiner reports orally under Subsection ~~[(10)(a)]~~ (10)(d), the
- 482 designated examiner shall immediately send a written report to the clerk of the court.
- 483 (11) If a designated examiner is unable to complete an examination on the first attempt
- 484 because the proposed patient refuses to submit to the examination, the court shall fix a
- 485 reasonable compensation to be paid to the examiner.
- 486 (12) If the local mental health authority, the local mental health authority's designee, or a
- 487 medical examiner determines before the court hearing that the conditions justifying the
- 488 findings leading to a commitment hearing no longer exist, the local mental health
- 489 authority, the local mental health authority's designee, or the medical examiner shall
- 490 immediately report the determination to the court.
- 491 (13)(a) The court shall terminate the proceedings and dismiss the application before the
- 492 hearing if both designated examiners inform the court that the proposed patient does
- 493 not meet the criteria in Subsection (16).
- 494 (b) The court may terminate the proceedings and dismiss the application at any time,
- 495 including before the hearing, if the designated examiners or the local mental health
- 496 authority or the local mental health authority's designee informs the court that the
- 497 proposed patient:
- 498 ~~[(a) does not meet the criteria in Subsection (16);]~~
- 499 ~~[(b)]~~ (i) has agreed to voluntary commitment, as described in Section 26B-5-360;
- 500 ~~[(e)]~~ (ii) has acceptable options for treatment programs that are available without
- 501 court proceedings; or
- 502 ~~[(d)]~~ (iii) meets the criteria for assisted outpatient treatment described in Section
- 503 26B-5-351.
- 504 (14)(a) Before the hearing, the court shall provide the proposed patient an opportunity to

- 505 be represented by counsel, and if neither the proposed patient nor others provide
506 counsel, the court shall appoint counsel and allow counsel sufficient time to consult
507 with the proposed patient before the hearing.
- 508 (b) In the case of an indigent proposed patient, the county in which the proposed patient
509 resides or is found shall make payment of reasonable attorney fees for counsel, as
510 determined by the court.
- 511 (15)(a)(i) The court shall afford the proposed patient, the applicant, and any other
512 person to whom notice is required to be given an opportunity to appear at the
513 hearing, to testify, and to present and cross-examine witnesses.
- 514 (ii) The court may, in the court's discretion, receive the testimony of any other person.
515 (iii) The court may allow a waiver of the proposed patient's right to appear for good
516 cause, which cause shall be set forth in the record, or an informed waiver by the
517 patient, which shall be included in the record.
- 518 (b) The court is authorized to exclude any person not necessary for the conduct of the
519 proceedings and may, upon motion of counsel, require the testimony of each
520 designated examiner to be given out of the presence of any other designated
521 examiners.
- 522 (c) The court shall:
- 523 (i) conduct the hearing in as informal a manner as may be consistent with orderly
524 procedure~~[-, and]~~ ; and
- 525 (ii) while preserving the due process rights of the proposed patient:
- 526 (A) conduct the hearing remotely, in accordance with Utah Rules of Civil
527 Procedure, Rule 87, unless the court finds good cause under Rule 87 not to
528 conduct the hearing remotely; or
- 529 (B) if the court finds good cause under Rule 87 not to conduct the hearing
530 remotely, conduct the hearing in a physical setting that is not likely to have a
531 harmful effect on the mental health of the proposed patient~~[-, while preserving~~
532 the due process rights of the proposed patient].
- 533 (d) The court shall consider any relevant historical and material information that is
534 offered, subject to the rules of evidence, including reliable hearsay under Utah Rules
535 of Evidence, Rule 1102.
- 536 (e)(i) A local mental health authority or the local mental health authority's designee
537 or the physician in charge of the proposed patient's care shall, at the time of the
538 hearing, provide the court with the following information:

- 539 (A) the detention order;
- 540 (B) admission notes;
- 541 (C) the diagnosis;
- 542 (D) any doctors' orders;
- 543 (E) progress notes;
- 544 (F) nursing notes;
- 545 (G) medication records pertaining to the current commitment; and
- 546 (H) whether the proposed patient has previously been civilly committed or under
- 547 an order for assisted outpatient treatment.
- 548 (ii) The local mental health authority or the local mental health authority's designee
- 549 or the physician in charge of the proposed patient's care shall also supply the
- 550 information described in Subsection (15)(e)(i) [shall also be supplied] to the
- 551 proposed patient's counsel at the time of the hearing, and at any time prior to the
- 552 hearing upon request by the proposed patient's counsel.
- 553 (16)(a) The court shall order commitment of an adult proposed patient to a local mental
- 554 health authority if, upon completion of the hearing and consideration of the
- 555 information presented, the court finds by clear and convincing evidence that:
- 556 (i)(A) the proposed patient has a mental illness;
- 557 (B) because of the proposed patient's mental illness the proposed patient poses a
- 558 substantial danger to self or others;
- 559 (C) the proposed patient lacks the ability to engage in a rational decision-making
- 560 process regarding the acceptance of mental treatment as demonstrated by
- 561 evidence of inability to weigh the possible risks of accepting or rejecting
- 562 treatment;
- 563 (D) there is no appropriate less-restrictive alternative to a court order of
- 564 commitment; and
- 565 (E) the local mental health authority can provide the proposed patient with
- 566 treatment that is adequate and appropriate to the proposed patient's conditions
- 567 and needs; or
- 568 (ii)(A) the proposed patient has been charged with a criminal offense;
- 569 (B) with respect to the charged offense, the proposed patient is found incompetent
- 570 to proceed as a result of a mental illness;
- 571 (C) the proposed patient has a mental illness;
- 572 (D) the proposed patient has a persistent unawareness of their mental illness and

- 573 the negative consequences of that illness, or within the preceding six months
574 has been requested or ordered to undergo mental health treatment but has
575 unreasonably refused to undergo that treatment;
- 576 (E) there is no appropriate less-restrictive alternative to a court order of
577 commitment; and
- 578 (F) the local mental health authority can provide the proposed patient with
579 treatment that is adequate and appropriate to the proposed patient's conditions
580 and needs.
- 581 (b)(i) If, at the hearing, the court determines that the proposed patient has a mental
582 illness but does not meet the other criteria described in Subsection (16)(a), the
583 court may consider whether the proposed patient meets the criteria for assisted
584 outpatient treatment under Section 26B-5-351.
- 585 (ii) The court may order the proposed patient to receive assisted outpatient treatment
586 in accordance with Section 26B-5-351 if, at the hearing, the court finds the
587 proposed patient meets the criteria for assisted outpatient treatment under Section
588 26B-5-351.
- 589 (iii) If the court determines that neither the criteria for commitment under Subsection
590 (16)(a) nor the criteria for assisted outpatient treatment under Section 26B-5-351
591 are met, the court shall dismiss the proceedings after the hearing.
- 592 (17)(a)(i) The order of commitment shall designate the period for which the patient
593 shall be treated.
- 594 (ii) If the patient is not under an order of commitment at the time of the hearing, the
595 patient's treatment period may not exceed six months without a review hearing.
- 596 (iii) Upon a review hearing, to be commenced before the expiration of the previous
597 order of commitment, an order for commitment may be for an indeterminate
598 period, if the court finds by clear and convincing evidence that the criteria
599 described in Subsection (16) will last for an indeterminate period.
- 600 (b)(i) The court shall maintain a current list of all patients under the court's order of
601 commitment and review the list to determine those patients who have been under
602 an order of commitment for the court designated period.
- 603 (ii) At least two weeks before the expiration of the designated period of any order of
604 commitment still in effect, the court that entered the original order of commitment
605 shall inform the appropriate local mental health authority or the local mental
606 health authority's designee of the expiration.

- 607 (iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local
608 mental health authority or the local mental health authority's designee shall
609 immediately reexamine the reasons upon which the order of commitment was
610 based.
- 611 (iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health
612 authority or the local mental health authority's designee determines that the
613 conditions justifying commitment no longer exist, the local mental health
614 authority or the local mental health authority's designee shall discharge the patient
615 from involuntary commitment and immediately report the discharge to the court.
- 616 (v) If, after reexamination under Subsection (17)(b)(iii), the local mental health
617 authority or the local mental health authority's designee determines that the
618 conditions justifying commitment continue to exist, the court shall immediately
619 appoint two designated examiners and proceed under Subsections (8) through (14).
- 620 (c)(i) The local mental health authority or the local mental health authority's designee
621 responsible for the care of a patient under an order of commitment for an
622 indeterminate period shall, at six-month intervals, reexamine the reasons upon
623 which the order of indeterminate commitment was based.
- 624 (ii) If the local mental health authority or the local mental health authority's designee
625 determines that the conditions justifying commitment no longer exist, the local
626 mental health authority or the local mental health authority's designee shall
627 discharge the patient from the local mental health authority's or the local mental
628 health authority designee's custody and immediately report the discharge to the
629 court.
- 630 (iii) If the local mental health authority or the local mental health authority's designee
631 determines that the conditions justifying commitment continue to exist, the local
632 mental health authority or the local mental health authority's designee shall send a
633 written report of the findings to the court.
- 634 (iv) [A] The local mental health authority or the local mental health authority's
635 designee shall notify the patient and the patient's counsel of record [shall be
636 notified] in writing that the involuntary commitment will be continued under
637 Subsection (17)(c)(iii), the reasons for the decision to continue, and that the
638 patient has the right to a review hearing by making a request to the court.
- 639 (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall
640 immediately appoint two designated examiners and proceed under Subsections (8)

641 through (14).

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

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

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

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

654 (20)(a) A local mental health authority shall provide discharge instructions to each
655 individual committed under this section at or before the time the individual is
656 discharged from the local mental health authority's custody, regardless of the
657 circumstances under which the individual is discharged.

658 (b) Discharge instructions provided under Subsection (20)(a) shall include:

- 659 (i) a summary of why the individual was committed to the local mental health
660 authority;
- 661 (ii) detailed information about why the individual is being discharged from the local
662 mental health authority's custody;
- 663 (iii) a safety plan for the individual based on the individual's mental illness or mental
664 or emotional state;
- 665 (iv) notification to the individual's primary care provider, if applicable;
- 666 (v) if the individual is discharged without food, housing, or economic security, a
667 referral to appropriate services, if such services exist in the individual's
668 community;
- 669 (vi) the phone number to call or text for a crisis services hotline, and information
670 about the availability of peer support services;
- 671 (vii) a copy of any psychiatric advance directive presented to the local mental health
672 authority, if applicable;
- 673 (viii) information about how to establish a psychiatric advance directive if one was
674 not presented to the local mental health authority;

- 675 (ix) as applicable, information about medications that were changed or discontinued
 676 during the commitment;
- 677 (x) a list of any screening or diagnostic tests conducted during the commitment;
- 678 (xi) a summary of therapeutic treatments provided during the commitment;
- 679 (xii) any laboratory work, including blood samples or imaging, that was completed or
 680 attempted during the commitment; and
- 681 (xiii) information about how to contact the local mental health authority if needed.
- 682 (c) If an individual's medications were changed, or if an individual was prescribed new
 683 medications while committed under this section, discharge instructions provided
 684 under Subsection (20)(a) shall include a clinically appropriate supply of medications,
 685 as determined by a licensed health care provider, to allow the individual time to
 686 access another health care provider or follow-up appointment.
- 687 (d) If an individual refuses to accept discharge instructions, the local mental health
 688 authority shall document the refusal in the individual's medical record.
- 689 (e) If an individual's discharge instructions include referrals to services under Subsection
 690 (20)(b)(v), the local mental health authority shall document those referrals in the
 691 individual's medical record.
- 692 (f) The local mental health authority shall attempt to follow up with a discharged
 693 individual at least 48 hours after discharge, and may use peer support professionals
 694 when performing follow-up care or developing a continuing care plan.

695 (21) If any provision of Subsection (16)(a)(ii) or the application of any provision of
 696 Subsection (16)(a)(ii) to any person or circumstance is held invalid by a court with
 697 jurisdiction, the remainder of Subsection (16)(a)(ii) shall be given effect without the
 698 invalid provision or application. The provisions of Subsection (16)(a)(ii) are severable.

699 Section 7. Section **26B-5-362** is amended to read:

700 **26B-5-362 . Commitment and care of criminally insane.**

701 Nothing contained in this part may be construed to alter or change the method presently
 702 employed for the commitment and care of the criminally insane as provided in [~~Title 77,~~
 703 ~~Chapter 15, Inquiry into Sanity of Defendant~~] Title 77, Chapter 15, Defendant's Competency to
 704 Proceed.

705 Section 8. Section **26B-5-371** is amended to read:

706 **26B-5-371 . Utah Forensic Mental Health Facility -- Design and operation --**
 707 **Security.**

708 (1) The forensic mental health facility is a secure treatment facility.

- 709 (2)(a) The forensic mental health facility accommodates the following populations:
- 710 (i) prison inmates displaying mental illness necessitating treatment in a secure mental
- 711 health facility;
- 712 (ii) criminally adjudicated persons found guilty with a mental illness or guilty with a
- 713 mental condition at the time of the offense undergoing evaluation for a mental
- 714 condition under Title 77, Chapter 16a, Commitment and Treatment of Individuals
- 715 with a Mental Condition;
- 716 (iii) criminally adjudicated persons undergoing evaluation for competency or found
- 717 guilty with a mental condition or guilty with a mental condition at the time of the
- 718 offense under Title 77, Chapter 16a, Commitment and Treatment of Individuals
- 719 with a Mental Condition, who also have an intellectual disability;
- 720 (iv) persons undergoing evaluation for competency or found by a court to be
- 721 incompetent to proceed in accordance with [~~Title 77, Chapter 15, Inquiry into~~
- 722 ~~Sanity of Defendant~~] Title 77, Chapter 15, Defendant's Competency to Proceed, or
- 723 not guilty by reason of insanity under Title 77, Chapter 14, Defenses;
- 724 (v) persons who are civilly committed to the custody of a local mental health
- 725 authority in accordance with this part, and who may not be properly supervised by
- 726 the Utah State Hospital because of a lack of necessary security, as determined by
- 727 the superintendent or the superintendent's designee; and
- 728 (vi) persons ordered to commit themselves to the custody of the division for
- 729 treatment at the Utah State Hospital as a condition of probation or stay of sentence
- 730 pursuant to Title 77, Chapter 18, The Judgment.
- 731 (b) Placement of an offender in the forensic mental health facility under any category
- 732 described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the
- 733 offender's status as established by the court at the time of adjudication.
- 734 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 735 department shall make rules providing for the allocation of beds to the categories
- 736 described in Subsection (2)(a).
- 737 (3) The department shall:
- 738 (a) own and operate the forensic mental health facility;
- 739 (b) provide and supervise administrative and clinical staff; and
- 740 (c) provide security staff who are trained as psychiatric technicians.
- 741 (4) Pursuant to Subsection 26B-5-303(3) the executive director shall designate individuals
- 742 to perform security functions for the state hospital.

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

744 **26B-6-401 . Definitions.**

745 As used in this part:

746 (1) "Approved provider" means a person approved by the division to provide home-and
747 community-based services.

748 (2) "Board" means the Utah State Developmental Center Board created under Section
749 26B-1-429.

750 (3)(a) "Brain injury" means an acquired injury to the brain that is neurological in nature,
751 including a cerebral vascular accident.

752 (b) "Brain injury" does not include a deteriorating disease.

753 (4) "Designated intellectual disability professional" means:

754 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:

755 (i)(A) has at least one year of specialized training in working with persons with an
756 intellectual disability; or

757 (B) has at least one year of clinical experience with persons with an intellectual
758 disability; and

759 (ii) is designated by the division as specially qualified, by training and experience, in
760 the treatment of an intellectual disability; or

761 (b) a clinical social worker, certified social worker, marriage and family therapist, or
762 professional counselor, licensed under Title 58, Chapter 60, Mental Health

763 Professional Practice Act, who:

764 (i) has at least two years of clinical experience with persons with an intellectual
765 disability; and

766 (ii) is designated by the division as specially qualified, by training and experience, in
767 the treatment of an intellectual disability.

768 (5) "Deteriorating disease" includes:

769 (a) multiple sclerosis;

770 (b) muscular dystrophy;

771 (c) Huntington's chorea;

772 (d) Alzheimer's disease;

773 (e) ataxia; or

774 (f) cancer.

775 (6) "Developmental center" means the Utah State Developmental Center, established in
776 accordance with Part 5, Utah State Developmental Center.

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

- 811 (V) communication;
- 812 (VI) physical health; or
- 813 (VII) employment; and
- 814 (iv) requires a combination or sequence of special interdisciplinary or generic care,
- 815 treatment, or other services that:
- 816 (A) may continue throughout life; and
- 817 (B) must be individually planned and coordinated.
- 818 (b) "Disability" does not include a condition due solely to:
- 819 (i) mental illness;
- 820 (ii) personality disorder;
- 821 (iii) deafness or being hard of hearing;
- 822 (iv) visual impairment;
- 823 (v) learning disability;
- 824 (vi) behavior disorder;
- 825 (vii) substance abuse; or
- 826 (viii) the aging process.
- 827 (10) "Division" means the Division of Services for People with Disabilities.
- 828 (11) "Eligible to receive division services" or "eligibility" means qualification, based on
- 829 criteria established by the division, to receive services that are administered by the
- 830 division.
- 831 (12) "Endorsed program" means a facility or program that:
- 832 (a) is operated:
- 833 (i) by the division; or
- 834 (ii) under contract with the division; or
- 835 (b) provides services to a person committed to the division under Part 6, Admission to
- 836 an Intermediate Care Facility for People with an Intellectual Disability.
- 837 (13) "Licensed physician" means:
- 838 (a) an individual licensed to practice medicine under:
- 839 (i) Title 58, Chapter 67, Utah Medical Practice Act; or
- 840 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
- 841 (b) a medical officer of the United States Government while in this state in the
- 842 performance of official duties.
- 843 (14) "Limited support services" means services that are administered by the division to
- 844 individuals with a disability:

- 845 (a) under a waiver authorized under 42 U.S.C. Sec. 1396n(c) by the Centers for
846 Medicare and Medicaid Services that permits the division to limit services to an
847 individual who is eligible to receive division services; and
- 848 (b) through a program that:
- 849 (i) was not operated by the division on or before January 1, 2020; and
- 850 (ii)(A) limits the kinds of services that an individual may receive; or
- 851 (B) sets a maximum total dollar amount for program services provided to each
852 individual.
- 853 (15) "Physical disability" means a medically determinable physical impairment that has
854 resulted in the functional loss of two or more of a person's limbs.
- 855 (16) "Public funds" means state or federal funds that are disbursed by the division.
- 856 (17)(a) "Related condition" means a severe, chronic condition that:
- 857 (i) manifests before the day on which an individual turns 22 years old;
- 858 (ii) is likely to continue indefinitely;
- 859 (iii) results in substantial functional limitations;
- 860 (iv) is closely related to an intellectual disability because the condition results in the
861 impairment of:
- 862 (A) general intellectual functioning, similar to that of an individual with an
863 intellectual disability; or
- 864 (B) adaptive behavior, similar to that of an individual with an intellectual
865 disability; and
- 866 (v) requires treatment or services similar to the treatment or services required for an
867 individual with an intellectual disability.
- 868 (b) "Related condition" does not include mental illness, as that term is defined in Section
869 26B-5-301.
- 870 [(17)] (18) "Resident" means an individual under observation, care, or treatment in an
871 intermediate care facility for people with an intellectual disability.
- 872 (19) "Substantial danger" means that because of an intellectual disability or related
873 condition, an individual is at risk of:
- 874 (a) suicide;
- 875 (b) serious bodily self-injury;
- 876 (c) serious bodily injury because the individual lacks capacity to provide the basic
877 necessities of life, such as food, clothing, or shelter;
- 878 (d) causing or attempting to cause serious bodily injury or serious emotional harm to

879 another individual;

880 (e) engaging in deviant sexual conduct; or

881 (f) suffering serious physical harm or serious emotional harm as a result of being
882 exploited, abused, or neglected.

883 [(18)] (20) "Sustainability fund" means the Utah State Developmental Center Long-Term
884 Sustainability Fund created in Section 26B-1-331.

885 Section 10. Section **26B-6-606** is amended to read:

886 **26B-6-606 . Involuntary commitment.**

887 An individual with an intellectual disability or related condition may not be involuntarily
888 committed to [~~an intermediate care facility for people with an intellectual disability~~] the division
889 except in accordance with Sections 26B-6-607 and 26B-6-608.

890 Section 11. Section **26B-6-607** is amended to read:

891 **26B-6-607 . Temporary emergency commitment -- Observation and evaluation.**

892 (1) [~~The director of the division or his designee may temporarily commit an individual to~~
893 ~~the division and therefore, as a matter of course, to an intermediate care facility for~~
894 ~~people with an intellectual disability for observation and evaluation~~] An individual with
895 an intellectual disability or related condition may be committed to the division on an
896 emergency basis upon[:]

897 [(a) ~~written application by a responsible person who has reason to know that the~~
898 ~~individual is in need of commitment, stating:]~~

899 [(i) ~~a belief that the individual has an intellectual disability and is likely to cause~~
900 ~~serious injury to self or others if not immediately committed;]~~

901 [(ii) ~~personal knowledge of the individual's condition; and]~~

902 [(iii) ~~the circumstances supporting that belief; or]~~

903 [(b)] certification by a [licensed physician or] designated intellectual disability
904 professional stating that the [physician or] designated intellectual disability
905 professional:

906 [(i)] (a) has examined the individual within a three-day period, excluding Saturdays,
907 Sundays, and state holidays, immediately preceding the certification; and

908 [(ii)] (b) is of the opinion that the individual has an intellectual disability or related
909 condition, and that because of the individual's intellectual disability [is likely to injure]
910 or related condition is a substantial danger to self or others[if not immediately
911 committed].

912 (2) If the individual in need of commitment is not placed in the custody of the director or

913 the director's designee by the person submitting the ~~[application, the director's]~~
914 certification, the director or the director's designee may certify, either in writing or orally
915 that the individual is in need of immediate commitment to prevent ~~[injury]~~ posing
916 substantial danger to self or others.

917 (3) Upon receipt of the ~~[application]~~ certification required by Subsection ~~[(1)(a) and the~~
918 ~~certifications required by Subsections (1)(b) and (2)]~~ (2), a peace officer ~~[may take the~~
919 ~~individual named in the application and certificates into custody, and]~~ may transport the
920 individual to a ~~[designated intermediate care facility for people with an intellectual~~
921 ~~disability]~~ placement designated by the division.

922 (4)(a) An individual committed under this section may be held for a maximum of ~~[72~~
923 ~~hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that~~
924 ~~time,]~~ 10 days, after which the individual shall be released unless proceedings for
925 involuntary commitment have been commenced under Section 26B-6-608.

926 (b) ~~[After]~~ If proceedings for involuntary commitment have been commenced~~[the~~
927 ~~individual shall be released unless an order of detention is issued in accordance with~~
928 ~~Section 26B-6-608]~~ , an emergency order under this section remains in effect until:
929 (i) the division determines that the conditions justifying commitment no longer exist;
930 or
931 (ii) a court order is issued pursuant to Section 26B-6-608.

932 (5)(a) If an individual is committed to the division under this section~~[on the application~~
933 ~~of any person other than the individual's legal guardian, spouse, parent, or next of kin],~~
934 the director or ~~[his]~~ the director's designee shall immediately give notice of the
935 commitment to the individual's legal guardian~~[- spouse, parent, or next of kin],~~ if
936 known.

937 (b)(i) Immediately after an individual is committed to the division under this section,
938 the division shall inform the individual, orally and in writing, of the individual's
939 right to communicate with an attorney.

940 (ii) If the individual desires to communicate with an attorney, the division shall take
941 immediate steps to assist the individual in contacting and communicating with an
942 attorney.

943 (6)(a) The division or an intermediate care facility shall provide discharge instructions to
944 each individual committed under this section at or before the time the individual is
945 discharged from the custody of the division or intermediate care facility, regardless of
946 whether the individual is discharged by being released or under other circumstances.

- 947 (b) Discharge instructions provided under Subsection (6)(a) shall include:
- 948 (i) a summary of why the individual was committed;
- 949 (ii) detailed information about why the individual is being discharged;
- 950 (iii) a safety plan for the individual based on the individual's intellectual disability
- 951 and condition;
- 952 (iv) notification to the individual's primary care provider, if applicable;
- 953 (v) if the individual is discharged without food, housing, or economic security, a
- 954 referral to appropriate services, if such services exist in the individual's
- 955 community;
- 956 (vi) the phone number to call or text for a crisis services hotline, and information
- 957 about the availability of peer support services;
- 958 (vii) a copy of any advance directive presented to the local mental health authority, if
- 959 applicable;
- 960 (viii) information about how to establish an advance directive if one was not
- 961 presented to the division or intermediate care facility;
- 962 (ix) as applicable, information about medications that were changed or discontinued
- 963 during the commitment;
- 964 (x) a list of any screening or diagnostic tests conducted during the commitment;
- 965 (xi) a summary of therapeutic treatments provided during the commitment;
- 966 (xii) any laboratory work, including blood samples or imaging, that was completed or
- 967 attempted during the commitment; and
- 968 (xiii) information about how to contact the division or intermediate care facility if
- 969 needed.
- 970 (c) If an individual's medications were changed, or if an individual was prescribed new
- 971 medications while committed under this section, discharge instructions provided
- 972 under Subsection (6)(a) shall include a clinically appropriate supply of medications,
- 973 as determined by a licensed health care provider, to allow the individual time to
- 974 access another health care provider or follow-up appointment.
- 975 (d) If an individual refuses to accept discharge instructions, the division or intermediate
- 976 care facility shall document the refusal in the individual's medical record.
- 977 (e) If an individual's discharge instructions include referrals to services under Subsection
- 978 (6)(b)(v), the division or intermediate care facility shall document those referrals in
- 979 the individual's medical record.
- 980 (f) The division shall attempt to follow up with a discharged individual at least 48 hours

981 after discharge, and may use peer support professionals when performing follow-up
982 care or developing a continuing care plan.

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

984 **26B-6-608 . Involuntary commitment -- Procedures -- Necessary findings --**
985 **Periodic review.**

986 [~~(1) Any responsible person who has reason to know that an individual is in need of~~
987 ~~commitment, who has a belief that the individual has an intellectual disability, and who~~
988 ~~has personal knowledge of the conditions and circumstances supporting that belief, may~~
989 ~~commence proceedings for involuntary commitment by filing a written petition with the~~
990 ~~district court, or if the subject of the petition is less than 18 years old with the juvenile~~
991 ~~court, of the county in which the individual to be committed is physically located at the~~
992 ~~time the petition is filed. The application shall be accompanied by:]~~

993 [~~(a) a certificate of a licensed physician or a designated intellectual disability~~
994 ~~professional, stating that within a seven-day period immediately preceding the~~
995 ~~certification, the physician or designated intellectual disability professional examined~~
996 ~~the individual and believes that the individual has an intellectual disability and is in~~
997 ~~need of involuntary commitment; or]~~

998 [~~(b) a written statement by the petitioner that:]~~

999 [~~(i) states that the individual was requested to, but refused to, submit to an~~
1000 ~~examination for an intellectual disability by a licensed physician or designated~~
1001 ~~intellectual disability professional, and that the individual refuses to voluntarily go~~
1002 ~~to the division or an intermediate care facility for people with an intellectual~~
1003 ~~disability recommended by the division for treatment;]~~

1004 [~~(ii) is under oath; and]~~

1005 [~~(iii) sets forth the facts on which the statement is based.:]~~

1006 [~~(2) Before issuing a detention order, the court may require the petitioner to consult with~~
1007 ~~personnel at the division or at an intermediate care facility for people with an intellectual~~
1008 ~~disability and may direct a designated intellectual disability professional to interview the~~
1009 ~~petitioner and the individual to be committed, to determine the existing facts, and to~~
1010 ~~report them to the court.]~~

1011 [~~(3) The court may issue a detention order and may direct a peace officer to immediately~~
1012 ~~take the individual to an intermediate care facility for people with an intellectual~~
1013 ~~disability to be detained for purposes of an examination if the court finds from the~~
1014 ~~petition, from other statements under oath, or from reports of physicians or designated~~

1015 intellectual disability professionals that there is a reasonable basis to believe that the
 1016 individual to be committed:]

1017 [(a) poses an immediate danger of physical injury to self or others;]
 1018 [(b) requires involuntary commitment pending examination and hearing;]
 1019 [(c) the individual was requested but refused to submit to an examination by a licensed
 1020 physician or designated intellectual disability professional; or]
 1021 [(d) the individual refused to voluntarily go to the division or to an intermediate care
 1022 facility for people with an intellectual disability recommended by the division.]

1023 [(4)(a) If the court issues a detention order based on an application that did not include
 1024 a certification by a designated intellectual disability professional or physician in
 1025 accordance with Subsection (1)(a), the director or his designee shall within 24 hours
 1026 after issuance of the detention order, excluding Saturdays, Sundays, and legal
 1027 holidays, examine the individual, report the results of the examination to the court
 1028 and inform the court:]

1029 [(i) whether the director or his designee believes that the individual has an intellectual
 1030 disability; and]
 1031 [(ii) whether appropriate treatment programs are available and will be used by the
 1032 individual without court proceedings.]

1033 [(b) If the report of the director or his designee is based on an oral report of the
 1034 examiner, the examiner shall immediately send the results of the examination in
 1035 writing to the clerk of the court.]

1036 [(5) Immediately after an individual is involuntarily committed under a detention order or
 1037 under Section 26B-6-607, the director or his designee shall inform the individual, orally
 1038 and in writing, of his right to communicate with an attorney. If an individual desires to
 1039 communicate with an attorney, the director or his designee shall take immediate steps to
 1040 assist the individual in contacting and communicating with an attorney.]

1041 (1)(a) Any responsible person who has reason to know that an individual is in need of
 1042 commitment, who has a belief that the individual has an intellectual disability or
 1043 related condition, and who has personal knowledge of the conditions and
 1044 circumstances supporting that belief, may make a referral to the division to conduct
 1045 an assessment to determine if the individual meets the criteria for involuntary
 1046 commitment under this section.

1047 (b)(i) To conduct an assessment of an individual who may be in need of commitment
 1048 under this section, the division shall have two designated intellectual disability

- 1049 professionals examine the individual.
- 1050 (ii) The examinations described in Subsection (1)(b)(i) shall be conducted separately
1051 and at a suitable location not likely to have a harmful effect on the individual
1052 being examined.
- 1053 (c) If the designated intellectual disability professionals who conduct the examinations
1054 described in Subsection (1)(b)(i) both believe the examined individual meets the
1055 criteria for involuntary commitment under this section, the division may file a written
1056 petition to commence involuntary commitment proceedings with the district court, or
1057 with the juvenile court if the subject of the petition is less than 18 years old, of the
1058 county in which the subject of the petition is physically located at the time the
1059 petition is filed.
- 1060 (d)(i) The division shall include with a petition described in Subsection (1)(c) a
1061 certification from each of the designated intellectual disability professionals who
1062 examined the subject of the petition.
- 1063 (ii) A designated intellectual disability professional's certification shall state that:
- 1064 (A) within a seven-day period immediately preceding the filing of the petition, the
1065 designated intellectual disability professional examined the subject of the
1066 petition separate from the other designated intellectual disability professional;
1067 and
- 1068 (B) it is the designated intellectual disability professional's belief that the subject
1069 of the petition has an intellectual disability or related condition and meets the
1070 criteria for involuntary commitment under this section.
- 1071 (2)(a) If, pursuant to Title 77, Chapter 15, Defendant's Competency to Proceed, or Title
1072 80, Chapter 6, Part 4, Competency, a prosecutor informs a court that commitment
1073 proceedings will be initiated, the prosecutor shall make a referral to the division
1074 pursuant to Subsection (1).
- 1075 (b) If a prosecutor makes a referral to the division pursuant to Subsection (1), the
1076 division shall complete an assessment as described in Subsection (1)(b) within seven
1077 days after the day on which the prosecutor makes the referral unless the court
1078 enlarges the time for good cause shown.
- 1079 (c) Upon completion of the assessment described in Subsection (2)(b), if the designated
1080 intellectual disability professionals who examine the individual who is the subject of
1081 the referral both certify that they believe the individual meets the criteria for
1082 involuntary commitment under this section, the division may file a petition to

1083 commence involuntary commitment proceedings in accordance with Subsections
1084 (1)(c) and (d).

1085 ~~[(6)]~~ (3)(a) Immediately after ~~[commencement of proceedings]~~ the division files a petition
1086 for involuntary commitment under this section, the court shall:

1087 (i) schedule a hearing on the petition for no later than 10 days after the day on which
1088 the division filed the petition; and

1089 (ii) give notice of commencement of the proceedings to:

1090 [(i)] (A) the individual to be committed;
1091 [(ii)] (B) the ~~[applicant]~~ referent under Subsection (1)(a) or (2)(a), if applicable;
1092 [(iii)] (C) any legal guardian of the individual;
1093 [(iv)] (D) adult members of the individual's immediate family;
1094 [(v)] (E) legal counsel of the individual to be committed, if any;
1095 [(vi)] (F) the division; and
1096 [(vii)] (G) any other person to whom the individual requests, or the court
1097 designates, notice to be given.

1098 (b) If an individual cannot or refuses to disclose the identity of persons to be notified,
1099 the extent of notice shall be determined by the court.

1100 ~~[(7)]~~ (4) ~~[That notice]~~ The notice described in Subsection (3) shall:

1101 (a) set forth the allegations of the petition and all supporting facts;
1102 (b) be accompanied by a copy of ~~[any detention]~~ an emergency order issued under [
1103 Subsection (3)] Section 26B-6-607, if applicable; and

1104 (c) state that a hearing will be held within the time provided by law, and give the time
1105 and place for that hearing.

1106 ~~[(8)]~~ (5) The court may transfer the case and the custody of the individual to be committed
1107 to any other district court within the state~~[-, if:]~~ if the individual resides in another
1108 jurisdiction within the state.

1109 ~~[(a) there are no appropriate facilities for persons with an intellectual disability within~~
1110 ~~the judicial district; and]~~

1111 ~~[(b) the transfer will not be adverse to the interests of the individual.]~~

1112 ~~[(9)]~~(a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any
1113 order or commitment under a detention order, the court shall appoint two designated
1114 intellectual disability professionals to examine the individual. If requested by the
1115 individual's counsel, the court shall appoint a reasonably available, qualified person
1116 designated by counsel to be one of the examining designated intellectual disability

- 1117 professionals. The examinations shall be conducted:]
- 1118 [(i) separately;]
- 1119 [(ii) at the home of the individual to be committed, a hospital, an intermediate care
- 1120 facility for people with an intellectual disability, or any other suitable place not
- 1121 likely to have a harmful effect on the individual; and]
- 1122 [(iii) within a reasonable period of time after appointment of the examiners by the
- 1123 court.]
- 1124 [(b) The court shall set a time for a hearing to be held within 10 court days of the
- 1125 appointment of the examiners. However, the court may immediately terminate the
- 1126 proceedings and dismiss the application if, prior to the hearing date, the examiners,
- 1127 the director, or his designee informs the court that:]
- 1128 [(i) the individual does not have an intellectual disability; or]
- 1129 [(ii) treatment programs are available and will be used by the individual without court
- 1130 proceedings.]
- 1131 [(40)] (6)(a)(i) Each individual has the right to be represented by counsel at the
- 1132 commitment hearing and in all preliminary proceedings.
- 1133 (ii) If neither the individual nor others provide counsel, [-]the court shall appoint
- 1134 counsel and allow sufficient time for counsel to consult with the individual prior
- 1135 to any hearing.
- 1136 (b) If the individual is indigent, the county in which the individual was physically
- 1137 located when taken into custody shall pay reasonable attorney fees as determined by
- 1138 the court.
- 1139 [(41)] (7) [~~The division or a designated intellectual disability professional in charge of the~~
- 1140 ~~individual's care]~~ Upon order of the court, the division or the division's designee shall
- 1141 provide all [~~documented information on~~] relevant documentation on the individual to be
- 1142 committed [~~and~~]to the court [~~at the time of the hearing. The~~] and the individual's
- 1143 attorney[~~shall have access to all documented information on the individual at the time~~
- 1144 ~~of and prior to the hearing~~].
- 1145 [(42)] (8)(a) The court shall provide an opportunity to the individual, the petitioner, and
- 1146 all other persons to whom notice is required to be given to appear at the hearing, to
- 1147 testify, and to present and cross-examine witnesses.
- 1148 (b) The court may, in its discretion:
- 1149 (i) receive the testimony of any other person;
- 1150 (ii) allow a waiver of the right to appear only for good cause shown;

- 1151 (iii) exclude from the hearing all persons not necessary to conduct the proceedings;
 1152 and
- 1153 (iv) upon motion of counsel, require the testimony of each examiner to be given out
 1154 of the presence of any other examiner.
- 1155 (c)(i) The hearing shall be conducted in as informal a manner as may be consistent
 1156 with orderly procedure, and in a physical setting that is not likely to have a
 1157 harmful effect on the individual.
- 1158 (ii) The Utah Rules of Evidence apply, and the hearing shall be a matter of court
 1159 record.
- 1160 (iii) A verbatim record of the proceedings shall be maintained.
- 1161 ~~[(13)]~~ (9) The court may order commitment if, upon completion of the hearing and
 1162 consideration of the record, ~~[it]~~ the court finds by clear and convincing evidence that all
 1163 of the following conditions are met:
- 1164 (a) the individual to be committed has an intellectual disability or a related condition;
- 1165 (b) because of the individual's intellectual disability or related condition, one or more of
 1166 the following conditions exist:
- 1167 (i) the individual poses ~~[an immediate danger of physical injury]~~ substantial danger to
 1168 self or others;
- 1169 (ii) the individual lacks the capacity to provide the basic necessities of life, such as
 1170 food, clothing, or shelter;~~[-or]~~
- 1171 (iii) the individual is in immediate need of habilitation, rehabilitation, care, or
 1172 treatment to minimize the effects of the condition which poses a ~~[threat of serious~~
 1173 ~~physical or psychological injury]~~ risk of substantial danger to ~~[the individual, and]~~
 1174 self or others; or
- 1175 (iv) the individual lacks the capacity to engage in a rational decision-making process
 1176 concerning the need for habilitation, rehabilitation, care, or treatment, as
 1177 evidenced by an inability to weigh the possible costs and benefits of the care or
 1178 treatment and the alternatives to it;
- 1179 (c) there is no appropriate, less restrictive alternative reasonably available; and
- 1180 (d) the division ~~[or the intermediate care facility for people with an intellectual disability~~
 1181 ~~recommended by the division in which the individual is to be committed]~~ can provide
 1182 the individual with treatment, care, habilitation, or rehabilitation that is adequate and
 1183 appropriate to the individual's condition and needs.
- 1184 ~~[(14)]~~ (10) In the absence of any of the required findings by the court, described in

- 1185 Subsection ~~[(13)]~~ (9), the court shall dismiss the proceedings.
- 1186 ~~[(15)]~~ (11)(a) The order of commitment shall designate the period for which the
1187 individual will be committed.
- 1188 (b) An initial commitment may not exceed six months.~~[-Before the end of the initial
1189 commitment period, the administrator of the intermediate care facility for people with
1190 an intellectual disability shall commence a review hearing on behalf of the individual.]~~
- 1191 ~~[(b) At the conclusion of the review hearing, the court may issue an order of
1192 commitment for up to a one-year period.]~~
- 1193 ~~[(16)]~~ (12)(a) An individual committed under this part has the right to a rehearing~~[-upon
1194 filing a petition with the court within 30 days after entry of the court's order. If the
1195 petition for rehearing alleges error or mistake in the court's findings, the]~~ if, within 15
1196 days after the court enters the order of commitment, the individual files a petition
1197 with the court alleging error or mistake in the court's findings.
- 1198 (b) Upon a request for rehearing filed in accordance with Subsection (12)(a), the court
1199 shall:
- 1200 (i) appoint~~[-one impartial licensed physician and]~~ two impartial designated
1201 intellectual disability professionals who have not previously been involved in the
1202 case to examine the individual~~[-]~~ ; and
- 1203 (ii) schedule a rehearing to be held within 30 days after the court entered the order of
1204 commitment.
- 1205 (c) ~~[(The)]~~ In all other respects, the rehearing shall~~[-, in all other respects,]~~ be conducted in
1206 accordance with this part.
- 1207 ~~[(17)]~~ (13)(a)(i) The court shall maintain a current list of all individuals under its
1208 orders of commitment.
- 1209 (ii) ~~[(That list shall be reviewed in order)]~~ The court shall review the list described in
1210 Subsection (13)(a)(i) to determine those patients who have been under an order of
1211 commitment for the designated period.
- 1212 (b) At least two weeks prior to the expiration of the designated period of any
1213 commitment order still in effect, the court that entered the original order shall ~~[inform
1214 the director of the division of the impending expiration of the designated
1215 commitment period]~~ commence and send notice to all parties of a review hearing for
1216 the committed individual.
- 1217 (c) Prior to the review hearing, a division-designated intellectual disability professional
1218 shall reexamine the basis for the order of commitment and provide a report of that

- 1219 reexamination to the court.
- 1220 (d) At the conclusion of a review hearing, the court may:
- 1221 (i) issue an order of commitment for up to a one-year period; or
- 1222 (ii) discharge the individual from involuntary commitment if the conditions justifying
- 1223 commitment no longer exist.
- 1224 ~~[(e) The staff of the division shall immediately:]~~
- 1225 ~~[(i) reexamine the reasons upon which the order of commitment was based and report~~
- 1226 ~~the results of the examination to the court;]~~
- 1227 ~~[(ii) discharge the resident from involuntary commitment if the conditions justifying~~
- 1228 ~~commitment no longer exist; and]~~
- 1229 ~~[(iii) immediately inform the court of any discharge.]~~
- 1230 ~~[(d)] (e) [If the director of the division reports to the court that the conditions justifying~~
- 1231 ~~commitment no longer exist, and the administrator of the intermediate care facility~~
- 1232 ~~for people with an intellectual disability does not discharge the individual at the end~~
- 1233 ~~of the designated period, the court shall order the immediate discharge of the~~
- 1234 ~~individual, unless involuntary commitment proceedings are again commenced in~~
- 1235 ~~accordance with this section] If at any time during the commitment period the director~~
- 1236 ~~or the director's designee determines that the conditions justifying commitment no~~
- 1237 ~~longer exist, the division shall immediately discharge the individual from the~~
- 1238 ~~commitment and notify the court.~~
- 1239 (f) If the division does not discharge an individual at the end of the designated period of
- 1240 a commitment order, the court shall order the immediate discharge of the individual
- 1241 unless involuntary commitment proceedings are commenced again in accordance
- 1242 with this section.
- 1243 ~~[(e) If the director of the division, or the director's designee reports to the court that the~~
- 1244 ~~conditions designated in Subsection (13) still exist, the court may extend the~~
- 1245 ~~commitment order for up to one year. At the end of any extension, the individual~~
- 1246 ~~must be reexamined in accordance with this section, or discharged.]~~
- 1247 ~~[(18)] (14) When a resident is discharged under this [subsection] section, the division shall [~~
- 1248 ~~provide any further support services available and] continue to provide division services~~
- 1249 ~~for which the individual is eligible and as required to meet the resident's needs.~~
- 1250 ~~[(19)] (15)(a) The division or an intermediate care facility shall provide discharge~~
- 1251 ~~instructions to each individual committed under this section at or before the time the~~
- 1252 ~~individual is discharged from the custody of the division or intermediate care facility,~~

- 1253 regardless of whether the individual is discharged by being released or under other
1254 circumstances.
- 1255 (b) Discharge instructions provided under Subsection [~~(19)(a)~~] (15)(a) shall include:
- 1256 (i) a summary of why the individual was committed;
- 1257 (ii) detailed information about why the individual is being discharged;
- 1258 (iii) a safety plan for the individual based on the individual's intellectual disability
1259 and condition;
- 1260 (iv) notification to the individual's primary care provider, if applicable;
- 1261 (v) if the individual is discharged without food, housing, or economic security, a
1262 referral to appropriate services, if such services exist in the individual's
1263 community;
- 1264 (vi) the phone number to call or text for a crisis services hotline, and information
1265 about the availability of peer support services;
- 1266 (vii) a copy of any advance directive presented to the local mental health authority, if
1267 applicable;
- 1268 (viii) information about how to establish an advance directive if one was not
1269 presented to the division or intermediate care facility;
- 1270 (ix) as applicable, information about medications that were changed or discontinued
1271 during the commitment;
- 1272 (x) a list of any screening or diagnostic tests conducted during the commitment;
- 1273 (xi) a summary of therapeutic treatments provided during the commitment;
- 1274 (xii) any laboratory work, including blood samples or imaging, that was completed or
1275 attempted during the commitment; and
- 1276 (xiii) information about how to contact the division or intermediate care facility if
1277 needed.
- 1278 (c) If an individual's medications were changed, or if an individual was prescribed new
1279 medications while committed under this section, discharge instructions provided
1280 under Subsection [~~(19)(a)~~] (15)(a) shall include a clinically appropriate supply of
1281 medications, as determined by a licensed health care provider, to allow the individual
1282 time to access another health care provider or follow-up appointment.
- 1283 (d) If an individual refuses to accept discharge instructions, the division or intermediate
1284 care facility shall document the refusal in the individual's medical record.
- 1285 (e) If an individual's discharge instructions include referrals to services under Subsection [
1286 ~~(19)(b)(v)~~] (15)(b)(v), the division or intermediate care facility shall document those

1287 referrals in the individual's medical record.

1288 (f) The division shall attempt to follow up with a discharged individual at least 48 hours
1289 after discharge, and may use peer support professionals when performing follow-up
1290 care or developing a continuing care plan.

1291 Section 13. Section **26B-6-613** is amended to read:

1292 **26B-6-613 . Involuntary treatment with medication -- Committee -- Findings.**

1293 (1) If, after commitment, a resident elects to refuse treatment with medication, the director,
1294 the administrator of the intermediate care facility for people with an intellectual
1295 disability, or a designee, shall submit documentation regarding the resident's proposed
1296 treatment to a committee composed of:

1297 (a) a licensed physician experienced in treating persons with an intellectual disability,
1298 who is not directly involved in the resident's treatment or diagnosis, and who is not
1299 biased toward any one facility;

1300 (b) a psychologist who is a designated intellectual disability professional who is not
1301 directly involved in the resident's treatment or diagnosis; and

1302 (c) another designated intellectual disability professional of the facility for persons with
1303 an intellectual disability, or a designee.

1304 (2) Based upon the court's finding, under Subsection [~~26B-6-608(13)~~] 26B-6-608(9), that
1305 the resident lacks the ability to engage in a rational decision-making process regarding
1306 the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence
1307 of inability to weigh the possible costs and benefits of treatment, the committee may
1308 authorize involuntary treatment with medication if it determines that:

1309 (a) the proposed treatment is in the medical best interest of the resident, taking into
1310 account the possible side effects as well as the potential benefits of the medication;
1311 and

1312 (b) the proposed treatment is in accordance with prevailing standards of accepted
1313 medical practice.

1314 (3) In making the determination described in Subsection (2), the committee shall consider
1315 the resident's general history and present condition, the specific need for medication and
1316 its possible side effects, and any previous reaction to the same or comparable medication.

1317 (4) Any authorization of involuntary treatment under this section shall be periodically
1318 reviewed in accordance with rules promulgated by the division.

1319 Section 14. Section **68-3-12.5** is amended to read:

1320 **68-3-12.5 . Definitions for Utah Code.**

- 1321 (1) The definitions listed in this section apply to the Utah Code, unless:
- 1322 (a) the definition is inconsistent with the manifest intent of the Legislature or repugnant
- 1323 to the context of the statute; or
- 1324 (b) a different definition is expressly provided for the respective title, chapter, part,
- 1325 section, or subsection.
- 1326 (2) "Adjudicative proceeding" means:
- 1327 (a) an action by a board, commission, department, officer, or other administrative unit of
- 1328 the state that determines the legal rights, duties, privileges, immunities, or other legal
- 1329 interests of one or more identifiable persons, including an action to grant, deny,
- 1330 revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license;
- 1331 and
- 1332 (b) judicial review of an action described in Subsection (2)(a).
- 1333 (3) "Administrator" includes "executor" when the subject matter justifies the use.
- 1334 (4) "Advisory board," "advisory commission," and "advisory council" mean a board,
- 1335 commission, committee, or council that:
- 1336 (a) is created by, and whose duties are provided by, statute or executive order;
- 1337 (b) performs its duties only under the supervision of another person as provided by
- 1338 statute; and
- 1339 (c) provides advice and makes recommendations to another person that makes policy for
- 1340 the benefit of the general public.
- 1341 (5) "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, Space
- 1342 Force, and Coast Guard.
- 1343 (6) "County executive" means:
- 1344 (a) the county commission, in the county commission or expanded county commission
- 1345 form of government established under Title 17, Chapter 52a, Changing Forms of
- 1346 County Government;
- 1347 (b) the county executive, in the county executive-council optional form of government
- 1348 authorized by Section 17-52a-203; or
- 1349 (c) the county manager, in the council-manager optional form of government authorized
- 1350 by Section 17-52a-204.
- 1351 (7) "County legislative body" means:
- 1352 (a) the county commission, in the county commission or expanded county commission
- 1353 form of government established under Title 17, Chapter 52a, Changing Forms of
- 1354 County Government;

- 1355 (b) the county council, in the county executive-council optional form of government
 1356 authorized by Section 17-52a-203; and
- 1357 (c) the county council, in the council-manager optional form of government authorized
 1358 by Section 17-52a-204.
- 1359 (8) "Depose" means to make a written statement made under oath or affirmation.
- 1360 (9)(a) "Equal" means, with respect to biological sex, of the same value.
- 1361 (b) "Equal" does not mean, with respect to biological sex:
- 1362 (i) a characteristic of being the same or identical; or
- 1363 (ii) a requirement that biological sexes be ignored or co-mingled in every
 1364 circumstance.
- 1365 (10) "Executor" includes "administrator" when the subject matter justifies the use.
- 1366 (11) "Father" means a parent who is of the male sex.
- 1367 (12) "Female" means the characteristic of an individual whose biological reproductive
 1368 system is of the general type that functions in a way that could produce ova.
- 1369 (13) "Guardian" includes a person who:
- 1370 (a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary or
 1371 court appointment; or
- 1372 (b) is appointed by a court to manage the estate of a minor or incapacitated person.
- 1373 (14) "Highway" includes:
- 1374 (a) a public bridge;
- 1375 (b) a county way;
- 1376 (c) a county road;
- 1377 (d) a common road; and
- 1378 (e) a state road.
- 1379 (15) "Intellectual disability" ~~[means a significant, subaverage general intellectual~~
 1380 ~~functioning that:]~~ means the same as that term is defined in the most recent edition of the
 1381 Diagnostic and Statistical Manual of Mental Disorders published by the American
 1382 Psychiatric Association.
- 1383 ~~[(a) exists concurrently with deficits in adaptive behavior; and]~~
- 1384 ~~[(b) is manifested during the developmental period as defined in the current edition of~~
 1385 ~~the Diagnostic and Statistical Manual of Mental Disorders, published by the~~
 1386 ~~American Psychiatric Association.]~~
- 1387 (16) "Intermediate care facility for people with an intellectual disability" means an [
 1388 ~~intermediate care facility for the mentally retarded, as defined in Title XIX of the Social~~

1389 ~~Security Act]~~ institution or distinct part thereof for people with an intellectual disability
1390 or related conditions, if the institution or distinct part thereof meets the requirements
1391 described in 42 U.S.C. Secs. 1396d(d)(1) through (3).

1392 (17) "Land" includes:

- 1393 (a) land;
- 1394 (b) a tenement;
- 1395 (c) a hereditament;
- 1396 (d) a water right;
- 1397 (e) a possessory right; and
- 1398 (f) a claim.

1399 (18) "Male" means the characteristic of an individual whose biological reproductive system
1400 is of the general type that functions to fertilize the ova of a female.

1401 (19) "Man" means an adult human male.

1402 (20) "Month" means a calendar month, unless otherwise expressed.

1403 (21) "Mother" means a parent who is of the female sex.

1404 (22) "Oath" includes "affirmation."

1405 (23) "Person" means:

- 1406 (a) an individual;
- 1407 (b) an association;
- 1408 (c) an institution;
- 1409 (d) a corporation;
- 1410 (e) a company;
- 1411 (f) a trust;
- 1412 (g) a limited liability company;
- 1413 (h) a partnership;
- 1414 (i) a political subdivision;
- 1415 (j) a government office, department, division, bureau, or other body of government; and
- 1416 (k) any other organization or entity.

1417 (24) "Personal property" includes:

- 1418 (a) money;
- 1419 (b) goods;
- 1420 (c) chattels;
- 1421 (d) effects;
- 1422 (e) evidences of a right in action;

- 1423 (f) a written instrument by which a pecuniary obligation, right, or title to property is
1424 created, acknowledged, transferred, increased, defeated, discharged, or diminished;
1425 and
- 1426 (g) a right or interest in an item described in Subsections (24)(a) through (f).
- 1427 (25) "Personal representative," "executor," and "administrator" include:
- 1428 (a) an executor;
- 1429 (b) an administrator;
- 1430 (c) a successor personal representative;
- 1431 (d) a special administrator; and
- 1432 (e) a person who performs substantially the same function as a person described in
1433 Subsections (25)(a) through (d) under the law governing the person's status.
- 1434 (26) "Policy board," "policy commission," or "policy council" means a board, commission,
1435 or council that:
- 1436 (a) is authorized to make policy for the benefit of the general public;
- 1437 (b) is created by, and whose duties are provided by, the constitution or statute; and
- 1438 (c) performs its duties according to its own rules without supervision other than under
1439 the general control of another person as provided by statute.
- 1440 (27) "Population" is shown by the most recent state or national census, unless expressly
1441 provided otherwise.
- 1442 (28) "Process" means a writ or summons issued in the course of a judicial proceeding.
- 1443 (29) "Property" includes both real and personal property.
- 1444 (30) "Real estate" or "real property" includes:
- 1445 (a) land;
- 1446 (b) a tenement;
- 1447 (c) a hereditament;
- 1448 (d) a water right;
- 1449 (e) a possessory right; and
- 1450 (f) a claim.
- 1451 (31) "Review board," "review commission," and "review council" mean a board,
1452 commission, committee, or council that:
- 1453 (a) is authorized to approve policy made for the benefit of the general public by another
1454 body or person;
- 1455 (b) is created by, and whose duties are provided by, statute; and
- 1456 (c) performs its duties according to its own rules without supervision other than under

- 1457 the general control of another person as provided by statute.
- 1458 (32) "Road" includes:
- 1459 (a) a public bridge;
- 1460 (b) a county way;
- 1461 (c) a county road;
- 1462 (d) a common road; and
- 1463 (e) a state road.
- 1464 (33) "Sex" means, in relation to an individual, the individual's biological sex, either male or
- 1465 female, at birth, according to distinct reproductive roles as manifested by:
- 1466 (a) sex and reproductive organ anatomy;
- 1467 (b) chromosomal makeup; and
- 1468 (c) endogenous hormone profiles.
- 1469 (34) "Signature" includes a name, mark, or sign written with the intent to authenticate an
- 1470 instrument or writing.
- 1471 (35) "State," when applied to the different parts of the United States, includes a state,
- 1472 district, or territory of the United States.
- 1473 (36) "Swear" includes "affirm."
- 1474 (37) "Testify" means to make an oral statement under oath or affirmation.
- 1475 (38) "Uniformed services" means:
- 1476 (a) the armed forces;
- 1477 (b) the commissioned corps of the National Oceanic and Atmospheric Administration;
- 1478 and
- 1479 (c) the commissioned corps of the United States Public Health Service.
- 1480 (39) "United States" includes each state, district, and territory of the United States of
- 1481 America.
- 1482 (40) "Utah Code" means the 1953 recodification of the Utah Code, as amended, unless the
- 1483 text expressly references a portion of the 1953 recodification of the Utah Code as it
- 1484 existed:
- 1485 (a) on the day on which the 1953 recodification of the Utah Code was enacted; or
- 1486 (b)(i) after the day described in Subsection (40)(a); and
- 1487 (ii) before the most recent amendment to the referenced portion of the 1953
- 1488 recodification of the Utah Code.
- 1489 (41) "Vessel," when used with reference to shipping, includes a steamboat, canal boat, and
- 1490 every structure adapted to be navigated from place to place.

- 1491 (42)(a) "Veteran" means an individual who:
- 1492 (i) has served in the United States Armed Forces for at least 180 days:
- 1493 (A) on active duty; or
- 1494 (B) in a reserve component, to include the National Guard; or
- 1495 (ii) has incurred an actual service-related injury or disability while in the United
- 1496 States Armed Forces regardless of whether the individual completed 180 days; and
- 1497 (iii) was separated or retired under conditions characterized as honorable or general.
- 1498 (b) This definition is not intended to confer eligibility for benefits.
- 1499 (43) "Will" includes a codicil.
- 1500 (44) "Woman" means an adult human female.
- 1501 (45) "Writ" means an order or precept in writing, issued in the name of:
- 1502 (a) the state;
- 1503 (b) a court; or
- 1504 (c) a judicial officer.
- 1505 (46) "Writing" includes:
- 1506 (a) printing;
- 1507 (b) handwriting; and
- 1508 (c) information stored in an electronic or other medium if the information is retrievable
- 1509 in a perceivable format.
- 1510 Section 15. Section **77-15-2** is amended to read:
- 1511 **77-15-2 . Definitions.**
- 1512 As used in this chapter:
- 1513 (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to
- 1514 determine if an individual is competent to stand trial.
- 1515 (2) "Competent to stand trial" means that a defendant has:
- 1516 (a) a rational and factual understanding of the criminal proceedings against the
- 1517 defendant and of the punishment specified for the offense charged; and
- 1518 (b) the ability to consult with the defendant's legal counsel with a reasonable degree of
- 1519 rational understanding in order to assist in the defense.
- 1520 (3) "Department" means the Department of Health and Human Services.
- 1521 (4) "Forensic evaluator" means a licensed mental health professional who:
- 1522 (a) is not involved in the defendant's treatment;
- 1523 (b) is trained and qualified by the department to conduct a competency evaluation, a
- 1524 restoration screening, and a progress toward competency evaluation, based on

- 1525 knowledge, experience, or education relating to:
- 1526 (i) intellectual functioning or psychopathology; and
- 1527 (ii) the legal system and the rights of a defendant in a criminal trial; and
- 1528 (c) if under contract with the department, demonstrates ongoing education and training
- 1529 relating to forensic mental health in accordance with rules established by the
- 1530 department in accordance with Title 63G, Chapter 3, Utah Administrative
- 1531 Rulemaking Act.
- 1532 (5) "Incompetent to proceed" means that a defendant is not competent to stand trial as a
- 1533 result of:
- 1534 (a) mental illness; or
- 1535 (b) intellectual disability.
- 1536 [~~(6) "Intellectual disability" means an intellectual disability as defined in the current edition~~
- 1537 ~~of the Diagnostic and Statistical Manual of Mental Disorders published by the American~~
- 1538 ~~Psychiatric Association.]~~
- 1539 [~~(7)~~ (6) "Mental illness" means the same as that term is defined in Section 26B-5-301.
- 1540 [~~(8)~~ (7) "Petition" means a petition to request a court to determine whether a defendant is
- 1541 competent to stand trial.
- 1542 [~~(9)~~ (8) "Progress toward competency evaluation" means an evaluation to determine
- 1543 whether an individual who is receiving restoration treatment is:
- 1544 (a) competent to stand trial;
- 1545 (b) incompetent to proceed but has a substantial probability of becoming competent to
- 1546 stand trial in the foreseeable future; or
- 1547 (c) incompetent to proceed and does not have a substantial probability of becoming
- 1548 competent to stand trial in the foreseeable future.
- 1549 [~~(10)~~ (9) "Restoration treatment" means training and treatment that is:
- 1550 (a) provided to an individual who is incompetent to proceed;
- 1551 (b) tailored to the individual's particular impairment to competency; and
- 1552 (c) limited to the purpose of restoring the individual to competency.

1553 Section 16. Section 77-15-5 is amended to read:

1554 **CHAPTER 15. DEFENDANT'S COMPETENCY TO PROCEED**

1555 **77-15-5 . Order for hearing -- Stay of other proceedings -- Examinations of**

1556 **defendant -- Scope of examination and report.**

- 1557 (1) A court in which criminal proceedings are pending shall stay all criminal proceedings, if:
- 1558 (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or

- 1559 (b) the court raises the issue of the defendant's competency under Section 77-15-4.
- 1560 (2) The court in which the petition described in Subsection (1)(a) is filed:
- 1561 (a) shall inform the court in which criminal proceedings are pending of the petition, if
- 1562 the petition is not filed in the court in which criminal proceedings are pending;
- 1563 (b) shall review the allegations of incompetency;
- 1564 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of
- 1565 the petition, if the court finds the petition is not clearly sufficient on its face;
- 1566 (d) shall hold a hearing, if the petition is opposed by either party; and
- 1567 (e) may not order an examination of the defendant or order a hearing on the mental
- 1568 condition of the defendant unless the court finds that the allegations in the petition
- 1569 raise a bona fide doubt as to the defendant's competency to stand trial.
- 1570 (3)(a) If the court finds that there is a bona fide doubt as to the defendant's competency
- 1571 to stand trial, the court shall order the department to have one or two forensic
- 1572 evaluators complete a competency evaluation for the defendant in accordance with
- 1573 Subsection (3)(b) and provide a report to the court regarding the competency of the
- 1574 defendant to stand trial.
- 1575 (b) The court shall order the department to have the defendant evaluated by one forensic
- 1576 evaluator unless:
- 1577 (i) the defendant is charged with a capital felony; or
- 1578 (ii) the defendant is charged with a felony that is not a capital felony, and the court
- 1579 determines, based on the allegations in the petition, that good cause exists to order
- 1580 two competency evaluations.
- 1581 (c)(i) This section does not prohibit a party from seeking an additional forensic
- 1582 evaluator to conduct a competency evaluation of the defendant.
- 1583 (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c),
- 1584 the party shall:
- 1585 (A) select the additional forensic evaluator; and
- 1586 (B) pay the costs of the additional forensic evaluator.
- 1587 (d) The stipulation by parties to a bona fide doubt as to the defendant's competency to
- 1588 stand trial alone may not take the place of a competency evaluation ordered under
- 1589 this Subsection (3).
- 1590 (e) In accordance with state licensing laws, the court may only order the department to
- 1591 provide an initial evaluation and progress toward competency evaluation for a
- 1592 defendant who is located within the state.

- 1593 (4)(a) If the petition or other information sufficiently raises concerns that the defendant
1594 may have an intellectual disability, at least one forensic evaluator who is experienced
1595 in assessments of intellectual disabilities shall conduct a competency evaluation.
- 1596 (b) The petitioner or other party, as directed by the court or requested by the department,
1597 shall provide to the forensic evaluator nonmedical information and materials relevant
1598 to a determination of the defendant's competency, including the charging document,
1599 arrest or incident reports pertaining to the charged offense, known criminal history
1600 information, and known prior mental health evaluations and treatments.
- 1601 (c) For purposes of a competency evaluation, a custodian of mental health records
1602 pertaining to the defendant, including the defendant's prior mental health evaluations
1603 or records relating to the defendant's substance use disorder, may provide the records
1604 to:
- 1605 (i) with the defendant's consent, a forensic evaluator or the department on the
1606 department's request; or
- 1607 (ii) a forensic evaluator by court order.
- 1608 (d) A court order under Subsection (4)(c) shall include a protective order that expires
1609 180 days after the day on which:
- 1610 (i) the defendant is found guilty;
- 1611 (ii) the defendant enters a guilty plea;
- 1612 (iii) the court sentences the defendant; or
- 1613 (iv) if the case is appealed, the day on which the final appeal is resolved.
- 1614 (e)(i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f),
1615 the court shall order the forensic evaluator to destroy all records subject to the
1616 protective order within the 180 day period described in Subsection (4)(d).
- 1617 (ii) A forensic evaluator is not required to destroy the records subject to the
1618 protective order if destroying the records is a violation of ethical standards to
1619 which the forensic evaluator is subject for occupational licensing.
- 1620 (f) The court may extend the protective order described in Subsection (4)(d) if:
- 1621 (i) the court finds the defendant incompetent to proceed without a substantial
1622 probability that the defendant will become competent in the foreseeable future;
- 1623 (ii) the prosecutor or another individual indicates to the court that the prosecutor or
1624 other individual will seek civil commitment of the defendant under Section
1625 77-15-6; and
- 1626 (iii) the court orders the records be maintained and used only for the purposes of

- 1627 examining the defendant in connection with the petition for civil commitment.
- 1628 (g) An order for a competency evaluation may not contain an order for any other inquiry
1629 into the mental state of the defendant that is not described in this Subsection (4).
- 1630 (5) Pending a competency evaluation, unless the court or the department directs otherwise,
1631 the defendant shall be retained in the same custody or status that the defendant was in at
1632 the time the examination was ordered.
- 1633 (6) In the conduct of a competency evaluation and in a report to the court, a forensic
1634 evaluator shall consider and address, in addition to any other factors determined to be
1635 relevant by the forensic evaluator:
- 1636 (a) ~~(f)~~ the impact of the defendant's mental illness or intellectual disability on the
1637 defendant's present ability to:
- 1638 ~~(A)~~ (i) rationally and factually understand the criminal proceedings against the
1639 defendant; and
- 1640 ~~(B)~~ (ii) consult with the defendant's legal counsel with a reasonable degree of
1641 rational understanding in order to assist in the defense;
- 1642 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator
1643 shall consider, as applicable~~[-]~~
- 1644 ~~(f)~~ the defendant's present ability to:
- 1645 ~~(A)~~ (i) understand the charges or allegations against the defendant;
1646 ~~(B)~~ (ii) communicate facts, events, and states of mind;
1647 ~~(C)~~ (iii) understand the range of possible penalties associated with the charges or
1648 allegations against the defendant;
1649 ~~(D)~~ (iv) engage in reasoned choice of legal strategies and options;
1650 ~~(E)~~ (v) understand the adversarial nature of the proceedings against the defendant;
1651 ~~(F)~~ (vi) manifest behavior sufficient to allow the court to proceed; and
1652 ~~(G)~~ (vii) testify relevantly, if applicable; and
- 1653 (c) whether the defendant is exhibiting false or exaggerated physical or psychological
1654 symptoms relevant to the defendant's capacity to stand trial.
- 1655 (7) Upon a determination that the defendant is incompetent to proceed, the forensic
1656 evaluator shall indicate in the report to the court:
- 1657 (a) the factors that contribute to the defendant's incompetency, including the nature of
1658 the defendant's mental illness or intellectual disability, if any, and its relationship to
1659 the factors contributing to the defendant's incompetency;
- 1660 (b) whether there is a substantial probability that:

- 1661 (i) restoration treatment may bring the defendant to competency to stand trial in the
1662 foreseeable future; or
- 1663 (ii) the defendant cannot become competent to stand trial in the foreseeable future;
- 1664 (c) whether the defendant would benefit from restoration treatment; and
- 1665 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c),
1666 an explanation of the reason for the determination and a summary of the treatment
1667 provided to the defendant in the past.
- 1668 (8)(a) A forensic evaluator shall provide an initial report to the court and the prosecuting
1669 and defense attorneys within 30 days of the receipt of the court's order. The report
1670 shall inform the court of the examiner's opinion concerning the competency of the
1671 defendant to stand trial.
- 1672 (b)(i) If the forensic evaluator is unable to complete the report in the time specified in
1673 Subsection (8)(a), the forensic evaluator shall give written notice to the court.
- 1674 (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i)
1675 shall receive a 15-day extension, giving the forensic evaluator a total of 45 days
1676 after the day on which the forensic evaluator received the court's order to conduct
1677 a competency evaluation and file a report.
- 1678 (iii) The court may further extend the deadline for completion of the evaluation and
1679 report if the court determines that there is good cause for the extension.
- 1680 (iv) Upon receipt of an extension described in Subsection (8)(b)(iii), the forensic
1681 evaluator shall file the report as soon as reasonably possible.
- 1682 (9) Any written report submitted by a forensic evaluator shall:
- 1683 (a) identify the case ordered for evaluation by the case number;
- 1684 (b) describe the procedures, techniques, and tests used in the examination and the
1685 purpose or purposes for each, the time spent by the forensic evaluator with the
1686 defendant for purposes of the examination, and the compensation to be paid to the
1687 evaluator for the report;
- 1688 (c) state the forensic evaluator's clinical observations, findings, and opinions on each
1689 factor described in Subsection (6); and
- 1690 (d) identify the sources of information used by the forensic evaluator and present the
1691 basis for the forensic evaluator's clinical findings and opinions.
- 1692 (10)(a) Any statement made by the defendant in the course of any competency
1693 examination, whether the examination is with or without the consent of the
1694 defendant, any testimony by a forensic evaluator based upon the statement, and any

1695 other fruits of the statement may not be admitted in evidence against the defendant in
1696 any criminal proceeding except on an issue respecting mental condition on which the
1697 defendant has introduced evidence, unless the evidence is relevant to a determination
1698 of the defendant's competency.

1699 (b) Before examining the defendant, the forensic evaluator shall specifically advise the
1700 defendant of the limits of confidentiality as provided under Subsection (10)(a).

1701 (11)(a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a
1702 competency hearing. The hearing shall be held not less than five and not more than
1703 15 days after the day on which the court received the forensic evaluators' reports,
1704 unless for good cause the court sets a later date.

1705 (b) Any person directed by the department to conduct the competency evaluation may be
1706 subpoenaed to testify at the hearing.

1707 (c) The court may call any forensic evaluator to testify at the hearing who is not called
1708 by the parties. [-]If the court calls a forensic evaluator, counsel for the parties may
1709 cross-examine the forensic evaluator.

1710 (d)(i) If the forensic evaluators are in conflict as to the competency of the defendant,
1711 all forensic evaluators should be called to testify at the hearing if reasonably
1712 available.

1713 (ii) A conflict in the opinions of the forensic evaluators does not require the
1714 appointment of an additional forensic evaluator unless the court finds good cause
1715 for the appointment.

1716 (iii) If a party seeks an additional competency evaluation under this Subsection (11),
1717 that party shall:

1718 (A) select the additional forensic evaluator; and

1719 (B) pay the costs of the additional forensic evaluator.

1720 (12)(a)(i) A defendant shall be presumed competent to stand trial unless the court, by
1721 a preponderance of the evidence, finds the defendant incompetent to proceed.

1722 (ii) The burden of proof is upon the proponent of incompetency at the hearing.

1723 (b) An adjudication of incompetent to proceed does not operate as an adjudication of
1724 incompetency to give informed consent for medical treatment or for any other
1725 purpose, unless specifically set forth in the court order.

1726 (13) In determining the defendant's competency to stand trial, the court shall consider the
1727 totality of the circumstances, including:

1728 (a) the petition;

- 1729 (b) the defendant's criminal and arrest history;
- 1730 (c) prior mental health evaluations and treatments provided to the court by the defendant;
- 1731 (d) subject to Subsection (15), whether the defendant was found incompetent to proceed
- 1732 in a criminal action unrelated to the charged offense for which the petition is filed;
- 1733 (e) the testimony of lay witnesses, if any;
- 1734 (f) the forensic evaluator's testimony and report;
- 1735 (g) the materials on which the forensic evaluator's report is based; and
- 1736 (h) any other relevant evidence or consideration bearing on the competency of the
- 1737 defendant.
- 1738 (14) If the court finds the defendant incompetent to proceed:
- 1739 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:
- 1740 (i) include findings addressing each of the factors in Subsection (6)(a);
- 1741 (ii) include a transportation order, if necessary;
- 1742 (iii) be accompanied by the forensic evaluators' reports, any psychiatric,
- 1743 psychological, or social work reports submitted to the court relative to the mental
- 1744 condition of the defendant, and any other documents made available to the court
- 1745 by either the defense or the prosecution, pertaining to the defendant's current or
- 1746 past mental condition; and
- 1747 (iv) be sent by the court to the department; and
- 1748 (b) the prosecuting attorney shall provide to the department:
- 1749 (i) the charging document and probable cause statement, if any;
- 1750 (ii) arrest or incident reports prepared by law enforcement and pertaining to the
- 1751 charged offense; and
- 1752 (iii) additional supporting documents.
- 1753 (15) The court may not find the defendant incompetent to proceed based solely on a court
- 1754 having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6
- 1755 in an unrelated criminal action if the court in the unrelated criminal action ordered the
- 1756 release more than one year before the day on which the petition described in Subsection
- 1757 (13)(a) is filed.
- 1758 (16) The court may make any reasonable order to ensure compliance with this section.
- 1759 (17) Failure to comply with this section does not result in the dismissal of criminal charges.
- 1760 Section 17. Section **77-15-6** is amended to read:
- 1761 **77-15-6 . Commitment on finding of incompetency to stand trial -- Subsequent**
- 1762 **hearings -- Notice to prosecuting attorneys.**

- 1763 (1)(a) Except as provided in Subsection (5), if after a hearing a court finds a defendant to
1764 be incompetent to proceed, the court shall order the defendant committed to the
1765 department for restoration treatment.
- 1766 (b)(i) Except as provided in Subsection (1)(b)(ii), the court may recommend but may
1767 not order placement of a defendant who is found incompetent to proceed.
- 1768 (ii) The court may order that the defendant be placed in a secure setting rather than a
1769 nonsecure setting.
- 1770 (c) Following restoration screening, the department's designee shall designate and
1771 inform the court of the specific placement and restoration treatment program for the
1772 defendant.
- 1773 (d) Restoration treatment shall be of sufficient scope and duration to:
- 1774 (i) restore the defendant to competency; or
- 1775 (ii) determine whether the defendant can be restored to competency in the foreseeable
1776 future.
- 1777 (e) A defendant who a court determines is incompetent to proceed may not be held for
1778 restoration treatment longer than:
- 1779 (i) the time reasonably necessary to determine that the defendant cannot become
1780 competent to stand trial in the foreseeable future; and
- 1781 (ii) the maximum period of incarceration that the defendant could receive if the
1782 defendant were convicted of the most severe offense of the offenses charged.
- 1783 (2)(a) A defendant who is receiving restoration treatment shall receive a progress toward
1784 competency evaluation, by:
- 1785 (i) a forensic evaluator, designated by the department; and
- 1786 (ii) an additional forensic evaluator, if requested by a party and paid for by the
1787 requesting party.
- 1788 (b) A forensic evaluator shall complete a progress toward competency evaluation and
1789 submit a report within 90 days after the day on which the forensic evaluator receives
1790 the commitment order from the department.
- 1791 (c) The report shall:
- 1792 (i) assess whether the defendant is exhibiting false or exaggerated physical or
1793 psychological symptoms;
- 1794 (ii) describe any diagnostic instruments, methods, and observations used by the
1795 evaluator to make the determination;
- 1796 (iii) describe the defendant's current mental illness or intellectual disability, if any;

- 1797 (iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated
1798 symptoms on the defendant's competency to stand trial;
- 1799 (v) assess the facility's or program's capacity to provide appropriate restoration
1800 treatment for the defendant;
- 1801 (vi) assess the nature of restoration treatment provided to the defendant;
- 1802 (vii) assess what progress the defendant has made toward competency restoration,
1803 with respect to the factors identified by the court in its initial order;
- 1804 (viii) assess whether the defendant can reasonably be restored to competency in the
1805 foreseeable future given the restoration treatment currently being provided and the
1806 facility's or program's capacity to provide appropriate restoration treatment for the
1807 defendant;
- 1808 (ix) assess the likelihood of restoration to competency, the amount of time estimated
1809 to achieve competency, or the amount of time estimated to determine whether
1810 restoration to competency may be achieved; and
- 1811 (x) include a statement by the facility's treating physician regarding:
- 1812 (A) whether the defendant is taking any antipsychotic medication as prescribed;
- 1813 (B) whether ongoing administration of antipsychotic medication is necessary to
1814 maintain the defendant's competency to stand trial;
- 1815 (C) whether antipsychotic medication is substantially likely to maintain the
1816 defendant's competency to stand trial;
- 1817 (D) whether antipsychotic medication is substantially unlikely to produce side
1818 effects which would significantly interfere with the defendant's ability to assist
1819 in the defendant's defense;
- 1820 (E) that no less intrusive means are available, and whether any of those means
1821 have been attempted to render the defendant competent; and
- 1822 (F) whether antipsychotic medication is medically appropriate and in the
1823 defendant's best medical interest in light of the defendant's medical condition.
- 1824 (3)(a) The court on its own motion or upon motion by either party or the department
1825 may appoint an additional forensic evaluator to conduct a progress toward
1826 competency evaluation.
- 1827 (b) If the court appoints an additional forensic evaluator upon motion of a party, that
1828 party shall pay the costs of the additional forensic evaluator.
- 1829 (4)(a) Within 15 days after the day on which the court receives the forensic evaluator's
1830 report of the progress toward competency evaluation, the court shall hold a hearing to

- 1831 review the defendant's competency.
- 1832 (b) At the hearing, the burden of proving that the defendant is competent to stand trial is
1833 on the proponent of competency.
- 1834 (c) Following the hearing, the court shall determine by a preponderance of evidence
1835 whether the defendant:
- 1836 (i) is competent to stand trial;
- 1837 (ii) is competent, but requires the ongoing administration of antipsychotic medication
1838 in order to maintain the defendant's competency to stand trial;
- 1839 (iii) is incompetent to proceed, with a substantial probability that the defendant may
1840 become competent in the foreseeable future; or
- 1841 (iv) is incompetent to proceed, without a substantial probability that the defendant
1842 may become competent in the foreseeable future.
- 1843 (5)(a) If at any time the court determines that the defendant is competent to stand trial,
1844 the court shall:
- 1845 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
1846 charges;
- 1847 (ii) order that the defendant be returned to the placement and status that the defendant
1848 was in at the time when the petition for the adjudication of competency was filed
1849 or raised by the court, unless the court determines that placement of the defendant
1850 in a less restrictive environment is more appropriate;
- 1851 (iii) order the ongoing administration of antipsychotic medication to the defendant for
1852 the purpose of maintaining the defendant's competency to stand trial, if the court
1853 finds that the administration of antipsychotic medication is necessary to maintain
1854 the defendant's competency to stand trial under Subsection (4)(c)(ii); and
- 1855 (iv) require the agency, jail, or prison with custody over the defendant to report to the
1856 court any noncompliance with the court's orders under this Subsection (5) within
1857 48 hours of the noncompliance.
- 1858 (b) If the court determines that the defendant is incompetent to proceed with a
1859 substantial probability that the defendant may become competent in the foreseeable
1860 future, the court may order that the defendant remain committed to the department or
1861 the department's designee for the purpose of restoration treatment.
- 1862 (c)(i) If the court determines that the defendant is incompetent to proceed without a
1863 substantial probability that the defendant may become competent in the
1864 foreseeable future, the court shall order the defendant released from commitment

- 1865 to the department, unless the prosecutor or another individual informs the court
1866 that civil commitment proceedings pursuant to Title 26B, Chapter 5, Health Care -
1867 Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of
1868 Services for People with Disabilities, will be initiated.
- 1869 (ii) The commitment proceedings must be initiated by a petition filed within seven
1870 days after the day on which the court makes the determination described in
1871 Subsection (4)(c)(iv), unless the court finds that there is good cause to delay the
1872 initiation of the civil commitment proceedings.
- 1873 (iii) The court may order the defendant to remain committed to the department until
1874 the civil commitment proceedings conclude.
- 1875 (iv) If the defendant is civilly committed and admitted to a secure setting, the
1876 department shall provide notice to the court that adjudicated the defendant
1877 incompetent to proceed and to the prosecution agency that prosecuted the case at
1878 least [60] 15 days before any proposed release of the committed individual from
1879 the secure setting.
- 1880 (v) If the prosecution agency that prosecuted the case intends to refile charges against
1881 the committed individual:
- 1882 (A) the prosecution agency shall provide written notice of that intent to the
1883 department within 15 days after the department provides the notice described
1884 in Subsection (5)(c)(iv); and
- 1885 (B) the department shall postpone release of the committed individual for at least
1886 30 days after the day on which the department receives the written notice of
1887 intent from the prosecution agency.
- 1888 (vi) If the prosecution agency that prosecuted the case refiles charges against the
1889 committed individual and the individual's competency is raised, the department
1890 shall postpone release of the individual until the competency proceedings
1891 conclude.
- 1892 (6)(a) At any time following the court's order under Subsection (5)(a)(iii), the defendant,
1893 the prosecuting attorney, the department, the treating physician, or the agency, jail, or
1894 prison with custody over the defendant, may notify the court of the need to review
1895 the medication order under Subsection (5)(a)(iii) for continued appropriateness and
1896 feasibility.
- 1897 (b) The court shall set the matter for a hearing if the notification under Subsection (6)(a)
1898 establishes good cause to review the matter.

- 1899 (7) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall
1900 schedule a competency review hearing for the earlier of:
- 1901 (a) the department's best estimate of when the defendant may be restored to competency;
1902 or
1903 (b) three months after the day on which the court determined under Subsection (5)(b) to
1904 extend the defendant's commitment.
- 1905 (8) Unless the defendant is charged with a crime listed in Subsection (9), if a defendant is
1906 incompetent to proceed by the day of the competency review hearing that follows the
1907 extension of a defendant's commitment, the court shall:
- 1908 (a) order the defendant be:
- 1909 (i) released or temporarily detained pending civil commitment proceedings as
1910 described in Subsection (5)(c); and
1911 (ii) terminate the defendant's commitment to the department for restoration treatment;
1912 or
1913 (b) if the forensic evaluator reports to the court that there is a substantial probability that
1914 restoration treatment will bring the defendant to competency to stand trial in the
1915 foreseeable future, extend the defendant's commitment for restoration treatment up to
1916 45 additional days.
- 1917 (9) If the defendant is charged with aggravated murder, murder, attempted murder,
1918 manslaughter, or a first degree felony and the court determines that the defendant is
1919 making reasonable progress towards restoration of competency at the time of the hearing
1920 held pursuant to Subsection (7), the court may extend the commitment for a period not
1921 to exceed nine months for the purpose of restoration treatment, with a mandatory review
1922 hearing at the end of the nine-month period.
- 1923 (10) Unless the defendant is charged with aggravated murder or murder, if, at the
1924 nine-month review hearing described in Subsection (9), the court determines that the
1925 defendant is incompetent to proceed, the court shall:
- 1926 (a)(i) order the defendant be released or temporarily detained pending civil
1927 commitment proceedings as provided in Subsection (5)(c); and
1928 (ii) terminate the defendant's commitment to the department for restoration treatment;
1929 or
1930 (b) if the forensic evaluator reports to the court that there is a substantial probability that
1931 restoration treatment will bring the defendant to competency to stand trial in the
1932 foreseeable future, extend the defendant's commitment for restoration treatment for

- 1933 up to 135 additional days.
- 1934 (11) If the defendant is charged with aggravated murder or murder and the court determines
1935 that the defendant is making reasonable progress towards restoration of competency at
1936 the time of the nine-month review hearing described in Subsection (9), the court may
1937 extend the commitment for a period not to exceed 24 months for the purpose of
1938 restoration treatment.
- 1939 (12) If the court extends the defendant's commitment term under Subsection (11), the court
1940 shall hold a hearing no less frequently than at 12-month intervals following the
1941 extension for the purpose of determining the defendant's competency status.
- 1942 (13) If, at the end of the 24-month commitment period described in Subsection (11), the
1943 court determines that the defendant is incompetent to proceed, the court shall:
- 1944 (a)(i) order the defendant be released or temporarily detained pending civil
1945 commitment proceedings as provided in Subsection (5)(c); and
1946 (ii) terminate the defendant's commitment to the department for restoration treatment;
1947 or
- 1948 (b) if the forensic evaluator reports to the court that there is a substantial probability that
1949 restoration treatment will bring the defendant to competency to stand trial in the
1950 foreseeable future, extend the defendant's commitment for restoration treatment for
1951 up to 12 additional months.
- 1952 (14)(a) Neither release from a pretrial incompetency commitment under the provisions
1953 of this section nor civil commitment requires dismissal of criminal charges.
- 1954 (b) The court may retain jurisdiction over the criminal case and may order periodic
1955 reviews.
- 1956 (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5, Health Care -
1957 Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services
1958 for People with Disabilities, may still be adjudicated competent to stand trial under this
1959 chapter.
- 1960 (16)(a) The remedy for a violation of the time periods specified in this section, other
1961 than those specified in Subsection (5)(c), (8), (10), or (13), shall be a motion to
1962 compel the hearing, or mandamus, but not release from detention or dismissal of the
1963 criminal charges.
- 1964 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (8), (9),
1965 or (13), or is not dismissal of the criminal charges.
- 1966 (17) In cases in which the treatment of the defendant is precluded by court order for a

- 1967 period of time, that time period may not be considered in computing time limitations
 1968 under this section.
- 1969 (18)(a) If, at any time, the defendant becomes competent to stand trial while the
 1970 defendant is committed to the department, the clinical director of the Utah State
 1971 Hospital, the department, or the department's designee shall certify that fact to the
 1972 court.
- 1973 (b) The court shall conduct a competency review hearing:
- 1974 (i) within 15 working days after the day on which the court receives the certification
 1975 described in Subsection (18)(a); or
- 1976 (ii) within 30 working days after the day on which the court receives the certification
 1977 described in Subsection (18)(a), if the court determines that more than 15 working
 1978 days are necessary for good cause related to the defendant's competency.
- 1979 (19) The court may order a hearing at any time on the court's own motion or upon
 1980 recommendations of the clinical director of the Utah State Hospital or other facility or
 1981 the department.
- 1982 (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting
 1983 attorney and all counsel of record.
- 1984 Section 18. Section **77-19-203** is amended to read:
- 1985 **77-19-203 . Petition for inquiry as to competency to be executed -- Filing --**
 1986 **Contents -- Successive petitions.**
- 1987 (1) If an inmate who has been sentenced to death is or becomes incompetent to be executed,
 1988 a petition under Subsection (2) may be filed in the district court of the county where the
 1989 inmate is confined.
- 1990 (2) The petition shall:
- 1991 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to
 1992 believe the inmate is incompetent to be executed; and
- 1993 (b) contain a specific recital of the facts, observations, and conversations with the inmate
 1994 that form the basis for the petition.
- 1995 (3) The petition may be based upon knowledge or information and belief and may be filed
 1996 by the inmate alleged to be incompetent, legal counsel for the inmate, or by an attorney
 1997 representing the state.
- 1998 (4) Before ruling on a petition filed by an inmate or his counsel alleging that the inmate is
 1999 incompetent to be executed, the court shall give the state and the Department of
 2000 Corrections an opportunity to respond to the allegations of incompetency.

2001 (5) If a petition is filed after an inmate has previously been found competent under either
 2002 this chapter or under [~~Title 77, Chapter 15, Inquiry into Sanity of Defendant~~] Chapter 15,
 2003 Defendant's Competency to Proceed, no further hearing on competency may be granted
 2004 unless the successive petition:

2005 (a) alleges with specificity a substantial change of circumstances subsequent to the
 2006 previous determination of competency; and

2007 (b) is sufficient to raise a significant question about the inmate's competency to be
 2008 executed.

2009 Section 19. Section ~~77-29-3~~ is amended to read:

2010 **77-29-3 . Chapter inapplicable to incompetent persons.**

2011 The provisions of this chapter shall not apply to any person while adjudged to be
 2012 incompetent to proceed under [~~Chapter 15, Inquiry into Sanity of Defendant~~] Chapter 15,
 2013 Defendant's Competency to Proceed.

2014 Section 20. Section ~~80-6-403~~ is amended to read:

2015 **80-6-403 . Disposition on finding of not competent to proceed -- Subsequent**
 2016 **hearings -- Notice to prosecuting attorneys.**

2017 (1) If the juvenile court determines that the minor is not competent to proceed, and there is
 2018 a substantial likelihood that the minor may attain competency in the foreseeable future,
 2019 the juvenile court shall notify the department of the finding and allow the department 30
 2020 days to develop an attainment plan for the minor.

2021 (2) The attainment plan shall include:

2022 (a) any services or treatment the minor has been or is currently receiving that are
 2023 necessary to attain competency;

2024 (b) any additional services or treatment the minor may require to attain competency;

2025 (c) an assessment of the parent, custodian, or guardian's ability to access or provide any
 2026 recommended treatment or services;

2027 (d) any special conditions or supervision that may be necessary for the safety of the
 2028 minor or others during the attainment period; and

2029 (e) the likelihood that the minor will attain competency and the amount of time likely
 2030 required for the minor to attain competency.

2031 (3) The department shall provide the attainment plan to the juvenile court, the prosecuting
 2032 attorney, the defense attorney, and the attorney guardian ad litem at least three days
 2033 before the competency disposition hearing.

2034 (4)(a) During the attainment period, the minor shall remain in the least restrictive

- 2035 appropriate setting.
- 2036 (b) A finding of not competent to proceed does not grant authority for a juvenile court to
2037 place a minor in the custody of a division of the department, or create eligibility for
2038 services from the Division of Services for People With Disabilities.
- 2039 (c) If the juvenile court orders the minor to be held in detention during the attainment
2040 period, the juvenile court shall make the following findings on the record:
2041 (i) the placement is the least restrictive appropriate setting;
2042 (ii) the placement is in the best interest of the minor;
2043 (iii) the minor will have access to the services and treatment required by the
2044 attainment plan in the placement; and
2045 (iv) the placement is necessary for the safety of the minor or others.
- 2046 (d) A juvenile court shall terminate an order of detention related to the pending
2047 proceeding for a minor who is not competent to proceed in that matter if:
2048 (i) the most severe allegation against the minor if committed by an adult is a class B
2049 misdemeanor;
2050 (ii) more than 60 days have passed after the day on which the juvenile court
2051 adjudicated the minor not competent to proceed; and
2052 (iii) the minor has not attained competency.
- 2053 (5)(a) At any time that the minor becomes competent to proceed during the attainment
2054 period, the department shall notify the juvenile court, the prosecuting attorney, the
2055 defense attorney, and the attorney guardian ad litem.
- 2056 (b) The juvenile court shall hold a hearing with 15 business days of notice from the
2057 department described in Subsection (5)(a).
- 2058 (6)(a) If at any time during the attainment period the juvenile court finds that there is not
2059 a substantial probability that the minor will attain competency in the foreseeable
2060 future, the juvenile court shall terminate the competency proceeding, dismiss the
2061 petition or information without prejudice, and release the minor from any custody
2062 order related to the pending proceeding, unless the prosecuting attorney or any other
2063 individual informs the juvenile court that commitment proceedings will be initiated in
2064 accordance with:
2065 (i) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for
2066 People with an Intellectual Disability;
2067 (ii) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State
2068 Hospital and Other Mental Health Facilities; or

- 2069 (iii) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons
2070 Under Age 18.
- 2071 (b) The prosecuting attorney shall initiate the proceedings described in Subsection (6)(a)
2072 within seven days after the juvenile court's order, unless the juvenile court enlarges
2073 the time for good cause shown.
- 2074 (7) During the attainment period, the juvenile court may order a hearing or rehearing at
2075 anytime on the juvenile court's own motion or upon recommendation of any interested
2076 party or the department.
- 2077 (8)(a) Within three months of the juvenile court's approval of the attainment plan, the
2078 department shall provide a report on the minor's progress towards competence.
- 2079 (b) The report described in Subsection (8)(a) shall address the minor's:
2080 (i) compliance with the attainment plan;
2081 (ii) progress towards competency based on the issues identified in the original
2082 competency evaluation; and
2083 (iii) current mental illness, intellectual disability or related condition, or
2084 developmental immaturity, and need for treatment, if any, and whether there is
2085 substantial likelihood of the minor attaining competency within six months.
- 2086 (9)(a) Within 30 days of receipt of the report, the juvenile court shall hold a hearing to
2087 determine the minor's current status.
- 2088 (b) At the hearing, the burden of proving the minor is competent is on the proponent of
2089 competency.
- 2090 (c) The juvenile court shall determine by a preponderance of the evidence whether the
2091 minor is competent to proceed.
- 2092 (10) If the minor has not attained competency after the initial three month attainment period
2093 but is showing reasonable progress towards attainment of competency, the juvenile court
2094 may extend the attainment period up to an additional three months.
- 2095 (11) The department shall provide an updated juvenile competency evaluation at the
2096 conclusion of the [~~six month~~]attainment period to advise the juvenile court on the
2097 minor's current competency status.
- 2098 (12) If the minor does not attain competency within six months after the juvenile court
2099 initially finds the minor not competent to proceed, the court shall terminate the
2100 competency proceedings and dismiss the petition or information filed without prejudice,
2101 unless good cause is shown that there is a substantial likelihood the minor will attain
2102 competency within one year from the initial finding of not competent to proceed.

- 2103 (13) In the event a minor has an unauthorized leave lasting more than 24 hours, the
2104 attainment period shall toll until the minor returns.
- 2105 (14)(a) Regardless of whether a minor consents to attainment, any statement made by
2106 the minor in the course of attainment, any testimony by the forensic evaluator based
2107 upon any statement made by the minor in the course of attainment, and any other
2108 fruits of a statement made by the minor in the course of attainment:
- 2109 (i) may not be admitted in evidence against the minor in a proceeding under this
2110 chapter, except the statement may be admitted on an issue respecting the mental
2111 condition on which the minor has introduced evidence; and
- 2112 (ii) may be admitted where relevant to a determination of the minor's competency.
- 2113 (b) Before evaluating the minor during the attainment period, a forensic evaluator shall
2114 specifically advise the minor, and the minor's parent or guardian if reasonably
2115 available, of the limits of confidentiality provided in Subsection (14)(a).

2116 Section 21. **Effective Date.**

2117 This bill takes effect on May 7, 2025.