

Nelson T. Abbott proposes the following substitute bill:

Commitment Revisions

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines terms;
- amends the definitions of "intellectual disability" and "intermediate care facility for people with an intellectual disability" as used in the Utah Code;
- amends provisions relating to the rights and privileges to which an individual is entitled when under commitment to the custody or to the treatment services of a local mental health authority;
- provides that if a right of a patient of a local mental health authority is limited or denied, including for the welfare of the patient or caretakers, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record;
- requires a designated examiner to conduct an examination of a proposed patient by telehealth except in certain circumstances;
- requires a court to hold a hearing on an application for involuntary commitment remotely unless the court finds good cause not to hold the hearing remotely;
- amends standards and processes related to the involuntary civil commitment of an individual with an intellectual disability or related condition;
- provides that a court may only order the Department of Health and Human Services (department) to provide an initial evaluation and progress toward competency evaluation for a defendant if the defendant is located within the state;
- requires a court to dismiss a petition for involuntary civil commitment if both designated examiners determine that the proposed patient does not meet the criteria for involuntary

29 commitment;

30 ▸ provides that when there is a conflict in the opinions of forensic evaluators, if a party
31 seeks an additional competency evaluation then the party is responsible for selecting the
32 evaluator and paying the cost of the evaluator;

33 ▸ amends provisions regarding the release of a defendant determined to be incompetent to
34 proceed from a secured setting; and

35 ▸ makes technical and conforming changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **26B-2-121**, as renumbered and amended by Laws of Utah 2023, Chapter 305

43 **26B-2-122**, as last amended by Laws of Utah 2024, Chapter 240

44 **26B-5-301**, as renumbered and amended by Laws of Utah 2023, Chapter 308

45 **26B-5-310**, as renumbered and amended by Laws of Utah 2023, Chapter 308

46 **26B-5-322**, as last amended by Laws of Utah 2023, Chapter 184 and renumbered and
47 amended by Laws of Utah 2023, Chapter 308

48 **26B-5-332**, as last amended by Laws of Utah 2024, Chapters 287, 299 and 314

49 **26B-5-362**, as renumbered and amended by Laws of Utah 2023, Chapter 308

50 **26B-5-371**, as last amended by Laws of Utah 2023, Chapter 184 and renumbered and
51 amended by Laws of Utah 2023, Chapter 308

52 **26B-6-401**, as last amended by Laws of Utah 2024, Chapter 240

53 **26B-6-606**, as renumbered and amended by Laws of Utah 2023, Chapter 308

54 **26B-6-607**, as last amended by Laws of Utah 2024, Chapter 299

55 **26B-6-608**, as last amended by Laws of Utah 2024, Chapter 299

56 **26B-6-613**, as renumbered and amended by Laws of Utah 2023, Chapter 308

57 **68-3-12.5**, as last amended by Laws of Utah 2024, Chapter 438

58 **77-15-2**, as last amended by Laws of Utah 2023, Chapter 171

59 **77-15-5**, as last amended by Laws of Utah 2023, Chapters 171, 417 and last amended by
60 Coordination Clause, Laws of Utah 2023, Chapter 417

61 **77-15-6**, as last amended by Laws of Utah 2024, Chapter 174

62 **77-19-203**, as enacted by Laws of Utah 2004, Chapter 137

63 **77-29-3**, as enacted by Laws of Utah 1980, Chapter 15

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

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

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

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

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

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

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

298 (g) not be discriminated against on the basis of a characteristic identified in Subsection
 299 57-21-5(1);

300 (h) within 72 business hours after the patient's request, see and receive the services of a

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

335 appropriate local substance abuse authority, or an approved treatment facility or
 336 program[, whichever is most applicable to the patient].

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

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

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

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

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

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

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

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

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

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

368 (1) A responsible individual who has credible knowledge of an adult's mental illness and

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

- 403 involuntary commitment pending examination and hearing; or
- 404 (b) the proposed patient refuses to submit to an interview with a mental health
- 405 professional as directed by the court or to go to a treatment facility voluntarily.
- 406 (4)(a) The court shall provide notice of commencement of proceedings for involuntary
- 407 commitment, setting forth the allegations of the application and any reported facts,
- 408 together with a copy of any official order of detention, to a proposed patient before,
- 409 or upon, placement of the proposed patient in the custody of a local mental health
- 410 authority or, with respect to any proposed patient presently in the custody of a local
- 411 mental health authority whose status is being changed from voluntary to involuntary,
- 412 upon the filing of an application for that purpose with the court.
- 413 (b) The place of detention shall maintain a copy of the order of detention.
- 414 (5)(a) The court shall provide notice of commencement of proceedings for involuntary
- 415 commitment as soon as practicable to the applicant, any legal guardian, any
- 416 immediate adult family members, legal counsel for the parties involved, the local
- 417 mental health authority or the local mental health authority's designee, and any other
- 418 persons whom the proposed patient or the court designates.
- 419 (b) Except as provided in Subsection (5)(c), the notice under Subsection (5)(a) shall
- 420 advise the persons that a hearing may be held within the time provided by law.
- 421 (c) If the proposed patient refuses to permit release of information necessary for
- 422 provisions of notice under this subsection, the court shall determine the extent of
- 423 notice.
- 424 (6) Proceedings for commitment of an individual under 18 years old to a local mental health
- 425 authority may be commenced in accordance with Part 4, Commitment of Persons Under
- 426 Age 18.
- 427 (7)(a) The court may, in the court's discretion, transfer the case to any other district court
- 428 within this state, if the transfer will not be adverse to the interest of the proposed
- 429 patient.
- 430 (b) If a case is transferred under Subsection (7)(a), the parties to the case may be
- 431 transferred and the local mental health authority may be substituted in accordance
- 432 with Utah Rules of Civil Procedure, Rule 25.
- 433 (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a
- 434 judicial order, or after commitment of a proposed patient to a local mental health
- 435 authority or the local mental health authority's designee under court order for detention
- 436 or examination, the court shall appoint two designated examiners:

- 437 (a) who did not sign the civil commitment application nor the civil commitment
438 certification under Subsection (1);
- 439 (b) one of whom is:
- 440 (i) a licensed physician; or
- 441 (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health
442 clinical nurse specialist who:
- 443 (A) is nationally certified;
- 444 (B) is doctorally trained; and
- 445 (C) has at least two years of inpatient mental health experience, regardless of the
446 license the individual held at the time of that experience; and
- 447 (c) one of whom may be designated by the proposed patient or the proposed patient's
448 counsel, if that designated examiner is reasonably available.
- 449 (9) The court shall schedule a hearing to be held within 10 calendar days after the day on
450 which the designated examiners are appointed.
- 451 (10)(a) The designated examiners shall[;]
- 452 [(+)] _conduct the examinations separately[;] .
- 453 [(ii)] ~~(b) [conduct the examinations at the home of the proposed patient, at a hospital or~~
454 ~~other medical facility, or at any other suitable place, including] The designated~~
455 ~~examiners shall conduct the examinations:~~
- 456 (i) through telehealth[;] unless the designated examiner determines that:
- 457 (A) a telehealth examination would not be sufficient to properly assess the
458 proposed patient;
- 459 (B) a telehealth examination would have a harmful effect on the proposed patient's
460 health; or
- 461 (C) an in-person examination can be conducted as effectively, conveniently, and
462 timely as an examination through telehealth; and
- 463 (ii) if the designated examiner determines, pursuant to Subsection (10)(b)(i), that the
464 examination should be conducted in person, at the home of the proposed patient,
465 at a hospital or other medical facility, or at any other suitable place that is not
466 likely to have a harmful effect on the proposed patient's health[;] .
- 467 [(iii)] (c) The designated examiners shall inform the proposed patient, if not represented
468 by an attorney:
- 469 [(A)] (i) that the proposed patient does not have to say anything;
- 470 [(B)] (ii) of the nature and reasons for the examination;

471 ~~[(C)]~~ (iii) that the examination was ordered by the court;

472 ~~[(D)]~~ (iv) that any information volunteered could form part of the basis for the

473 proposed patient's involuntary commitment;

474 ~~[(E)]~~ (v) that findings resulting from the examination will be made available to the

475 court; and

476 ~~[(F)]~~ (vi) that the designated examiner may, under court order, obtain the proposed

477 patient's mental health records~~[-and]~~ .

478 ~~[(iv)]~~ (d) ~~[within]~~ Within 24 hours of examining the proposed patient, a designated

479 examiner shall report to the court, orally or in writing, whether the proposed patient

480 is mentally ill, has agreed to voluntary commitment, as described in Section

481 26B-5-360, or has acceptable programs available to the proposed patient without

482 court proceedings.

483 ~~[(b)]~~ (e) If a designated examiner reports orally under Subsection ~~[(10)(a)]~~ (10)(d), the

484 designated examiner shall immediately send a written report to the clerk of the court.

485 (11) If a designated examiner is unable to complete an examination on the first attempt

486 because the proposed patient refuses to submit to the examination, the court shall fix a

487 reasonable compensation to be paid to the examiner.

488 (12) If the local mental health authority, the local mental health authority's designee, or a

489 medical examiner determines before the court hearing that the conditions justifying the

490 findings leading to a commitment hearing no longer exist, the local mental health

491 authority, the local mental health authority's designee, or the medical examiner shall

492 immediately report the determination to the court.

493 (13)(a) The court shall terminate the proceedings and dismiss the application before the

494 hearing if both designated examiners inform the court that the proposed patient does

495 not meet the criteria in Subsection (16).

496 (b) The court may terminate the proceedings and dismiss the application at any time,

497 including before the hearing, if the designated examiners or the local mental health

498 authority or the local mental health authority's designee informs the court that the

499 proposed patient:

500 ~~[(a) does not meet the criteria in Subsection (16);]~~

501 ~~[(b)]~~ (i) has agreed to voluntary commitment, as described in Section 26B-5-360;

502 ~~[(e)]~~ (ii) has acceptable options for treatment programs that are available without

503 court proceedings; or

504 ~~[(d)]~~ (iii) meets the criteria for assisted outpatient treatment described in Section

505 26B-5-351.

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

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

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

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

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

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

524 (c) The court shall:

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

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

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

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

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

538 (e)(i) A local mental health authority or the local mental health authority's designee

539 or the physician in charge of the proposed patient's care shall, at the time of the
540 hearing, provide the court with the following information:
541 (A) the detention order;
542 (B) admission notes;
543 (C) the diagnosis;
544 (D) any doctors' orders;
545 (E) progress notes;
546 (F) nursing notes;
547 (G) medication records pertaining to the current commitment; and
548 (H) whether the proposed patient has previously been civilly committed or under
549 an order for assisted outpatient treatment.

550 (ii) The local mental health authority or the local mental health authority's designee
551 or the physician in charge of the proposed patient's care shall also supply the
552 information described in Subsection (15)(e)(i) [~~shall also be supplied~~] to the
553 proposed patient's counsel at the time of the hearing, and at any time prior to the
554 hearing upon request by the proposed patient's counsel.

555 (16)(a) The court shall order commitment of an adult proposed patient to a local mental
556 health authority if, upon completion of the hearing and consideration of the
557 information presented, the court finds by clear and convincing evidence that:

- 558 (i)(A) the proposed patient has a mental illness;
559 (B) because of the proposed patient's mental illness the proposed patient poses a
560 substantial danger to self or others;
561 (C) the proposed patient lacks the ability to engage in a rational decision-making
562 process regarding the acceptance of mental treatment as demonstrated by
563 evidence of inability to weigh the possible risks of accepting or rejecting
564 treatment;
565 (D) there is no appropriate less-restrictive alternative to a court order of
566 commitment; and
567 (E) the local mental health authority can provide the proposed patient with
568 treatment that is adequate and appropriate to the proposed patient's conditions
569 and needs; or
570 (ii)(A) the proposed patient has been charged with a criminal offense;
571 (B) with respect to the charged offense, the proposed patient is found incompetent
572 to proceed as a result of a mental illness;

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

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

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

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

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

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

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

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

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

- 661 (i) a summary of why the individual was committed to the local mental health
662 authority;
- 663 (ii) detailed information about why the individual is being discharged from the local
664 mental health authority's custody;
- 665 (iii) a safety plan for the individual based on the individual's mental illness or mental
666 or emotional state;
- 667 (iv) notification to the individual's primary care provider, if applicable;
- 668 (v) if the individual is discharged without food, housing, or economic security, a
669 referral to appropriate services, if such services exist in the individual's
670 community;
- 671 (vi) the phone number to call or text for a crisis services hotline, and information
672 about the availability of peer support services;
- 673 (vii) a copy of any psychiatric advance directive presented to the local mental health
674 authority, if applicable;

- 675 (viii) information about how to establish a psychiatric advance directive if one was
 676 not presented to the local mental health authority;
- 677 (ix) as applicable, information about medications that were changed or discontinued
 678 during the commitment;
- 679 (x) a list of any screening or diagnostic tests conducted during the commitment;
- 680 (xi) a summary of therapeutic treatments provided during the commitment;
- 681 (xii) any laboratory work, including blood samples or imaging, that was completed or
 682 attempted during the commitment; and
- 683 (xiii) information about how to contact the local mental health authority if needed.
- 684 (c) If an individual's medications were changed, or if an individual was prescribed new
 685 medications while committed under this section, discharge instructions provided
 686 under Subsection (20)(a) shall include a clinically appropriate supply of medications,
 687 as determined by a licensed health care provider, to allow the individual time to
 688 access another health care provider or follow-up appointment.
- 689 (d) If an individual refuses to accept discharge instructions, the local mental health
 690 authority shall document the refusal in the individual's medical record.
- 691 (e) If an individual's discharge instructions include referrals to services under Subsection
 692 (20)(b)(v), the local mental health authority shall document those referrals in the
 693 individual's medical record.
- 694 (f) The local mental health authority shall attempt to follow up with a discharged
 695 individual at least 48 hours after discharge, and may use peer support professionals
 696 when performing follow-up care or developing a continuing care plan.

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

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

702 **26B-5-362 . Commitment and care of criminally insane.**

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

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

708 **26B-5-371 . Utah Forensic Mental Health Facility -- Design and operation --**

709 **Security.**

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

711 (2)(a) The forensic mental health facility accommodates the following populations:

712 (i) prison inmates displaying mental illness necessitating treatment in a secure mental
713 health facility;714 (ii) criminally adjudicated persons found guilty with a mental illness or guilty with a
715 mental condition at the time of the offense undergoing evaluation for a mental
716 condition under Title 77, Chapter 16a, Commitment and Treatment of Individuals
717 with a Mental Condition;718 (iii) criminally adjudicated persons undergoing evaluation for competency or found
719 guilty with a mental condition or guilty with a mental condition at the time of the
720 offense under Title 77, Chapter 16a, Commitment and Treatment of Individuals
721 with a Mental Condition, who also have an intellectual disability;722 (iv) persons undergoing evaluation for competency or found by a court to be
723 incompetent to proceed in accordance with [~~Title 77, Chapter 15, Inquiry into~~
724 ~~Sanity of Defendant~~] Title 77, Chapter 15, Defendant's Competency to Proceed, or
725 not guilty by reason of insanity under Title 77, Chapter 14, Defenses;726 (v) persons who are civilly committed to the custody of a local mental health
727 authority in accordance with this part, and who may not be properly supervised by
728 the Utah State Hospital because of a lack of necessary security, as determined by
729 the superintendent or the superintendent's designee; and730 (vi) persons ordered to commit themselves to the custody of the division for
731 treatment at the Utah State Hospital as a condition of probation or stay of sentence
732 pursuant to Title 77, Chapter 18, The Judgment.733 (b) Placement of an offender in the forensic mental health facility under any category
734 described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the
735 offender's status as established by the court at the time of adjudication.736 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
737 department shall make rules providing for the allocation of beds to the categories
738 described in Subsection (2)(a).

739 (3) The department shall:

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

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

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

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

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

746 **26B-6-401 . Definitions.**

747 As used in this part:

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

750 (2) "Board" means the Utah State Developmental Center Board created under Section
751 26B-1-429.

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

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

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

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

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

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

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

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

765 Professional Practice Act, who:

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

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

770 (5) "Deteriorating disease" includes:

771 (a) multiple sclerosis;

772 (b) muscular dystrophy;

773 (c) Huntington's chorea;

774 (d) Alzheimer's disease;

775 (e) ataxia; or

776 (f) cancer.

- 777 (6) "Developmental center" means the Utah State Developmental Center, established in
778 accordance with Part 5, Utah State Developmental Center.
- 779 (7) "Director" means the director of the Division of Services for People with Disabilities.
- 780 (8) "Direct service worker" means a person who provides services to a person with a
781 disability:
- 782 (a) when the services are rendered in:
- 783 (i) the physical presence of the person with a disability; or
784 (ii) a location where the person rendering the services has access to the physical
785 presence of the person with a disability; and
- 786 (b)(i) under a contract with the division;
787 (ii) under a grant agreement with the division; or
788 (iii) as an employee of the division.
- 789 (9)(a) "Disability" means a severe, chronic disability that:
- 790 (i) is attributable to:
- 791 (A) an intellectual disability;
792 (B) a condition that qualifies a person as a person with a related condition, as
793 defined in 42 C.F.R. Sec. 435.1010;
794 (C) a physical disability; or
795 (D) a brain injury;
- 796 (ii) is likely to continue indefinitely;
- 797 (iii)(A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in
798 a substantial functional limitation in three or more of the following areas of
799 major life activity:
- 800 (I) self-care;
801 (II) receptive and expressive language;
802 (III) learning;
803 (IV) mobility;
804 (V) self-direction;
805 (VI) capacity for independent living; or
806 (VII) economic self-sufficiency; or
- 807 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial
808 limitation in three or more of the following areas:
- 809 (I) memory or cognition;
810 (II) activities of daily life;

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

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

879 necessities of life, such as food, clothing, or shelter;

880 (d) causing or attempting to cause serious bodily injury or serious emotional harm to
881 another individual;

882 (e) engaging in deviant sexual conduct; or

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

885 [(18)] (20) "Sustainability fund" means the Utah State Developmental Center Long-Term
886 Sustainability Fund created in Section 26B-1-331.

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

888 **26B-6-606 . Involuntary commitment.**

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

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

893 **26B-6-607 . Temporary emergency commitment -- Observation and evaluation.**

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

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

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

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

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

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

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

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

- 913 committed].
- 914 (2) If the individual in need of commitment is not placed in the custody of the director or
915 the director's designee by the person submitting the ~~[application, the director's]~~
916 certification, the director or the director's designee may certify, either in writing or orally
917 that the individual is in need of immediate commitment to prevent ~~[injury]~~ posing
918 substantial danger to self or others.
- 919 (3) Upon receipt of the ~~[application]~~ certification required by Subsection ~~[(1)(a) and the~~
920 certifications required by Subsections (1)(b) and (2)] (2), a peace officer ~~[may take the~~
921 individual named in the application and certificates into custody, and] may transport the
922 individual to a ~~[designated intermediate care facility for people with an intellectual~~
923 disability] placement designated by the division.
- 924 (4)(a) An individual committed under this section may be held for a maximum of ~~[72~~
925 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that
926 time,] 10 days, after which the individual shall be released unless proceedings for
927 involuntary commitment have been commenced under Section 26B-6-608.
- 928 (b) ~~[After]~~ If proceedings for involuntary commitment have been commenced~~[- the~~
929 individual shall be released unless an order of detention is issued in accordance with
930 Section 26B-6-608], an emergency order under this section remains in effect until:
931 (i) the division determines that the conditions justifying commitment no longer exist;
932 or
933 (ii) a court order is issued pursuant to Section 26B-6-608.
- 934 (5)(a) If an individual is committed to the division under this section~~[- on the application~~
935 of any person other than the individual's legal guardian, spouse, parent, or next of kin],
936 the director or ~~[his]~~ the director's designee shall immediately give notice of the
937 commitment to the individual's legal guardian~~[- spouse, parent, or next of kin]~~, if
938 known.
- 939 (b)(i) Immediately after an individual is committed to the division under this section,
940 the division shall inform the individual, orally and in writing, of the individual's
941 right to communicate with an attorney.
- 942 (ii) If the individual desires to communicate with an attorney, the division shall take
943 immediate steps to assist the individual in contacting and communicating with an
944 attorney.
- 945 (6)(a) The division or an intermediate care facility shall provide discharge instructions to
946 each individual committed under this section at or before the time the individual is

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

981 the individual's medical record.

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

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

986 **26B-6-608 . Involuntary commitment -- Procedures -- Necessary findings --**

987 **Periodic review.**

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

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

1000 [~~(b) a written statement by the petitioner that:]~~

1001 [~~(i) states that the individual was requested to, but refused to, submit to an
 1002 examination for an intellectual disability by a licensed physician or designated
 1003 intellectual disability professional, and that the individual refuses to voluntarily go
 1004 to the division or an intermediate care facility for people with an intellectual
 1005 disability recommended by the division for treatment;]~~

1006 [~~(ii) is under oath; and]~~

1007 [~~(iii) sets forth the facts on which the statement is based.]~~

1008 [~~(2) Before issuing a detention order, the court may require the petitioner to consult with
 1009 personnel at the division or at an intermediate care facility for people with an intellectual
 1010 disability and may direct a designated intellectual disability professional to interview the
 1011 petitioner and the individual to be committed, to determine the existing facts, and to
 1012 report them to the court.]~~

1013 [~~(3) The court may issue a detention order and may direct a peace officer to immediately
 1014 take the individual to an intermediate care facility for people with an intellectual~~

1015 disability to be detained for purposes of an examination if the court finds from the
 1016 petition, from other statements under oath, or from reports of physicians or designated
 1017 intellectual disability professionals that there is a reasonable basis to believe that the
 1018 individual to be committed:]

1019 [(a) poses an immediate danger of physical injury to self or others;]
 1020 [(b) requires involuntary commitment pending examination and hearing;]
 1021 [(c) the individual was requested but refused to submit to an examination by a licensed
 1022 physician or designated intellectual disability professional; or]
 1023 [(d) the individual refused to voluntarily go to the division or to an intermediate care
 1024 facility for people with an intellectual disability recommended by the division.]

1025 [(4)(a) If the court issues a detention order based on an application that did not include
 1026 a certification by a designated intellectual disability professional or physician in
 1027 accordance with Subsection (1)(a), the director or his designee shall within 24 hours
 1028 after issuance of the detention order, excluding Saturdays, Sundays, and legal
 1029 holidays, examine the individual, report the results of the examination to the court
 1030 and inform the court:]

1031 [(i) whether the director or his designee believes that the individual has an intellectual
 1032 disability; and]
 1033 [(ii) whether appropriate treatment programs are available and will be used by the
 1034 individual without court proceedings.]

1035 [(b) If the report of the director or his designee is based on an oral report of the
 1036 examiner, the examiner shall immediately send the results of the examination in
 1037 writing to the clerk of the court.]

1038 [(5) Immediately after an individual is involuntarily committed under a detention order or
 1039 under Section 26B-6-607, the director or his designee shall inform the individual, orally
 1040 and in writing, of his right to communicate with an attorney. If an individual desires to
 1041 communicate with an attorney, the director or his designee shall take immediate steps to
 1042 assist the individual in contacting and communicating with an attorney.]

1043 (1)(a) Any responsible person who has reason to know that an individual is in need of
 1044 commitment, who has a belief that the individual has an intellectual disability or
 1045 related condition, and who has personal knowledge of the conditions and
 1046 circumstances supporting that belief, may make a referral to the division to conduct
 1047 an assessment to determine if the individual meets the criteria for involuntary
 1048 commitment under this section.

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

1083 the referral both certify that they believe the individual meets the criteria for
 1084 involuntary commitment under this section, the division may file a petition to
 1085 commence involuntary commitment proceedings in accordance with Subsections
 1086 (1)(c) and (d).

1087 ~~[(6)]~~ (3)(a) Immediately after [commencement of proceedings] the division files a petition
 1088 for involuntary commitment under this section, the court shall:

1089 (i) schedule a hearing on the petition for no later than 10 days after the day on which
 1090 the division filed the petition; and

1091 (ii) give notice of commencement of the proceedings to:

1092 [(i)] (A) the individual to be committed;
 1093 [(ii)] (B) the [applicant] referent under Subsection (1)(a) or (2)(a), if applicable;
 1094 [(iii)] (C) any legal guardian of the individual;
 1095 [(iv)] (D) adult members of the individual's immediate family;
 1096 [(v)] (E) legal counsel of the individual to be committed, if any;
 1097 [(vi)] (F) the division; and
 1098 [(vii)] (G) any other person to whom the individual requests, or the court
 1099 designates, notice to be given.

1100 (b) If an individual cannot or refuses to disclose the identity of persons to be notified,
 1101 the extent of notice shall be determined by the court.

1102 ~~[(7)]~~ (4) [That notice] The notice described in Subsection (3) shall:

1103 (a) set forth the allegations of the petition and all supporting facts;
 1104 (b) be accompanied by a copy of [any detention] an emergency order issued under [
 1105 Subsection (3)] Section 26B-6-607, if applicable; and
 1106 (c) state that a hearing will be held within the time provided by law, and give the time
 1107 and place for that hearing.

1108 ~~[(8)]~~ (5) The court may transfer the case and the custody of the individual to be committed
 1109 to any other district court within the state~~[-if:]~~ if the individual resides in another
 1110 jurisdiction within the state.

1111 ~~[(a) there are no appropriate facilities for persons with an intellectual disability within~~
 1112 ~~the judicial district; and]~~

1113 ~~[(b) the transfer will not be adverse to the interests of the individual.]~~

1114 ~~[(9)(a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any~~
 1115 ~~order or commitment under a detention order, the court shall appoint two designated~~
 1116 ~~intellectual disability professionals to examine the individual. If requested by the~~

- 1117 individual's counsel, the court shall appoint a reasonably available, qualified person
1118 designated by counsel to be one of the examining designated intellectual disability
1119 professionals. The examinations shall be conducted:]
- 1120 [(i) separately;]
1121 [(ii) at the home of the individual to be committed, a hospital, an intermediate care
1122 facility for people with an intellectual disability, or any other suitable place not
1123 likely to have a harmful effect on the individual; and]
1124 [(iii) within a reasonable period of time after appointment of the examiners by the
1125 court.]
- 1126 [(b) The court shall set a time for a hearing to be held within 10 court days of the
1127 appointment of the examiners. However, the court may immediately terminate the
1128 proceedings and dismiss the application if, prior to the hearing date, the examiners,
1129 the director, or his designee informs the court that:]
- 1130 [(i) the individual does not have an intellectual disability; or]
1131 [(ii) treatment programs are available and will be used by the individual without court
1132 proceedings.]
- 1133 [(10)] (6)(a)(i) Each individual has the right to be represented by counsel at the
1134 commitment hearing and in all preliminary proceedings.
- 1135 (ii) If neither the individual nor others provide counsel, [-]the court shall appoint
1136 counsel and allow sufficient time for counsel to consult with the individual prior
1137 to any hearing.
- 1138 (b) If the individual is indigent, the county in which the individual was physically
1139 located when taken into custody shall pay reasonable attorney fees as determined by
1140 the court.
- 1141 [(11)] (7) [~~The division or a designated intellectual disability professional in charge of the~~
1142 ~~individual's care~~] Upon order of the court, the division or the division's designee shall
1143 provide all [documented information on] relevant documentation on the individual to be
1144 committed [and] to the court [at the time of the hearing. The] and the individual's
1145 attorney [~~shall have access to all documented information on the individual at the time~~
1146 ~~of and prior to the hearing~~].
- 1147 [(12)] (8)(a) The court shall provide an opportunity to the individual, the petitioner, and
1148 all other persons to whom notice is required to be given to appear at the hearing, to
1149 testify, and to present and cross-examine witnesses.
- 1150 (b) The court may, in its discretion:

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

1185 appropriate to the individual's condition and needs.

1186 ~~[(14)]~~ (10) In the absence of any of the required findings by the court, described in

1187 Subsection ~~[(13)]~~ (9), the court shall dismiss the proceedings.

1188 ~~[(15)]~~ (11)(a) The order of commitment shall designate the period for which the

1189 individual will be committed.

1190 (b) An initial commitment may not exceed six months.~~[- Before the end of the initial~~

1191 ~~commitment period, the administrator of the intermediate care facility for people with~~

1192 ~~an intellectual disability shall commence a review hearing on behalf of the individual.]~~

1193 ~~[(b) At the conclusion of the review hearing, the court may issue an order of~~

1194 ~~commitment for up to a one-year period.]~~

1195 ~~[(16)]~~ (12)(a) An individual committed under this part has the right to a rehearing~~[- upon~~

1196 ~~filing a petition with the court within 30 days after entry of the court's order. If the~~

1197 ~~petition for rehearing alleges error or mistake in the court's findings, the]~~ if, within 15

1198 days after the court enters the order of commitment, the individual files a petition

1199 with the court alleging error or mistake in the court's findings.

1200 (b) Upon a request for rehearing filed in accordance with Subsection (12)(a), the court

1201 shall:

1202 (i) appoint~~[- one impartial licensed physician and]~~ two impartial designated

1203 intellectual disability professionals who have not previously been involved in the

1204 case to examine the individual~~[-]~~ ; and

1205 (ii) schedule a rehearing to be held within 30 days after the court entered the order of

1206 commitment.

1207 (c) [The] In all other respects, the rehearing shall~~[- in all other respects,]~~ be conducted in

1208 accordance with this part.

1209 ~~[(17)]~~ (13)(a)(i) The court shall maintain a current list of all individuals under its

1210 orders of commitment.

1211 (ii) [That list shall be reviewed in order] The court shall review the list described in

1212 Subsection (13)(a)(i) to determine those patients who have been under an order of

1213 commitment for the designated period.

1214 (b) At least two weeks prior to the expiration of the designated period of any

1215 commitment order still in effect, the court that entered the original order shall ~~[inform~~

1216 ~~the director of the division of the impending expiration of the designated~~

1217 ~~commitment period]~~ commence and send notice to all parties of a review hearing for

1218 the committed individual.

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

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

1287 (e) If an individual's discharge instructions include referrals to services under Subsection [
1288 (~~19~~)(b)(v)] (15)(b)(v), the division or intermediate care facility shall document those
1289 referrals in the individual's medical record.

1290 (f) The division shall attempt to follow up with a discharged individual at least 48 hours
1291 after discharge, and may use peer support professionals when performing follow-up
1292 care or developing a continuing care plan.

1293 Section 13. Section **26B-6-613** is amended to read:

1294 **26B-6-613 . Involuntary treatment with medication -- Committee -- Findings.**

1295 (1) If, after commitment, a resident elects to refuse treatment with medication, the director,
1296 the administrator of the intermediate care facility for people with an intellectual
1297 disability, or a designee, shall submit documentation regarding the resident's proposed
1298 treatment to a committee composed of:

1299 (a) a licensed physician experienced in treating persons with an intellectual disability,
1300 who is not directly involved in the resident's treatment or diagnosis, and who is not
1301 biased toward any one facility;

1302 (b) a psychologist who is a designated intellectual disability professional who is not
1303 directly involved in the resident's treatment or diagnosis; and

1304 (c) another designated intellectual disability professional of the facility for persons with
1305 an intellectual disability, or a designee.

1306 (2) Based upon the court's finding, under Subsection [~~26B-6-608(13)~~] 26B-6-608(9), that
1307 the resident lacks the ability to engage in a rational decision-making process regarding
1308 the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence
1309 of inability to weigh the possible costs and benefits of treatment, the committee may
1310 authorize involuntary treatment with medication if it determines that:

1311 (a) the proposed treatment is in the medical best interest of the resident, taking into
1312 account the possible side effects as well as the potential benefits of the medication;
1313 and

1314 (b) the proposed treatment is in accordance with prevailing standards of accepted
1315 medical practice.

1316 (3) In making the determination described in Subsection (2), the committee shall consider
1317 the resident's general history and present condition, the specific need for medication and
1318 its possible side effects, and any previous reaction to the same or comparable medication.

1319 (4) Any authorization of involuntary treatment under this section shall be periodically
1320 reviewed in accordance with rules promulgated by the division.

- 1321 Section 14. Section **68-3-12.5** is amended to read:
- 1322 **68-3-12.5 . Definitions for Utah Code.**
- 1323 (1) The definitions listed in this section apply to the Utah Code, unless:
- 1324 (a) the definition is inconsistent with the manifest intent of the Legislature or repugnant
- 1325 to the context of the statute; or
- 1326 (b) a different definition is expressly provided for the respective title, chapter, part,
- 1327 section, or subsection.
- 1328 (2) "Adjudicative proceeding" means:
- 1329 (a) an action by a board, commission, department, officer, or other administrative unit of
- 1330 the state that determines the legal rights, duties, privileges, immunities, or other legal
- 1331 interests of one or more identifiable persons, including an action to grant, deny,
- 1332 revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license;
- 1333 and
- 1334 (b) judicial review of an action described in Subsection (2)(a).
- 1335 (3) "Administrator" includes "executor" when the subject matter justifies the use.
- 1336 (4) "Advisory board," "advisory commission," and "advisory council" mean a board,
- 1337 commission, committee, or council that:
- 1338 (a) is created by, and whose duties are provided by, statute or executive order;
- 1339 (b) performs its duties only under the supervision of another person as provided by
- 1340 statute; and
- 1341 (c) provides advice and makes recommendations to another person that makes policy for
- 1342 the benefit of the general public.
- 1343 (5) "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, Space
- 1344 Force, and Coast Guard.
- 1345 (6) "County executive" means:
- 1346 (a) the county commission, in the county commission or expanded county commission
- 1347 form of government established under Title 17, Chapter 52a, Changing Forms of
- 1348 County Government;
- 1349 (b) the county executive, in the county executive-council optional form of government
- 1350 authorized by Section 17-52a-203; or
- 1351 (c) the county manager, in the council-manager optional form of government authorized
- 1352 by Section 17-52a-204.
- 1353 (7) "County legislative body" means:
- 1354 (a) the county commission, in the county commission or expanded county commission

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

- 1389 (16) "Intermediate care facility for people with an intellectual disability" means an [
1390 ~~intermediate care facility for the mentally retarded, as defined in Title XIX of the Social~~
1391 ~~Security Act]~~ institution or distinct part thereof for people with an intellectual disability
1392 or related conditions, if the institution or distinct part thereof meets the requirements
1393 described in 42 U.S.C. Secs. 1396d(d)(1) through (3).
- 1394 (17) "Land" includes:
- 1395 (a) land;
 - 1396 (b) a tenement;
 - 1397 (c) a hereditament;
 - 1398 (d) a water right;
 - 1399 (e) a possessory right; and
 - 1400 (f) a claim.
- 1401 (18) "Male" means the characteristic of an individual whose biological reproductive system
1402 is of the general type that functions to fertilize the ova of a female.
- 1403 (19) "Man" means an adult human male.
- 1404 (20) "Month" means a calendar month, unless otherwise expressed.
- 1405 (21) "Mother" means a parent who is of the female sex.
- 1406 (22) "Oath" includes "affirmation."
- 1407 (23) "Person" means:
- 1408 (a) an individual;
 - 1409 (b) an association;
 - 1410 (c) an institution;
 - 1411 (d) a corporation;
 - 1412 (e) a company;
 - 1413 (f) a trust;
 - 1414 (g) a limited liability company;
 - 1415 (h) a partnership;
 - 1416 (i) a political subdivision;
 - 1417 (j) a government office, department, division, bureau, or other body of government; and
 - 1418 (k) any other organization or entity.
- 1419 (24) "Personal property" includes:
- 1420 (a) money;
 - 1421 (b) goods;
 - 1422 (c) chattels;

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

- 1457 (b) is created by, and whose duties are provided by, statute; and
1458 (c) performs its duties according to its own rules without supervision other than under
1459 the general control of another person as provided by statute.
- 1460 (32) "Road" includes:
1461 (a) a public bridge;
1462 (b) a county way;
1463 (c) a county road;
1464 (d) a common road; and
1465 (e) a state road.
- 1466 (33) "Sex" means, in relation to an individual, the individual's biological sex, either male or
1467 female, at birth, according to distinct reproductive roles as manifested by:
1468 (a) sex and reproductive organ anatomy;
1469 (b) chromosomal makeup; and
1470 (c) endogenous hormone profiles.
- 1471 (34) "Signature" includes a name, mark, or sign written with the intent to authenticate an
1472 instrument or writing.
- 1473 (35) "State," when applied to the different parts of the United States, includes a state,
1474 district, or territory of the United States.
- 1475 (36) "Swear" includes "affirm."
- 1476 (37) "Testify" means to make an oral statement under oath or affirmation.
- 1477 (38) "Uniformed services" means:
1478 (a) the armed forces;
1479 (b) the commissioned corps of the National Oceanic and Atmospheric Administration;
1480 and
1481 (c) the commissioned corps of the United States Public Health Service.
- 1482 (39) "United States" includes each state, district, and territory of the United States of
1483 America.
- 1484 (40) "Utah Code" means the 1953 recodification of the Utah Code, as amended, unless the
1485 text expressly references a portion of the 1953 recodification of the Utah Code as it
1486 existed:
1487 (a) on the day on which the 1953 recodification of the Utah Code was enacted; or
1488 (b)(i) after the day described in Subsection (40)(a); and
1489 (ii) before the most recent amendment to the referenced portion of the 1953
1490 recodification of the Utah Code.

- 1491 (41) "Vessel," when used with reference to shipping, includes a steamboat, canal boat, and
1492 every structure adapted to be navigated from place to place.
- 1493 (42)(a) "Veteran" means an individual who:
- 1494 (i) has served in the United States Armed Forces for at least 180 days:
- 1495 (A) on active duty; or
- 1496 (B) in a reserve component, to include the National Guard; or
- 1497 (ii) has incurred an actual service-related injury or disability while in the United
1498 States Armed Forces regardless of whether the individual completed 180 days; and
- 1499 (iii) was separated or retired under conditions characterized as honorable or general.
- 1500 (b) This definition is not intended to confer eligibility for benefits.
- 1501 (43) "Will" includes a codicil.
- 1502 (44) "Woman" means an adult human female.
- 1503 (45) "Writ" means an order or precept in writing, issued in the name of:
- 1504 (a) the state;
- 1505 (b) a court; or
- 1506 (c) a judicial officer.
- 1507 (46) "Writing" includes:
- 1508 (a) printing;
- 1509 (b) handwriting; and
- 1510 (c) information stored in an electronic or other medium if the information is retrievable
1511 in a perceivable format.
- 1512 Section 15. Section **77-15-2** is amended to read:
- 1513 **77-15-2 . Definitions.**
- 1514 As used in this chapter:
- 1515 (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to
1516 determine if an individual is competent to stand trial.
- 1517 (2) "Competent to stand trial" means that a defendant has:
- 1518 (a) a rational and factual understanding of the criminal proceedings against the
1519 defendant and of the punishment specified for the offense charged; and
- 1520 (b) the ability to consult with the defendant's legal counsel with a reasonable degree of
1521 rational understanding in order to assist in the defense.
- 1522 (3) "Department" means the Department of Health and Human Services.
- 1523 (4) "Forensic evaluator" means a licensed mental health professional who:
- 1524 (a) is not involved in the defendant's treatment;

- 1525 (b) is trained and qualified by the department to conduct a competency evaluation, a
 1526 restoration screening, and a progress toward competency evaluation, based on
 1527 knowledge, experience, or education relating to:
- 1528 (i) intellectual functioning or psychopathology; and
 - 1529 (ii) the legal system and the rights of a defendant in a criminal trial; and
- 1530 (c) if under contract with the department, demonstrates ongoing education and training
 1531 relating to forensic mental health in accordance with rules established by the
 1532 department in accordance with Title 63G, Chapter 3, Utah Administrative
 1533 Rulemaking Act.
- 1534 (5) "Incompetent to proceed" means that a defendant is not competent to stand trial as a
 1535 result of:
- 1536 (a) mental illness; or
 - 1537 (b) intellectual disability.
- 1538 [~~(6) "Intellectual disability" means an intellectual disability as defined in the current edition~~
 1539 ~~of the Diagnostic and Statistical Manual of Mental Disorders published by the American~~
 1540 ~~Psychiatric Association.]~~
- 1541 [~~(7)~~ (6) "Mental illness" means the same as that term is defined in Section 26B-5-301.
- 1542 [~~(8)~~ (7) "Petition" means a petition to request a court to determine whether a defendant is
 1543 competent to stand trial.
- 1544 [~~(9)~~ (8) "Progress toward competency evaluation" means an evaluation to determine
 1545 whether an individual who is receiving restoration treatment is:
- 1546 (a) competent to stand trial;
 - 1547 (b) incompetent to proceed but has a substantial probability of becoming competent to
 1548 stand trial in the foreseeable future; or
 - 1549 (c) incompetent to proceed and does not have a substantial probability of becoming
 1550 competent to stand trial in the foreseeable future.
- 1551 [~~(10)~~ (9) "Restoration treatment" means training and treatment that is:
- 1552 (a) provided to an individual who is incompetent to proceed;
 - 1553 (b) tailored to the individual's particular impairment to competency; and
 - 1554 (c) limited to the purpose of restoring the individual to competency.

1555 Section 16. Section **77-15-5** is amended to read:

1556 **CHAPTER 15. DEFENDANT'S COMPETENCY TO PROCEED**

1557 **77-15-5 . Order for hearing -- Stay of other proceedings -- Examinations of**
 1558 **defendant -- Scope of examination and report.**

- 1559 (1) A court in which criminal proceedings are pending shall stay all criminal proceedings, if:
- 1560 (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or
- 1561 (b) the court raises the issue of the defendant's competency under Section 77-15-4.
- 1562 (2) The court in which the petition described in Subsection (1)(a) is filed:
- 1563 (a) shall inform the court in which criminal proceedings are pending of the petition, if
- 1564 the petition is not filed in the court in which criminal proceedings are pending;
- 1565 (b) shall review the allegations of incompetency;
- 1566 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of
- 1567 the petition, if the court finds the petition is not clearly sufficient on its face;
- 1568 (d) shall hold a hearing, if the petition is opposed by either party; and
- 1569 (e) may not order an examination of the defendant or order a hearing on the mental
- 1570 condition of the defendant unless the court finds that the allegations in the petition
- 1571 raise a bona fide doubt as to the defendant's competency to stand trial.
- 1572 (3)(a) If the court finds that there is a bona fide doubt as to the defendant's competency
- 1573 to stand trial, the court shall order the department to have one or two forensic
- 1574 evaluators complete a competency evaluation for the defendant in accordance with
- 1575 Subsection (3)(b) and provide a report to the court regarding the competency of the
- 1576 defendant to stand trial.
- 1577 (b) The court shall order the department to have the defendant evaluated by one forensic
- 1578 evaluator unless:
- 1579 (i) the defendant is charged with a capital felony; or
- 1580 (ii) the defendant is charged with a felony that is not a capital felony, and the court
- 1581 determines, based on the allegations in the petition, that good cause exists to order
- 1582 two competency evaluations.
- 1583 (c)(i) This section does not prohibit a party from seeking an additional forensic
- 1584 evaluator to conduct a competency evaluation of the defendant.
- 1585 (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c),
- 1586 the party shall:
- 1587 (A) select the additional forensic evaluator; and
- 1588 (B) pay the costs of the additional forensic evaluator.
- 1589 (d) The stipulation by parties to a bona fide doubt as to the defendant's competency to
- 1590 stand trial alone may not take the place of a competency evaluation ordered under
- 1591 this Subsection (3).
- 1592 (e) In accordance with state licensing laws, the court may only order the department to

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

- 1627 77-15-6; and
- 1628 (iii) the court orders the records be maintained and used only for the purposes of
1629 examining the defendant in connection with the petition for civil commitment.
- 1630 (g) An order for a competency evaluation may not contain an order for any other inquiry
1631 into the mental state of the defendant that is not described in this Subsection (4).
- 1632 (5) Pending a competency evaluation, unless the court or the department directs otherwise,
1633 the defendant shall be retained in the same custody or status that the defendant was in at
1634 the time the examination was ordered.
- 1635 (6) In the conduct of a competency evaluation and in a report to the court, a forensic
1636 evaluator shall consider and address, in addition to any other factors determined to be
1637 relevant by the forensic evaluator:
- 1638 (a)[(†)] the impact of the defendant's mental illness or intellectual disability on the
1639 defendant's present ability to:
- 1640 [~~(A)~~] (i) rationally and factually understand the criminal proceedings against the
1641 defendant; and
- 1642 [~~(B)~~] (ii) consult with the defendant's legal counsel with a reasonable degree of
1643 rational understanding in order to assist in the defense;
- 1644 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator
1645 shall consider, as applicable[;]:
- 1646 [(†)] the defendant's present ability to:
- 1647 [~~(A)~~] (i) understand the charges or allegations against the defendant;
1648 [~~(B)~~] (ii) communicate facts, events, and states of mind;
1649 [~~(C)~~] (iii) understand the range of possible penalties associated with the charges or
1650 allegations against the defendant;
- 1651 [~~(D)~~] (iv) engage in reasoned choice of legal strategies and options;
1652 [~~(E)~~] (v) understand the adversarial nature of the proceedings against the defendant;
1653 [~~(F)~~] (vi) manifest behavior sufficient to allow the court to proceed; and
1654 [~~(G)~~] (vii) testify relevantly, if applicable; and
- 1655 (c) whether the defendant is exhibiting false or exaggerated physical or psychological
1656 symptoms relevant to the defendant's capacity to stand trial.
- 1657 (7) Upon a determination that the defendant is incompetent to proceed, the forensic
1658 evaluator shall indicate in the report to the court:
- 1659 (a) the factors that contribute to the defendant's incompetency, including the nature of
1660 the defendant's mental illness or intellectual disability, if any, and its relationship to

- 1661 the factors contributing to the defendant's incompetency;
- 1662 (b) whether there is a substantial probability that:
- 1663 (i) restoration treatment may bring the defendant to competency to stand trial in the
- 1664 foreseeable future; or
- 1665 (ii) the defendant cannot become competent to stand trial in the foreseeable future;
- 1666 (c) whether the defendant would benefit from restoration treatment; and
- 1667 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c),
- 1668 an explanation of the reason for the determination and a summary of the treatment
- 1669 provided to the defendant in the past.
- 1670 (8)(a) A forensic evaluator shall provide an initial report to the court and the prosecuting
- 1671 and defense attorneys within 30 days of the receipt of the court's order. The report
- 1672 shall inform the court of the examiner's opinion concerning the competency of the
- 1673 defendant to stand trial.
- 1674 (b)(i) If the forensic evaluator is unable to complete the report in the time specified in
- 1675 Subsection (8)(a), the forensic evaluator shall give written notice to the court.
- 1676 (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i)
- 1677 shall receive a 15-day extension, giving the forensic evaluator a total of 45 days
- 1678 after the day on which the forensic evaluator received the court's order to conduct
- 1679 a competency evaluation and file a report.
- 1680 (iii) The court may further extend the deadline for completion of the evaluation and
- 1681 report if the court determines that there is good cause for the extension.
- 1682 (iv) Upon receipt of an extension described in Subsection (8)(b)(iii), the forensic
- 1683 evaluator shall file the report as soon as reasonably possible.
- 1684 (9) Any written report submitted by a forensic evaluator shall:
- 1685 (a) identify the case ordered for evaluation by the case number;
- 1686 (b) describe the procedures, techniques, and tests used in the examination and the
- 1687 purpose or purposes for each, the time spent by the forensic evaluator with the
- 1688 defendant for purposes of the examination, and the compensation to be paid to the
- 1689 evaluator for the report;
- 1690 (c) state the forensic evaluator's clinical observations, findings, and opinions on each
- 1691 factor described in Subsection (6); and
- 1692 (d) identify the sources of information used by the forensic evaluator and present the
- 1693 basis for the forensic evaluator's clinical findings and opinions.
- 1694 (10)(a) Any statement made by the defendant in the course of any competency

1695 examination, whether the examination is with or without the consent of the
1696 defendant, any testimony by a forensic evaluator based upon the statement, and any
1697 other fruits of the statement may not be admitted in evidence against the defendant in
1698 any criminal proceeding except on an issue respecting mental condition on which the
1699 defendant has introduced evidence, unless the evidence is relevant to a determination
1700 of the defendant's competency.

1701 (b) Before examining the defendant, the forensic evaluator shall specifically advise the
1702 defendant of the limits of confidentiality as provided under Subsection (10)(a).

1703 (11)(a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a
1704 competency hearing. The hearing shall be held not less than five and not more than
1705 15 days after the day on which the court received the forensic evaluators' reports,
1706 unless for good cause the court sets a later date.

1707 (b) Any person directed by the department to conduct the competency evaluation may be
1708 subpoenaed to testify at the hearing.

1709 (c) The court may call any forensic evaluator to testify at the hearing who is not called
1710 by the parties. [-]If the court calls a forensic evaluator, counsel for the parties may
1711 cross-examine the forensic evaluator.

1712 (d)(i) If the forensic evaluators are in conflict as to the competency of the defendant,
1713 all forensic evaluators should be called to testify at the hearing if reasonably
1714 available.

1715 (ii) A conflict in the opinions of the forensic evaluators does not require the
1716 appointment of an additional forensic evaluator unless the court finds good cause
1717 for the appointment.

1718 (iii) If a party seeks an additional competency evaluation under this Subsection (11),
1719 that party shall:

1720 (A) select the additional forensic evaluator; and

1721 (B) pay the costs of the additional forensic evaluator.

1722 (12)(a)(i) A defendant shall be presumed competent to stand trial unless the court, by
1723 a preponderance of the evidence, finds the defendant incompetent to proceed.

1724 (ii) The burden of proof is upon the proponent of incompetency at the hearing.

1725 (b) An adjudication of incompetent to proceed does not operate as an adjudication of
1726 incompetency to give informed consent for medical treatment or for any other
1727 purpose, unless specifically set forth in the court order.

1728 (13) In determining the defendant's competency to stand trial, the court shall consider the

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

- 1763 **77-15-6 . Commitment on finding of incompetency to stand trial -- Subsequent**
1764 **hearings -- Notice to prosecuting attorneys.**
- 1765 (1)(a) Except as provided in Subsection (5), if after a hearing a court finds a defendant to
1766 be incompetent to proceed, the court shall order the defendant committed to the
1767 department for restoration treatment.
- 1768 (b)(i) Except as provided in Subsection (1)(b)(ii), the court may recommend but may
1769 not order placement of a defendant who is found incompetent to proceed.
- 1770 (ii) The court may order that the defendant be placed in a secure setting rather than a
1771 nonsecure setting.
- 1772 (c) Following restoration screening, the department's designee shall designate and
1773 inform the court of the specific placement and restoration treatment program for the
1774 defendant.
- 1775 (d) Restoration treatment shall be of sufficient scope and duration to:
- 1776 (i) restore the defendant to competency; or
1777 (ii) determine whether the defendant can be restored to competency in the foreseeable
1778 future.
- 1779 (e) A defendant who a court determines is incompetent to proceed may not be held for
1780 restoration treatment longer than:
- 1781 (i) the time reasonably necessary to determine that the defendant cannot become
1782 competent to stand trial in the foreseeable future; and
1783 (ii) the maximum period of incarceration that the defendant could receive if the
1784 defendant were convicted of the most severe offense of the offenses charged.
- 1785 (2)(a) A defendant who is receiving restoration treatment shall receive a progress toward
1786 competency evaluation, by:
- 1787 (i) a forensic evaluator, designated by the department; and
1788 (ii) an additional forensic evaluator, if requested by a party and paid for by the
1789 requesting party.
- 1790 (b) A forensic evaluator shall complete a progress toward competency evaluation and
1791 submit a report within 90 days after the day on which the forensic evaluator receives
1792 the commitment order from the department.
- 1793 (c) The report shall:
- 1794 (i) assess whether the defendant is exhibiting false or exaggerated physical or
1795 psychological symptoms;
1796 (ii) describe any diagnostic instruments, methods, and observations used by the

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

- 1831 (4)(a) Within 15 days after the day on which the court receives the forensic evaluator's
1832 report of the progress toward competency evaluation, the court shall hold a hearing to
1833 review the defendant's competency.
- 1834 (b) At the hearing, the burden of proving that the defendant is competent to stand trial is
1835 on the proponent of competency.
- 1836 (c) Following the hearing, the court shall determine by a preponderance of evidence
1837 whether the defendant:
- 1838 (i) is competent to stand trial;
- 1839 (ii) is competent, but requires the ongoing administration of antipsychotic medication
1840 in order to maintain the defendant's competency to stand trial;
- 1841 (iii) is incompetent to proceed, with a substantial probability that the defendant may
1842 become competent in the foreseeable future; or
- 1843 (iv) is incompetent to proceed, without a substantial probability that the defendant
1844 may become competent in the foreseeable future.
- 1845 (5)(a) If at any time the court determines that the defendant is competent to stand trial,
1846 the court shall:
- 1847 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
1848 charges;
- 1849 (ii) order that the defendant be returned to the placement and status that the defendant
1850 was in at the time when the petition for the adjudication of competency was filed
1851 or raised by the court, unless the court determines that placement of the defendant
1852 in a less restrictive environment is more appropriate;
- 1853 (iii) order the ongoing administration of antipsychotic medication to the defendant for
1854 the purpose of maintaining the defendant's competency to stand trial, if the court
1855 finds that the administration of antipsychotic medication is necessary to maintain
1856 the defendant's competency to stand trial under Subsection (4)(c)(ii); and
- 1857 (iv) require the agency, jail, or prison with custody over the defendant to report to the
1858 court any noncompliance with the court's orders under this Subsection (5) within
1859 48 hours of the noncompliance.
- 1860 (b) If the court determines that the defendant is incompetent to proceed with a
1861 substantial probability that the defendant may become competent in the foreseeable
1862 future, the court may order that the defendant remain committed to the department or
1863 the department's designee for the purpose of restoration treatment.
- 1864 (c)(i) If the court determines that the defendant is incompetent to proceed without a

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

- 1899 (b) The court shall set the matter for a hearing if the notification under Subsection (6)(a)
1900 establishes good cause to review the matter.
- 1901 (7) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall
1902 schedule a competency review hearing for the earlier of:
- 1903 (a) the department's best estimate of when the defendant may be restored to competency;
1904 or
- 1905 (b) three months after the day on which the court determined under Subsection (5)(b) to
1906 extend the defendant's commitment.
- 1907 (8) Unless the defendant is charged with a crime listed in Subsection (9), if a defendant is
1908 incompetent to proceed by the day of the competency review hearing that follows the
1909 extension of a defendant's commitment, the court shall:
- 1910 (a) order the defendant be:
- 1911 (i) released or temporarily detained pending civil commitment proceedings as
1912 described in Subsection (5)(c); and
- 1913 (ii) terminate the defendant's commitment to the department for restoration treatment;
1914 or
- 1915 (b) if the forensic evaluator reports to the court that there is a substantial probability that
1916 restoration treatment will bring the defendant to competency to stand trial in the
1917 foreseeable future, extend the defendant's commitment for restoration treatment up to
1918 45 additional days.
- 1919 (9) If the defendant is charged with aggravated murder, murder, attempted murder,
1920 manslaughter, or a first degree felony and the court determines that the defendant is
1921 making reasonable progress towards restoration of competency at the time of the hearing
1922 held pursuant to Subsection (7), the court may extend the commitment for a period not
1923 to exceed nine months for the purpose of restoration treatment, with a mandatory review
1924 hearing at the end of the nine-month period.
- 1925 (10) Unless the defendant is charged with aggravated murder or murder, if, at the
1926 nine-month review hearing described in Subsection (9), the court determines that the
1927 defendant is incompetent to proceed, the court shall:
- 1928 (a)(i) order the defendant be released or temporarily detained pending civil
1929 commitment proceedings as provided in Subsection (5)(c); and
- 1930 (ii) terminate the defendant's commitment to the department for restoration treatment;
1931 or
- 1932 (b) if the forensic evaluator reports to the court that there is a substantial probability that

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

- 1967 or (13), or is not dismissal of the criminal charges.
- 1968 (17) In cases in which the treatment of the defendant is precluded by court order for a
 1969 period of time, that time period may not be considered in computing time limitations
 1970 under this section.
- 1971 (18)(a) If, at any time, the defendant becomes competent to stand trial while the
 1972 defendant is committed to the department, the clinical director of the Utah State
 1973 Hospital, the department, or the department's designee shall certify that fact to the
 1974 court.
- 1975 (b) The court shall conduct a competency review hearing:
- 1976 (i) within 15 working days after the day on which the court receives the certification
 1977 described in Subsection (18)(a); or
- 1978 (ii) within 30 working days after the day on which the court receives the certification
 1979 described in Subsection (18)(a), if the court determines that more than 15 working
 1980 days are necessary for good cause related to the defendant's competency.
- 1981 (19) The court may order a hearing at any time on the court's own motion or upon
 1982 recommendations of the clinical director of the Utah State Hospital or other facility or
 1983 the department.
- 1984 (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting
 1985 attorney and all counsel of record.
- 1986 Section 18. Section **77-19-203** is amended to read:
- 1987 **77-19-203 . Petition for inquiry as to competency to be executed -- Filing --**
- 1988 **Contents -- Successive petitions.**
- 1989 (1) If an inmate who has been sentenced to death is or becomes incompetent to be executed,
 1990 a petition under Subsection (2) may be filed in the district court of the county where the
 1991 inmate is confined.
- 1992 (2) The petition shall:
- 1993 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to
 1994 believe the inmate is incompetent to be executed; and
- 1995 (b) contain a specific recital of the facts, observations, and conversations with the inmate
 1996 that form the basis for the petition.
- 1997 (3) The petition may be based upon knowledge or information and belief and may be filed
 1998 by the inmate alleged to be incompetent, legal counsel for the inmate, or by an attorney
 1999 representing the state.
- 2000 (4) Before ruling on a petition filed by an inmate or his counsel alleging that the inmate is

2001 incompetent to be executed, the court shall give the state and the Department of
2002 Corrections an opportunity to respond to the allegations of incompetency.

2003 (5) If a petition is filed after an inmate has previously been found competent under either
2004 this chapter or under [~~Title 77, Chapter 15, Inquiry into Sanity of Defendant~~] Chapter 15,
2005 Defendant's Competency to Proceed, no further hearing on competency may be granted
2006 unless the successive petition:

2007 (a) alleges with specificity a substantial change of circumstances subsequent to the
2008 previous determination of competency; and

2009 (b) is sufficient to raise a significant question about the inmate's competency to be
2010 executed.

2011 Section 19. Section **77-29-3** is amended to read:

2012 **77-29-3 . Chapter inapplicable to incompetent persons.**

2013 The provisions of this chapter shall not apply to any person while adjudged to be
2014 incompetent to proceed under [~~Chapter 15, Inquiry into Sanity of Defendant~~] Chapter 15,
2015 Defendant's Competency to Proceed.

2016 Section 20. **Effective Date.**

2017 This bill takes effect on May 7, 2025.