

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 or minor if the defendant or minor 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;
- 35 ▸ addresses when the department is required to provide an updated juvenile competency
- 36 evaluation after an extended attainment period; and
- 37 ▸ makes technical and conforming changes.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

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

63 **77-15-6**, as last amended by Laws of Utah 2024, Chapter 174

64 **77-19-203**, as enacted by Laws of Utah 2004, Chapter 137

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

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

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

68

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

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

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

72 (1) As used in this section:

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

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

75 ~~26B-6-401~~] 26B-6-101.

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

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

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

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

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

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

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

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

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

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

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

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

96 (B) has a substantiated finding by a juvenile court of a severe type of child abuse

- or neglect under Subsections 80-3-404(1) and (2); or
- (c)(i) determining whether a personal care attendant:
- (A) is listed in the Licensing Information System; or
- (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
- (ii) informing a person described in Subsections 26B-6-101(9)(a)(i) through (iv) that a personal care attendant:
- (A) is listed in the Licensing Information System; or
- (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2).

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

- (a) for the purpose of licensing and monitoring foster parents;
- (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and
- (c) for the purpose described in Section 26B-1-211.

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

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

- (a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002; or
- (b) juvenile court records show that a court made a substantiated finding under Section 80-3-404, that the person committed a severe type of child abuse or neglect.

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

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

(1) For purposes of this section:

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

(2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access the database created by Section 26B-6-210 for the purpose of:

- (a)(i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:

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

in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Section 3. Section **26B-5-301** is amended to read:

26B-5-301 . Definitions.

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

- (1) "Adult" means an individual 18 years old or older.
- (2) "Approved treatment facility or program" means a mental health or substance use treatment provider that meets the goals and measurements described in Subsection 26B-5-102(2)(j).
- (3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under Section 26B-5-351.
- (4) "Attending physician" means a physician licensed to practice medicine in this state who has primary responsibility for the care and treatment of the declarant.
- (5) "Attorney-in-fact" means an adult properly appointed under this part to make mental health treatment decisions for a declarant under a declaration for mental health treatment.
- (6) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area where the adult resides or is found.
- (7) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.
- (8) "Designated examiner" means:
 - (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness; or
 - (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.
- (9) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental

health services under Section 17-43-304.

(10) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.

(11) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in Subsections 76-5-406(2)(a) through (l):

(a) sexual intercourse;

(b) penetration, however slight, of the genital or anal opening of the individual;

(c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or

(d) any sexual act causing substantial emotional injury or bodily pain.

(12) "Informed waiver" means the patient was informed of a right and, after being informed of that right and the patient's right to waive the right, expressly communicated his or her intention to waive that right.

(13) "Incapable" means that, in the opinion of the court in a guardianship proceeding under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

(14) "Institution" means a hospital or a health facility licensed under Section 26B-2-206.

(15) "Lay person" means an individual identified and authorized by a patient to participate in activities related to the patient's commitment, including court appearances, discharge planning, and grievances, except that a patient may revoke a lay person's authorization at any time.

~~(16)~~ "Local substance abuse authority" means the same as that term is defined in Section 26B-5-101 and described in Section 17-43-201.

~~[(16)]~~ (17) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, a person that contracts with a local mental health authority, or a person that provides acute inpatient psychiatric services to a patient.

~~[(17)]~~ (18) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to:

- 233 (a) apply for and provide certification for a temporary commitment; or
234 (b) assist in the arrangement of transportation to a designated mental health facility.
- 235 ~~[(18)]~~ (19) "Mental illness" means:
- 236 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
237 behavioral, or related functioning; or
- 238 (b) the same as that term is defined in:
- 239 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
240 published by the American Psychiatric Association; or
- 241 (ii) the current edition of the International Statistical Classification of Diseases and
242 Related Health Problems.
- 243 ~~[(19)]~~ (20) "Mental health treatment" means convulsive treatment, treatment with
244 psychoactive medication, or admission to and retention in a facility for a period not to
245 exceed 17 days.
- 246 ~~[(20)]~~ (21) "Patient" means an individual who is:
- 247 (a) under commitment to the custody or to the treatment services of a local mental health
248 authority; or
- 249 (b) undergoing essential treatment and intervention.
- 250 ~~[(21)]~~ (22) "Physician" means an individual who is:
- 251 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
- 252 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical
253 Practice Act.
- 254 ~~[(22)]~~ (23) "Serious bodily injury" means bodily injury that involves a substantial risk of
255 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
256 protracted loss or impairment of the function of a bodily member, organ, or mental
257 faculty.
- 258 ~~[(23)]~~ (24) "State hospital" means the Utah State Hospital established in Section 26B-5-302.
- 259 ~~[(24)]~~ (25) "Substantial danger" means that due to mental illness, an individual is at serious
260 risk of:
- 261 (a) suicide;
- 262 (b) serious bodily self-injury;
- 263 (c) serious bodily injury because the individual is incapable of providing the basic
264 necessities of life, including food, clothing, or shelter;
- 265 (d) causing or attempting to cause serious bodily injury to another individual;
- 266 (e) engaging in harmful sexual conduct; or

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

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

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

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

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

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

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

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

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

(iii) have staff of the responsible mental health authority, local substance abuse authority, or approved treatment facility or program assist the patient if the patient is unable to write, prepare, or mail correspondence;

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

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

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

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

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

- 301 individuality;
- 302 (g) not be discriminated against on the basis of a characteristic identified in Subsection
- 303 57-21-5(1);
- 304 (h) within 72 business hours after the patient's request, see and receive the services of a
- 305 patient representative, including a peer specialist or patient advocate, who is not
- 306 involved in the direct clinical care of the patient;
- 307 (i) have the patient's behavioral health orders for scope of treatment, declaration for
- 308 mental health treatment, or other psychiatric advance directive reviewed and
- 309 considered as the preferred treatment option for involuntary administration of
- 310 medications by the responsible local mental health authority, local substance abuse
- 311 authority, or approved treatment facility or program, unless by clear and convincing
- 312 evidence the patient's directive does not qualify as effective participation in
- 313 behavioral health decision-making;
- 314 (j) with the patient's consent, have the patient's information or records disclosed to an
- 315 adult family member, the patient's lay person, or, in accordance with state and federal
- 316 law, to a protection and advocacy system designated pursuant to 42 U.S.C. Sec.
- 317 10801 et seq.;
- 318 (k)(i) access to a telephone to make and receive private calls, unless determined a
- 319 clinical or safety risk; and
- 320 (ii) staff assistance to be able to communicate with others, if the patient does not have
- 321 a contact list;
- 322 (l) wear the patient's own clothes, keep and use the patient's own possessions, and keep
- 323 and be allowed to spend a reasonable amount of the patient's own money, unless
- 324 deemed a clinical or safety risk; and
- 325 (m) be told:
- 326 (i) the reason for the patient's detainment and the limitation of the patient's
- 327 detainment, including a description of the patient's right to refuse medication
- 328 unless the patient requires emergency medications; and
- 329 (ii) that the patient's commitment does not mean all treatment during commitment is
- 330 mandatory.
- 331 (2)(a) When any right of a patient is limited or denied, the nature, extent, and reason for
- 332 that limitation or denial shall be entered in the patient's treatment record.
- 333 (b) Information pertaining to a denial of any right of a patient shall be made available,
- 334 upon request, to the patient, the patient's attorney, and the patient's lay person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) name;

(ii) date of birth; and

(iii) social security number;

(b)(i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or

(ii) a written statement by the applicant that:

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

(B) is sworn to under oath; and

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

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

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

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

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

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

the purpose of examination if:

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

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

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

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

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

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

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

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

(7)(a) The court may, in the court's discretion, transfer the case to any other district court within this state, if the transfer will not be adverse to the interest of the proposed patient.

(b) If a case is transferred under Subsection (7)(a), the parties to the case may be transferred and the local mental health authority may be substituted in accordance with Utah Rules of Civil Procedure, Rule 25.

- (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or the local mental health authority's designee under court order for detention or examination, the court shall appoint two designated examiners:
- (a) who did not sign the civil commitment application nor the civil commitment certification under Subsection (1);
 - (b) one of whom is:
 - (i) a licensed physician; or
 - (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health clinical nurse specialist who:
 - (A) is nationally certified;
 - (B) is doctorally trained; and
 - (C) has at least two years of inpatient mental health experience, regardless of the license the individual held at the time of that experience; and
 - (c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.
- (9) The court shall schedule a hearing to be held within 10 calendar days after the day on which the designated examiners are appointed.
- (10)(a) The designated examiners shall[:]
- ~~[(i)]~~ _conduct the examinations separately[;] .
 - ~~[(ii)]~~ ~~(b) [conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place, including]~~ The designated examiners shall conduct the examinations:
 - (i) through telehealth[;] unless the designated examiner determines that:
 - (A) a telehealth examination would not be sufficient to properly assess the proposed patient;
 - (B) a telehealth examination would have a harmful effect on the proposed patient's health; or
 - (C) an in-person examination can be conducted as effectively, conveniently, and timely as an examination through telehealth; and
 - (ii) if the designated examiner determines, pursuant to Subsection (10)(b)(i), that the examination should be conducted in person, at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the proposed patient's health[;] .

471 ~~[(iii)]~~ (c) The designated examiners shall inform the proposed patient, if not represented
472 by an attorney:

473 ~~[(A)]~~ (i) that the proposed patient does not have to say anything;

474 ~~[(B)]~~ (ii) of the nature and reasons for the examination;

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

476 ~~[(D)]~~ (iv) that any information volunteered could form part of the basis for the
477 proposed patient's involuntary commitment;

478 ~~[(E)]~~ (v) that findings resulting from the examination will be made available to the
479 court; and

480 ~~[(F)]~~ (vi) that the designated examiner may, under court order, obtain the proposed
481 patient's mental health records~~[-and]~~ .

482 ~~[(iv)]~~ (d) ~~[within]~~ Within 24 hours of examining the proposed patient, a designated
483 examiner shall report to the court, orally or in writing, whether the proposed patient
484 is mentally ill, has agreed to voluntary commitment, as described in Section
485 26B-5-360, or has acceptable programs available to the proposed patient without
486 court proceedings.

487 ~~[(b)]~~ (e) If a designated examiner reports orally under Subsection ~~[(10)(a)]~~ (10)(d), the
488 designated examiner shall immediately send a written report to the clerk of the court.

489 (11) If a designated examiner is unable to complete an examination on the first attempt
490 because the proposed patient refuses to submit to the examination, the court shall fix a
491 reasonable compensation to be paid to the examiner.

492 (12) If the local mental health authority, the local mental health authority's designee, or a
493 medical examiner determines before the court hearing that the conditions justifying the
494 findings leading to a commitment hearing no longer exist, the local mental health
495 authority, the local mental health authority's designee, or the medical examiner shall
496 immediately report the determination to the court.

497 (13)(a) The court shall terminate the proceedings and dismiss the application before the
498 hearing if both designated examiners inform the court that the proposed patient does
499 not meet the criteria in Subsection (16).

500 (b) The court may terminate the proceedings and dismiss the application at any time,
501 including before the hearing, if the designated examiners or the local mental health
502 authority or the local mental health authority's designee informs the court that the
503 proposed patient:

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

~~[(b)]~~ (i) has agreed to voluntary commitment, as described in Section 26B-5-360;
~~[(e)]~~ (ii) has acceptable options for treatment programs that are available without
court proceedings; or
~~[(d)]~~ (iii) meets the criteria for assisted outpatient treatment described in Section
26B-5-351.

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

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

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

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

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

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

(c) The court shall:

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

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

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

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

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

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

(A) the detention order;

(B) admission notes;

(C) the diagnosis;

(D) any doctors' orders;

(E) progress notes;

(F) nursing notes;

(G) medication records pertaining to the current commitment; and

(H) whether the proposed patient has previously been civilly committed or under an order for assisted outpatient treatment.

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

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

(i)(A) the proposed patient has a mental illness;

(B) because of the proposed patient's mental illness the proposed patient poses a substantial danger to self or others;

(C) the proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;

(D) there is no appropriate less-restrictive alternative to a court order of commitment; and

(E) the local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions

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

commitment and review the list to determine those patients who have been under an order of commitment for the court designated period.

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

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

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

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

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

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

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

(iv) [A] The local mental health authority or the local mental health authority's

- 641 designee shall notify the patient and the patient's counsel of record [~~shall be~~
642 ~~notified~~] in writing that the involuntary commitment will be continued under
643 Subsection (17)(c)(iii), the reasons for the decision to continue, and that the
644 patient has the right to a review hearing by making a request to the court.
- 645 (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall
646 immediately appoint two designated examiners and proceed under Subsections (8)
647 through (14).
- 648 (18)(a) Any patient committed as a result of an original hearing or a patient's legally
649 designated representative who is aggrieved by the findings, conclusions, and order of
650 the court entered in the original hearing has the right to a new hearing upon filing a
651 petition [~~filed~~] with the court within 30 days after the day on which the court entered
652 the order [~~is entered~~].
- 653 (b) The petition shall allege error or mistake in the findings, in which case the court shall
654 appoint three impartial designated examiners previously unrelated to the case to
655 conduct an additional examination of the patient.
- 656 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects,
657 conduct the new hearing in the manner otherwise permitted.
- 658 (19) The county in which the proposed patient resides or is found shall pay the costs of all
659 proceedings under this section.
- 660 (20)(a) A local mental health authority shall provide discharge instructions to each
661 individual committed under this section at or before the time the individual is
662 discharged from the local mental health authority's custody, regardless of the
663 circumstances under which the individual is discharged.
- 664 (b) Discharge instructions provided under Subsection (20)(a) shall include:
- 665 (i) a summary of why the individual was committed to the local mental health
666 authority;
- 667 (ii) detailed information about why the individual is being discharged from the local
668 mental health authority's custody;
- 669 (iii) a safety plan for the individual based on the individual's mental illness or mental
670 or emotional state;
- 671 (iv) notification to the individual's primary care provider, if applicable;
- 672 (v) if the individual is discharged without food, housing, or economic security, a
673 referral to appropriate services, if such services exist in the individual's
674 community;

- 675 (vi) the phone number to call or text for a crisis services hotline, and information
676 about the availability of peer support services;
- 677 (vii) a copy of any psychiatric advance directive presented to the local mental health
678 authority, if applicable;
- 679 (viii) information about how to establish a psychiatric advance directive if one was
680 not presented to the local mental health authority;
- 681 (ix) as applicable, information about medications that were changed or discontinued
682 during the commitment;
- 683 (x) a list of any screening or diagnostic tests conducted during the commitment;
- 684 (xi) a summary of therapeutic treatments provided during the commitment;
- 685 (xii) any laboratory work, including blood samples or imaging, that was completed or
686 attempted during the commitment; and
- 687 (xiii) information about how to contact the local mental health authority if needed.
- 688 (c) If an individual's medications were changed, or if an individual was prescribed new
689 medications while committed under this section, discharge instructions provided
690 under Subsection (20)(a) shall include a clinically appropriate supply of medications,
691 as determined by a licensed health care provider, to allow the individual time to
692 access another health care provider or follow-up appointment.
- 693 (d) If an individual refuses to accept discharge instructions, the local mental health
694 authority shall document the refusal in the individual's medical record.
- 695 (e) If an individual's discharge instructions include referrals to services under Subsection
696 (20)(b)(v), the local mental health authority shall document those referrals in the
697 individual's medical record.
- 698 (f) The local mental health authority shall attempt to follow up with a discharged
699 individual at least 48 hours after discharge, and may use peer support professionals
700 when performing follow-up care or developing a continuing care plan.
- 701 (21) If any provision of Subsection (16)(a)(ii) or the application of any provision of
702 Subsection (16)(a)(ii) to any person or circumstance is held invalid by a court with
703 jurisdiction, the remainder of Subsection (16)(a)(ii) shall be given effect without the
704 invalid provision or application. The provisions of Subsection (16)(a)(ii) are severable.
- 705 Section 7. Section **26B-5-362** is amended to read:
- 706 **26B-5-362 . Commitment and care of criminally insane.**
- 707 Nothing contained in this part may be construed to alter or change the method presently
708 employed for the commitment and care of the criminally insane as provided in [Title 77,

~~Chapter 15, Inquiry into Sanity of Defendant]~~ Title 77, Chapter 15, Defendant's Competency to Proceed.

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

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

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

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

(i) prison inmates displaying mental illness necessitating treatment in a secure mental health facility;

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

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

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

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

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

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

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

(3) The department shall:

- (a) own and operate the forensic mental health facility;
- (b) provide and supervise administrative and clinical staff; and
- (c) provide security staff who are trained as psychiatric technicians.

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

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

26B-6-401 . Definitions.

As used in this part:

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

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

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

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

(4) "Designated intellectual disability professional" means:

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

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

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

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

(b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:

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

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

(5) "Deteriorating disease" includes:

- (a) multiple sclerosis;
- (b) muscular dystrophy;

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

- 811 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial
812 limitation in three or more of the following areas:
- 813 (I) memory or cognition;
814 (II) activities of daily life;
815 (III) judgment and self-protection;
816 (IV) control of emotions;
817 (V) communication;
818 (VI) physical health; or
819 (VII) employment; and
- 820 (iv) requires a combination or sequence of special interdisciplinary or generic care,
821 treatment, or other services that:
- 822 (A) may continue throughout life; and
823 (B) must be individually planned and coordinated.
- 824 (b) "Disability" does not include a condition due solely to:
- 825 (i) mental illness;
826 (ii) personality disorder;
827 (iii) deafness or being hard of hearing;
828 (iv) visual impairment;
829 (v) learning disability;
830 (vi) behavior disorder;
831 (vii) substance abuse; or
832 (viii) the aging process.
- 833 (10) "Division" means the Division of Services for People with Disabilities.
- 834 (11) "Eligible to receive division services" or "eligibility" means qualification, based on
835 criteria established by the division, to receive services that are administered by the
836 division.
- 837 (12) "Endorsed program" means a facility or program that:
- 838 (a) is operated:
- 839 (i) by the division; or
840 (ii) under contract with the division; or
- 841 (b) provides services to a person committed to the division under Part 6, Admission to
842 an Intermediate Care Facility for People with an Intellectual Disability.
- 843 (13) "Licensed physician" means:
- 844 (a) an individual licensed to practice medicine under:

- 845 (i) Title 58, Chapter 67, Utah Medical Practice Act; or
846 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
847 (b) a medical officer of the United States Government while in this state in the
848 performance of official duties.
- 849 (14) "Limited support services" means services that are administered by the division to
850 individuals with a disability:
- 851 (a) under a waiver authorized under 42 U.S.C. Sec. 1396n(c) by the Centers for
852 Medicare and Medicaid Services that permits the division to limit services to an
853 individual who is eligible to receive division services; and
854 (b) through a program that:
- 855 (i) was not operated by the division on or before January 1, 2020; and
856 (ii)(A) limits the kinds of services that an individual may receive; or
857 (B) sets a maximum total dollar amount for program services provided to each
858 individual.
- 859 (15) "Physical disability" means a medically determinable physical impairment that has
860 resulted in the functional loss of two or more of a person's limbs.
- 861 (16) "Public funds" means state or federal funds that are disbursed by the division.
- 862 (17)(a) "Related condition" means a severe, chronic condition that:
- 863 (i) manifests before the day on which an individual turns 22 years old;
864 (ii) is likely to continue indefinitely;
865 (iii) results in substantial functional limitations;
866 (iv) is closely related to an intellectual disability because the condition results in the
867 impairment of:
- 868 (A) general intellectual functioning, similar to that of an individual with an
869 intellectual disability; or
870 (B) adaptive behavior, similar to that of an individual with an intellectual
871 disability; and
- 872 (v) requires treatment or services similar to the treatment or services required for an
873 individual with an intellectual disability.
- 874 (b) "Related condition" does not include mental illness, as that term is defined in Section
875 26B-5-301.
- 876 [(17)] (18) "Resident" means an individual under observation, care, or treatment in an
877 intermediate care facility for people with an intellectual disability.
- 878 (19) "Substantial danger" means that because of an intellectual disability or related

condition, an individual is at risk of:

(a) suicide;

(b) serious bodily self-injury;

(c) serious bodily injury because the individual lacks capacity to provide the basic necessities of life, such as food, clothing, or shelter;

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

(e) engaging in harmful sexual conduct, as that term is defined in Section 26B-5-301; or

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

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

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

26B-6-606 . Involuntary commitment.

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

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

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

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

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

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

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

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

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

~~[(i)]~~ (a) has examined the individual within a three-day period, excluding Saturdays,

Sundays, and state holidays, immediately preceding the certification; and
[(ii)] (b) is of the opinion that the individual has an intellectual disability or related
condition, and that because of the individual's intellectual disability ~~[is likely to injure]~~
or related condition is a substantial danger to self or others~~[if not immediately~~
~~committed]~~.

(2) If the individual in need of commitment is not placed in the custody of the director or
the director's designee by the person submitting the ~~[application, the director's]~~
certification, the director or the director's designee may certify, either in writing or orally
that the individual is in need of immediate commitment to prevent ~~[injury]~~ posing
substantial danger to self or others.

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

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

(b) ~~[After]~~ If proceedings for involuntary commitment have been commenced~~[the~~
~~individual shall be released unless an order of detention is issued in accordance with~~
~~Section 26B-6-608]~~ , an emergency order under this section remains in effect until:

(i) the division determines that the conditions justifying commitment no longer exist;

or

(ii) a court order is issued pursuant to Section 26B-6-608.

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

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

(ii) If the individual desires to communicate with an attorney, the division shall take

947 immediate steps to assist the individual in contacting and communicating with an
948 attorney.

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

access another health care provider or follow-up appointment.

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

(e) If an individual's discharge instructions include referrals to services under Subsection (6)(b)(v), the division~~[-or intermediate care facility]~~ shall document those referrals in the individual's medical record.

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

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

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

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

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

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

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

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

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

~~[(2) Before issuing a detention order, the court may require the petitioner to consult with personnel at the division or at an intermediate care facility for people with an intellectual~~

1015 disability and may direct a designated intellectual disability professional to interview the
1016 petitioner and the individual to be committed, to determine the existing facts, and to
1017 report them to the court.]

1018 [(3) The court may issue a detention order and may direct a peace officer to immediately
1019 take the individual to an intermediate care facility for people with an intellectual
1020 disability to be detained for purposes of an examination if the court finds from the
1021 petition, from other statements under oath, or from reports of physicians or designated
1022 intellectual disability professionals that there is a reasonable basis to believe that the
1023 individual to be committed:]

1024 [(a) poses an immediate danger of physical injury to self or others;]
1025 [(b) requires involuntary commitment pending examination and hearing;]
1026 [(c) the individual was requested but refused to submit to an examination by a licensed
1027 physician or designated intellectual disability professional; or]
1028 [(d) the individual refused to voluntarily go to the division or to an intermediate care
1029 facility for people with an intellectual disability recommended by the division.]

1030 [(4)(a) If the court issues a detention order based on an application that did not include
1031 a certification by a designated intellectual disability professional or physician in
1032 accordance with Subsection (1)(a), the director or his designee shall within 24 hours
1033 after issuance of the detention order, excluding Saturdays, Sundays, and legal
1034 holidays, examine the individual, report the results of the examination to the court
1035 and inform the court:]

1036 [(i) whether the director or his designee believes that the individual has an intellectual
1037 disability; and]
1038 [(ii) whether appropriate treatment programs are available and will be used by the
1039 individual without court proceedings.]

1040 [(b) If the report of the director or his designee is based on an oral report of the
1041 examiner, the examiner shall immediately send the results of the examination in
1042 writing to the clerk of the court.]

1043 [(5) Immediately after an individual is involuntarily committed under a detention order or
1044 under Section 26B-6-607, the director or his designee shall inform the individual, orally
1045 and in writing, of his right to communicate with an attorney. If an individual desires to
1046 communicate with an attorney, the director or his designee shall take immediate steps to
1047 assist the individual in contacting and communicating with an attorney.]

1048 (1)(a) Any responsible person who has reason to know that an individual is in need of

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

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

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

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

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

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

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

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

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

(b) If a prosecutor makes a referral to the division pursuant to Subsection (1), the

1083 division shall complete an assessment as described in Subsection (1)(b) within seven
 1084 days after the day on which the prosecutor makes the referral unless the court
 1085 enlarges the time for good cause shown.

1086 (c) Upon completion of the assessment described in Subsection (2)(b), if the designated
 1087 intellectual disability professionals who examine the individual who is the subject of
 1088 the referral both certify that they believe the individual meets the criteria for
 1089 involuntary commitment under this section, the division may file a petition to
 1090 commence involuntary commitment proceedings in accordance with Subsections
 1091 (1)(c) and (d).

1092 [(6)] (3)(a) Immediately after [~~commencement of proceedings~~] the division files a petition
 1093 for involuntary commitment under this section, the court shall:

1094 (i) schedule a hearing on the petition for no later than 10 days after the day on which
 1095 the division filed the petition; and

1096 (ii) give notice of commencement of the proceedings to:

1097 [(i)] (A) the individual to be committed;

1098 [(ii)] (B) the [~~applicant~~] referent under Subsection (1)(a) or (2)(a), if applicable;

1099 [(iii)] (C) any legal guardian of the individual;

1100 [(iv)] (D) adult members of the individual's immediate family;

1101 [(v)] (E) legal counsel of the individual to be committed, if any;

1102 [(vi)] (F) the division; and

1103 [(vii)] (G) any other person to whom the individual requests, or the court
 1104 designates, notice to be given.

1105 (b) If an individual cannot or refuses to disclose the identity of persons to be notified,
 1106 the extent of notice shall be determined by the court.

1107 [(7)] (4) [~~That notice~~] The notice described in Subsection (3) shall:

1108 (a) set forth the allegations of the petition and all supporting facts;

1109 (b) be accompanied by a copy of [~~any detention~~] an emergency order issued under [
 1110 Subsection (3)] Section 26B-6-607, if applicable; and

1111 (c) state that a hearing will be held within the time provided by law, and give the time
 1112 and place for that hearing.

1113 [(8)] (5) The court may transfer the case and the custody of the individual to be committed
 1114 to any other district court within the state[, if:] if the individual resides in another
 1115 jurisdiction within the state.

1116 [(a)] ~~there are no appropriate facilities for persons with an intellectual disability within~~

1117 the judicial district; and]

1118 [(b) the transfer will not be adverse to the interests of the individual:]

1119 [(9)(a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any

1120 order or commitment under a detention order, the court shall appoint two designated

1121 intellectual disability professionals to examine the individual. If requested by the

1122 individual's counsel, the court shall appoint a reasonably available, qualified person

1123 designated by counsel to be one of the examining designated intellectual disability

1124 professionals. The examinations shall be conducted:]

1125 [(i) separately;]

1126 [(ii) at the home of the individual to be committed, a hospital, an intermediate care

1127 facility for people with an intellectual disability, or any other suitable place not

1128 likely to have a harmful effect on the individual; and]

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

1130 court.]

1131 [(b) The court shall set a time for a hearing to be held within 10 court days of the

1132 appointment of the examiners. However, the court may immediately terminate the

1133 proceedings and dismiss the application if, prior to the hearing date, the examiners,

1134 the director, or his designee informs the court that:]

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

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

1137 proceedings.]

1138 [(10)] (6)(a)(i) Each individual has the right to be represented by counsel at the

1139 commitment hearing and in all preliminary proceedings.

1140 (ii) If neither the individual nor others provide counsel, [-]the court shall appoint

1141 counsel and allow sufficient time for counsel to consult with the individual prior

1142 to any hearing.

1143 (b) If the individual is indigent, the county in which the individual was physically

1144 located when taken into custody shall pay reasonable attorney fees as determined by

1145 the court.

1146 [(11)] (7) [The division or a designated intellectual disability professional in charge of the

1147 individual's care] Upon order of the court, the division or the division's designee shall

1148 provide all [documented information on] relevant documentation on the individual to be

1149 committed [and -]to the court [at the time of the hearing. The] and the individual's

1150 attorney[- shall have access to all documented information on the individual at the time

1151 ~~of and prior to the hearing~~].

1152 [(12)] (8)(a) The court shall provide an opportunity to the individual, the petitioner, and
1153 all other persons to whom notice is required to be given to appear at the hearing, to
1154 testify, and to present and cross-examine witnesses.

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

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

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

1158 (iii) exclude from the hearing all persons not necessary to conduct the proceedings;
1159 and

1160 (iv) upon motion of counsel, require the testimony of each examiner to be given out
1161 of the presence of any other examiner.

1162 (c)(i) The hearing shall be conducted in as informal a manner as may be consistent
1163 with orderly procedure, and in a physical setting that is not likely to have a
1164 harmful effect on the individual.

1165 (ii) The Utah Rules of Evidence apply, and the hearing shall be a matter of court
1166 record.

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

1168 [(13)] (9) The court may order commitment if, upon completion of the hearing and
1169 consideration of the record, [it] the court finds by clear and convincing evidence that all
1170 of the following conditions are met:

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

1172 (b) because of the individual's intellectual disability or related condition, one or more of
1173 the following conditions exist:

1174 (i) the individual poses [~~an immediate danger of physical injury~~] substantial danger to
1175 self or others;

1176 (ii) the individual lacks the capacity to provide the basic necessities of life, such as
1177 food, clothing, or shelter; [~~or~~]

1178 (iii) the individual is in immediate need of habilitation, rehabilitation, care, or
1179 treatment to minimize the effects of the condition which poses a [~~threat of serious~~
1180 ~~physical or psychological injury to the individual, and~~] risk of substantial danger to
1181 self or others; or

1182 (iv) the individual lacks the capacity to engage in a rational decision-making process
1183 concerning the need for habilitation, rehabilitation, care, or treatment, as
1184 evidenced by an inability to weigh the possible costs and benefits of the care or

1185 treatment and the alternatives to it;

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

1187 (d) the division ~~[or the intermediate care facility for people with an intellectual disability~~
1188 ~~recommended by the division in which the individual is to be committed]~~ can provide
1189 the individual with treatment, care, habilitation, or rehabilitation that is adequate and
1190 appropriate to the individual's condition and needs.

1191 ~~[(14)]~~ (10) In the absence of any of the required findings by the court, described in
1192 Subsection ~~[(13)]~~ (9), the court shall dismiss the proceedings.

1193 ~~[(15)]~~ (11)(a) The order of commitment shall designate the period for which the
1194 individual will be committed.

1195 ~~(b) An initial commitment may not exceed six months. [Before the end of the initial~~
1196 ~~commitment period, the administrator of the intermediate care facility for people with~~
1197 ~~an intellectual disability shall commence a review hearing on behalf of the individual.]~~
1198 ~~[(b) At the conclusion of the review hearing, the court may issue an order of~~
1199 ~~commitment for up to a one-year period.]~~

1200 ~~[(16)]~~ (12)(a) An individual committed under this part has the right to a rehearing~~[, upon~~
1201 ~~filing a petition with the court within 30 days after entry of the court's order. If the~~
1202 ~~petition for rehearing alleges error or mistake in the court's findings, the]~~ if, within 15
1203 days after the court enters the order of commitment, the individual files a petition
1204 with the court alleging error or mistake in the court's findings.

1205 ~~(b) Upon a request for rehearing filed in accordance with Subsection (12)(a), the court~~
1206 ~~shall:~~

1207 ~~(i) appoint [one impartial licensed physician and] two impartial designated~~
1208 ~~intellectual disability professionals who have not previously been involved in the~~
1209 ~~case to examine the individual[. -] ; and~~

1210 ~~(ii) schedule a rehearing to be held within 30 days after the court entered the order of~~
1211 ~~commitment.~~

1212 ~~(c) [The] In all other respects, the~~ rehearing shall~~[, in all other respects,]~~ be conducted in
1213 accordance with this part.

1214 ~~[(17)]~~ (13)(a)(i) The court shall maintain a current list of all individuals under its
1215 orders of commitment.

1216 ~~(ii) [That list shall be reviewed in order]~~ The court shall review the list described in
1217 Subsection (13)(a)(i) to determine those patients who have been under an order of
1218 commitment for the designated period.

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

1253 ~~must be reexamined in accordance with this section, or discharged.]~~

1254 [(18)] (14) When a resident is discharged under this [~~subsection~~] section, the division shall [
1255 ~~provide any further support services available and~~] continue to provide division services
1256 for which the individual is eligible and as required to meet the resident's needs.

1257 [(19)] (15)(a) The division~~[-or an intermediate care facility]~~ shall provide discharge
1258 instructions to each individual committed under this section at or before the time the
1259 individual is discharged from the custody of the division~~[-or intermediate care facility]~~,
1260 regardless of whether the individual is discharged by being released or under other
1261 circumstances.

1262 (b) Discharge instructions provided under Subsection [(19)(a)] (15)(a) shall include:

1263 (i) a summary of why the individual was committed;

1264 (ii) detailed information about why the individual is being discharged;

1265 (iii) a safety plan for the individual based on the individual's intellectual disability
1266 and condition;

1267 (iv) notification to the individual's primary care provider, if applicable;

1268 (v) if the individual is discharged without food, housing, or economic security, a
1269 referral to appropriate services, if such services exist in the individual's
1270 community;

1271 (vi) the phone number to call or text for a crisis services hotline, and information
1272 about the availability of peer support services;

1273 (vii) a copy of any advance directive presented to the local mental health authority, if
1274 applicable;

1275 (viii) information about how to establish an advance directive if one was not
1276 presented to the division~~[-or intermediate care facility]~~;

1277 (ix) as applicable, information about medications that were changed or discontinued
1278 during the commitment;

1279 (x) a list of any screening or diagnostic tests conducted during the commitment;

1280 (xi) a summary of therapeutic treatments provided during the commitment;

1281 (xii) any laboratory work, including blood samples or imaging, that was completed or
1282 attempted during the commitment; and

1283 (xiii) information about how to contact the division~~[-or intermediate care facility]~~ if
1284 needed.

1285 (c) If an individual's medications were changed, or if an individual was prescribed new
1286 medications while committed under this section, discharge instructions provided

under Subsection [(19)(a)] (15)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68-3-12.5 . Definitions for Utah Code.

(1) The definitions listed in this section apply to the Utah Code, unless:

(a) the definition is inconsistent with the manifest intent of the Legislature or repugnant to the context of the statute; or

(b) a different definition is expressly provided for the respective title, chapter, part, section, or subsection.

(2) "Adjudicative proceeding" means:

(a) an action by a board, commission, department, officer, or other administrative unit of the state that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including an action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of an action described in Subsection (2)(a).

(3) "Administrator" includes "executor" when the subject matter justifies the use.

(4) "Advisory board," "advisory commission," and "advisory council" mean a board, commission, committee, or council that:

(a) is created by, and whose duties are provided by, statute or executive order;

(b) performs its duties only under the supervision of another person as provided by statute; and

(c) provides advice and makes recommendations to another person that makes policy for the benefit of the general public.

(5) "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.

(6) "County executive" means:

(a) the county commission, in the county commission or expanded county commission form of government established under Title 17, Chapter 52a, Changing Forms of County Government;

(b) the county executive, in the county executive-council optional form of government

- 1355 authorized by Section 17-52a-203; or
- 1356 (c) the county manager, in the council-manager optional form of government authorized
- 1357 by Section 17-52a-204.
- 1358 (7) "County legislative body" means:
- 1359 (a) the county commission, in the county commission or expanded county commission
- 1360 form of government established under Title 17, Chapter 52a, Changing Forms of
- 1361 County Government;
- 1362 (b) the county council, in the county executive-council optional form of government
- 1363 authorized by Section 17-52a-203; and
- 1364 (c) the county council, in the council-manager optional form of government authorized
- 1365 by Section 17-52a-204.
- 1366 (8) "Depose" means to make a written statement made under oath or affirmation.
- 1367 (9)(a) "Equal" means, with respect to biological sex, of the same value.
- 1368 (b) "Equal" does not mean, with respect to biological sex:
- 1369 (i) a characteristic of being the same or identical; or
- 1370 (ii) a requirement that biological sexes be ignored or co-mingled in every
- 1371 circumstance.
- 1372 (10) "Executor" includes "administrator" when the subject matter justifies the use.
- 1373 (11) "Father" means a parent who is of the male sex.
- 1374 (12) "Female" means the characteristic of an individual whose biological reproductive
- 1375 system is of the general type that functions in a way that could produce ova.
- 1376 (13) "Guardian" includes a person who:
- 1377 (a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary or
- 1378 court appointment; or
- 1379 (b) is appointed by a court to manage the estate of a minor or incapacitated person.
- 1380 (14) "Highway" includes:
- 1381 (a) a public bridge;
- 1382 (b) a county way;
- 1383 (c) a county road;
- 1384 (d) a common road; and
- 1385 (e) a state road.
- 1386 (15) "Intellectual disability" ~~[means a significant, subaverage general intellectual~~
- 1387 ~~functioning that:]~~ means the same as that term is defined in the most recent edition of the
- 1388 Diagnostic and Statistical Manual of Mental Disorders published by the American

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

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

- 1457 (f) a claim.
- 1458 (31) "Review board," "review commission," and "review council" mean a board,
1459 commission, committee, or council that:
- 1460 (a) is authorized to approve policy made for the benefit of the general public by another
1461 body or person;
- 1462 (b) is created by, and whose duties are provided by, statute; and
- 1463 (c) performs its duties according to its own rules without supervision other than under
1464 the general control of another person as provided by statute.
- 1465 (32) "Road" includes:
- 1466 (a) a public bridge;
- 1467 (b) a county way;
- 1468 (c) a county road;
- 1469 (d) a common road; and
- 1470 (e) a state road.
- 1471 (33) "Sex" means, in relation to an individual, the individual's biological sex, either male or
1472 female, at birth, according to distinct reproductive roles as manifested by:
- 1473 (a) sex and reproductive organ anatomy;
- 1474 (b) chromosomal makeup; and
- 1475 (c) endogenous hormone profiles.
- 1476 (34) "Signature" includes a name, mark, or sign written with the intent to authenticate an
1477 instrument or writing.
- 1478 (35) "State," when applied to the different parts of the United States, includes a state,
1479 district, or territory of the United States.
- 1480 (36) "Swear" includes "affirm."
- 1481 (37) "Testify" means to make an oral statement under oath or affirmation.
- 1482 (38) "Uniformed services" means:
- 1483 (a) the armed forces;
- 1484 (b) the commissioned corps of the National Oceanic and Atmospheric Administration;
1485 and
- 1486 (c) the commissioned corps of the United States Public Health Service.
- 1487 (39) "United States" includes each state, district, and territory of the United States of
1488 America.
- 1489 (40) "Utah Code" means the 1953 recodification of the Utah Code, as amended, unless the
1490 text expressly references a portion of the 1953 recodification of the Utah Code as it

- 1491 existed:
- 1492 (a) on the day on which the 1953 recodification of the Utah Code was enacted; or
- 1493 (b)(i) after the day described in Subsection (40)(a); and
- 1494 (ii) before the most recent amendment to the referenced portion of the 1953
- 1495 recodification of the Utah Code.
- 1496 (41) "Vessel," when used with reference to shipping, includes a steamboat, canal boat, and
- 1497 every structure adapted to be navigated from place to place.
- 1498 (42)(a) "Veteran" means an individual who:
- 1499 (i) has served in the United States Armed Forces for at least 180 days:
- 1500 (A) on active duty; or
- 1501 (B) in a reserve component, to include the National Guard; or
- 1502 (ii) has incurred an actual service-related injury or disability while in the United
- 1503 States Armed Forces regardless of whether the individual completed 180 days; and
- 1504 (iii) was separated or retired under conditions characterized as honorable or general.
- 1505 (b) This definition is not intended to confer eligibility for benefits.
- 1506 (43) "Will" includes a codicil.
- 1507 (44) "Woman" means an adult human female.
- 1508 (45) "Writ" means an order or precept in writing, issued in the name of:
- 1509 (a) the state;
- 1510 (b) a court; or
- 1511 (c) a judicial officer.
- 1512 (46) "Writing" includes:
- 1513 (a) printing;
- 1514 (b) handwriting; and
- 1515 (c) information stored in an electronic or other medium if the information is retrievable
- 1516 in a perceivable format.
- 1517 Section 15. Section **77-15-2** is amended to read:
- 1518 **77-15-2 . Definitions.**
- 1519 As used in this chapter:
- 1520 (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to
- 1521 determine if an individual is competent to stand trial.
- 1522 (2) "Competent to stand trial" means that a defendant has:
- 1523 (a) a rational and factual understanding of the criminal proceedings against the
- 1524 defendant and of the punishment specified for the offense charged; and

1525 (b) the ability to consult with the defendant's legal counsel with a reasonable degree of
1526 rational understanding in order to assist in the defense.

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

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

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

1530 (b) is trained and qualified by the department to conduct a competency evaluation, a
1531 restoration screening, and a progress toward competency evaluation, based on
1532 knowledge, experience, or education relating to:

1533 (i) intellectual functioning or psychopathology; and

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

1535 (c) if under contract with the department, demonstrates ongoing education and training
1536 relating to forensic mental health in accordance with rules established by the
1537 department in accordance with Title 63G, Chapter 3, Utah Administrative
1538 Rulemaking Act.

1539 (5) "Incompetent to proceed" means that a defendant is not competent to stand trial as a
1540 result of:

1541 (a) mental illness; or

1542 (b) intellectual disability.

1543 [~~(6) "Intellectual disability" means an intellectual disability as defined in the current edition~~
1544 ~~of the Diagnostic and Statistical Manual of Mental Disorders published by the American~~
1545 ~~Psychiatric Association.]~~

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

1547 [~~(8)] (7) "Petition" means a petition to request a court to determine whether a defendant is~~
1548 ~~competent to stand trial.~~

1549 [~~(9)] (8) "Progress toward competency evaluation" means an evaluation to determine~~
1550 ~~whether an individual who is receiving restoration treatment is:~~

1551 (a) competent to stand trial;

1552 (b) incompetent to proceed but has a substantial probability of becoming competent to
1553 stand trial in the foreseeable future; or

1554 (c) incompetent to proceed and does not have a substantial probability of becoming
1555 competent to stand trial in the foreseeable future.

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

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

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

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

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

CHAPTER 15. DEFENDANT'S COMPETENCY TO PROCEED

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

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

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

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

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

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

(b) shall review the allegations of incompetency;

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

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

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

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

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

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

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

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

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

(A) select the additional forensic evaluator; and

- 1593 (B) pay the costs of the additional forensic evaluator.
- 1594 (d) The stipulation by parties to a bona fide doubt as to the defendant's competency to
1595 stand trial alone may not take the place of a competency evaluation ordered under
1596 this Subsection (3).
- 1597 (e) In accordance with state licensing laws, the court may only order the department to
1598 provide an initial evaluation and progress toward competency evaluation for a
1599 defendant who is located within the state.
- 1600 (4)(a) If the petition or other information sufficiently raises concerns that the defendant
1601 may have an intellectual disability, at least one forensic evaluator who is experienced
1602 in assessments of intellectual disabilities shall conduct a competency evaluation.
- 1603 (b) The petitioner or other party, as directed by the court or requested by the department,
1604 shall provide to the forensic evaluator nonmedical information and materials relevant
1605 to a determination of the defendant's competency, including the charging document,
1606 arrest or incident reports pertaining to the charged offense, known criminal history
1607 information, and known prior mental health evaluations and treatments.
- 1608 (c) For purposes of a competency evaluation, a custodian of mental health records
1609 pertaining to the defendant, including the defendant's prior mental health evaluations
1610 or records relating to the defendant's substance use disorder, may provide the records
1611 to:
- 1612 (i) with the defendant's consent, a forensic evaluator or the department on the
1613 department's request; or
- 1614 (ii) a forensic evaluator by court order.
- 1615 (d) A court order under Subsection (4)(c) shall include a protective order that expires
1616 180 days after the day on which:
- 1617 (i) the defendant is found guilty;
- 1618 (ii) the defendant enters a guilty plea;
- 1619 (iii) the court sentences the defendant; or
- 1620 (iv) if the case is appealed, the day on which the final appeal is resolved.
- 1621 (e)(i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f),
1622 the court shall order the forensic evaluator to destroy all records subject to the
1623 protective order within the 180 day period described in Subsection (4)(d).
- 1624 (ii) A forensic evaluator is not required to destroy the records subject to the
1625 protective order if destroying the records is a violation of ethical standards to
1626 which the forensic evaluator is subject for occupational licensing.

- (f) The court may extend the protective order described in Subsection (4)(d) if:
- (i) the court finds the defendant incompetent to proceed without a substantial probability that the defendant will become competent in the foreseeable future;
 - (ii) the prosecutor or another individual indicates to the court that the prosecutor or other individual will seek civil commitment of the defendant under Section 77-15-6; and
 - (iii) the court orders the records be maintained and used only for the purposes of examining the defendant in connection with the petition for civil commitment.
- (g) An order for a competency evaluation may not contain an order for any other inquiry into the mental state of the defendant that is not described in this Subsection (4).
- (5) Pending a competency evaluation, unless the court or the department directs otherwise, the defendant shall be retained in the same custody or status that the defendant was in at the time the examination was ordered.
- (6) In the conduct of a competency evaluation and in a report to the court, a forensic evaluator shall consider and address, in addition to any other factors determined to be relevant by the forensic evaluator:
- (a) ~~(f)~~ the impact of the defendant's mental illness or intellectual disability on the defendant's present ability to:
 - ~~[(A)]~~ (i) rationally and factually understand the criminal proceedings against the defendant; and
 - ~~[(B)]~~ (ii) consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense;
 - (b) in making the determinations described in Subsection (6)(a), the forensic evaluator shall consider, as applicable~~[-]~~
 - ~~[(f)]~~ the defendant's present ability to:
 - ~~[(A)]~~ (i) understand the charges or allegations against the defendant;
 - ~~[(B)]~~ (ii) communicate facts, events, and states of mind;
 - ~~[(C)]~~ (iii) understand the range of possible penalties associated with the charges or allegations against the defendant;
 - ~~[(D)]~~ (iv) engage in reasoned choice of legal strategies and options;
 - ~~[(E)]~~ (v) understand the adversarial nature of the proceedings against the defendant;
 - ~~[(F)]~~ (vi) manifest behavior sufficient to allow the court to proceed; and
 - ~~[(G)]~~ (vii) testify relevantly, if applicable; and
 - (c) whether the defendant is exhibiting false or exaggerated physical or psychological

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

- 1695 (c) state the forensic evaluator's clinical observations, findings, and opinions on each
1696 factor described in Subsection (6); and
- 1697 (d) identify the sources of information used by the forensic evaluator and present the
1698 basis for the forensic evaluator's clinical findings and opinions.
- 1699 (10)(a) Any statement made by the defendant in the course of any competency
1700 examination, whether the examination is with or without the consent of the
1701 defendant, any testimony by a forensic evaluator based upon the statement, and any
1702 other fruits of the statement may not be admitted in evidence against the defendant in
1703 any criminal proceeding except on an issue respecting mental condition on which the
1704 defendant has introduced evidence, unless the evidence is relevant to a determination
1705 of the defendant's competency.
- 1706 (b) Before examining the defendant, the forensic evaluator shall specifically advise the
1707 defendant of the limits of confidentiality as provided under Subsection (10)(a).
- 1708 (11)(a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a
1709 competency hearing. The hearing shall be held not less than five and not more than
1710 15 days after the day on which the court received the forensic evaluators' reports,
1711 unless for good cause the court sets a later date.
- 1712 (b) Any person directed by the department to conduct the competency evaluation may be
1713 subpoenaed to testify at the hearing.
- 1714 (c) The court may call any forensic evaluator to testify at the hearing who is not called
1715 by the parties. [-]If the court calls a forensic evaluator, counsel for the parties may
1716 cross-examine the forensic evaluator.
- 1717 (d)(i) If the forensic evaluators are in conflict as to the competency of the defendant,
1718 all forensic evaluators should be called to testify at the hearing if reasonably
1719 available.
- 1720 (ii) A conflict in the opinions of the forensic evaluators does not require the
1721 appointment of an additional forensic evaluator unless the court finds good cause
1722 for the appointment.
- 1723 (iii) If a party seeks an additional competency evaluation under this Subsection (11),
1724 that party shall:
- 1725 (A) select the additional forensic evaluator; and
1726 (B) pay the costs of the additional forensic evaluator.
- 1727 (12)(a)(i) A defendant shall be presumed competent to stand trial unless the court, by
1728 a preponderance of the evidence, finds the defendant incompetent to proceed.

- 1729 (ii) The burden of proof is upon the proponent of incompetency at the hearing.
- 1730 (b) An adjudication of incompetent to proceed does not operate as an adjudication of
- 1731 incompetency to give informed consent for medical treatment or for any other
- 1732 purpose, unless specifically set forth in the court order.
- 1733 (13) In determining the defendant's competency to stand trial, the court shall consider the
- 1734 totality of the circumstances, including:
- 1735 (a) the petition;
- 1736 (b) the defendant's criminal and arrest history;
- 1737 (c) prior mental health evaluations and treatments provided to the court by the defendant;
- 1738 (d) subject to Subsection (15), whether the defendant was found incompetent to proceed
- 1739 in a criminal action unrelated to the charged offense for which the petition is filed;
- 1740 (e) the testimony of lay witnesses, if any;
- 1741 (f) the forensic evaluator's testimony and report;
- 1742 (g) the materials on which the forensic evaluator's report is based; and
- 1743 (h) any other relevant evidence or consideration bearing on the competency of the
- 1744 defendant.
- 1745 (14) If the court finds the defendant incompetent to proceed:
- 1746 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:
- 1747 (i) include findings addressing each of the factors in Subsection (6)(a);
- 1748 (ii) include a transportation order, if necessary;
- 1749 (iii) be accompanied by the forensic evaluators' reports, any psychiatric,
- 1750 psychological, or social work reports submitted to the court relative to the mental
- 1751 condition of the defendant, and any other documents made available to the court
- 1752 by either the defense or the prosecution, pertaining to the defendant's current or
- 1753 past mental condition; and
- 1754 (iv) be sent by the court to the department; and
- 1755 (b) the prosecuting attorney shall provide to the department:
- 1756 (i) the charging document and probable cause statement, if any;
- 1757 (ii) arrest or incident reports prepared by law enforcement and pertaining to the
- 1758 charged offense; and
- 1759 (iii) additional supporting documents.
- 1760 (15) The court may not find the defendant incompetent to proceed based solely on a court
- 1761 having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6
- 1762 in an unrelated criminal action if the court in the unrelated criminal action ordered the

release more than one year before the day on which the petition described in Subsection (13)(a) is filed.

(16) The court may make any reasonable order to ensure compliance with this section.

(17) Failure to comply with this section does not result in the dismissal of criminal charges.

Section 17. Section **77-15-6** is amended to read:

77-15-6 . Commitment on finding of incompetency to stand trial -- Subsequent hearings -- Notice to prosecuting attorneys.

(1)(a) Except as provided in Subsection (5), if after a hearing a court finds a defendant to be incompetent to proceed, the court shall order the defendant committed to the department for restoration treatment.

(b)(i) Except as provided in Subsection (1)(b)(ii), the court may recommend but may not order placement of a defendant who is found incompetent to proceed.

(ii) The court may order that the defendant be placed in a secure setting rather than a nonsecure setting.

(c) Following restoration screening, the department's designee shall designate and inform the court of the specific placement and restoration treatment program for the defendant.

(d) Restoration treatment shall be of sufficient scope and duration to:

(i) restore the defendant to competency; or

(ii) determine whether the defendant can be restored to competency in the foreseeable future.

(e) A defendant who a court determines is incompetent to proceed may not be held for restoration treatment longer than:

(i) the time reasonably necessary to determine that the defendant cannot become competent to stand trial in the foreseeable future; and

(ii) the maximum period of incarceration that the defendant could receive if the defendant were convicted of the most severe offense of the offenses charged.

(2)(a) A defendant who is receiving restoration treatment shall receive a progress toward competency evaluation, by:

(i) a forensic evaluator, designated by the department; and

(ii) an additional forensic evaluator, if requested by a party and paid for by the requesting party.

(b) A forensic evaluator shall complete a progress toward competency evaluation and submit a report within 90 days after the day on which the forensic evaluator receives

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

- 1831 (3)(a) The court on its own motion or upon motion by either party or the department
1832 may appoint an additional forensic evaluator to conduct a progress toward
1833 competency evaluation.
- 1834 (b) If the court appoints an additional forensic evaluator upon motion of a party, that
1835 party shall pay the costs of the additional forensic evaluator.
- 1836 (4)(a) Within 15 days after the day on which the court receives the forensic evaluator's
1837 report of the progress toward competency evaluation, the court shall hold a hearing to
1838 review the defendant's competency.
- 1839 (b) At the hearing, the burden of proving that the defendant is competent to stand trial is
1840 on the proponent of competency.
- 1841 (c) Following the hearing, the court shall determine by a preponderance of evidence
1842 whether the defendant:
- 1843 (i) is competent to stand trial;
- 1844 (ii) is competent, but requires the ongoing administration of antipsychotic medication
1845 in order to maintain the defendant's competency to stand trial;
- 1846 (iii) is incompetent to proceed, with a substantial probability that the defendant may
1847 become competent in the foreseeable future; or
- 1848 (iv) is incompetent to proceed, without a substantial probability that the defendant
1849 may become competent in the foreseeable future.
- 1850 (5)(a) If at any time the court determines that the defendant is competent to stand trial,
1851 the court shall:
- 1852 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
1853 charges;
- 1854 (ii) order that the defendant be returned to the placement and status that the defendant
1855 was in at the time when the petition for the adjudication of competency was filed
1856 or raised by the court, unless the court determines that placement of the defendant
1857 in a less restrictive environment is more appropriate;
- 1858 (iii) order the ongoing administration of antipsychotic medication to the defendant for
1859 the purpose of maintaining the defendant's competency to stand trial, if the court
1860 finds that the administration of antipsychotic medication is necessary to maintain
1861 the defendant's competency to stand trial under Subsection (4)(c)(ii); and
- 1862 (iv) require the agency, jail, or prison with custody over the defendant to report to the
1863 court any noncompliance with the court's orders under this Subsection (5) within
1864 48 hours of the noncompliance.

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

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

1933 (a)(i) order the defendant be released or temporarily detained pending civil
1934 commitment proceedings as provided in Subsection (5)(c); and
1935 (ii) terminate the defendant's commitment to the department for restoration treatment;
1936 or
1937 (b) if the forensic evaluator reports to the court that there is a substantial probability that
1938 restoration treatment will bring the defendant to competency to stand trial in the
1939 foreseeable future, extend the defendant's commitment for restoration treatment for
1940 up to 135 additional days.

1941 (11) If the defendant is charged with aggravated murder or murder and the court determines
1942 that the defendant is making reasonable progress towards restoration of competency at
1943 the time of the nine-month review hearing described in Subsection (9), the court may
1944 extend the commitment for a period not to exceed 24 months for the purpose of
1945 restoration treatment.

1946 (12) If the court extends the defendant's commitment term under Subsection (11), the court
1947 shall hold a hearing no less frequently than at 12-month intervals following the
1948 extension for the purpose of determining the defendant's competency status.

1949 (13) If, at the end of the 24-month commitment period described in Subsection (11), the
1950 court determines that the defendant is incompetent to proceed, the court shall:

1951 (a)(i) order the defendant be released or temporarily detained pending civil
1952 commitment proceedings as provided in Subsection (5)(c); and
1953 (ii) terminate the defendant's commitment to the department for restoration treatment;
1954 or
1955 (b) if the forensic evaluator reports to the court that there is a substantial probability that
1956 restoration treatment will bring the defendant to competency to stand trial in the
1957 foreseeable future, extend the defendant's commitment for restoration treatment for
1958 up to 12 additional months.

1959 (14)(a) Neither release from a pretrial incompetency commitment under the provisions
1960 of this section nor civil commitment requires dismissal of criminal charges.

1961 (b) The court may retain jurisdiction over the criminal case and may order periodic
1962 reviews.

1963 (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5, Health Care -
1964 Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services
1965 for People with Disabilities, may still be adjudicated competent to stand trial under this
1966 chapter.

- 1967 (16)(a) The remedy for a violation of the time periods specified in this section, other
1968 than those specified in Subsection (5)(c), (8), (10), or (13), shall be a motion to
1969 compel the hearing, or mandamus, but not release from detention or dismissal of the
1970 criminal charges.
- 1971 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (8), (9),
1972 or (13), or is not dismissal of the criminal charges.
- 1973 (17) In cases in which the treatment of the defendant is precluded by court order for a
1974 period of time, that time period may not be considered in computing time limitations
1975 under this section.
- 1976 (18)(a) If, at any time, the defendant becomes competent to stand trial while the
1977 defendant is committed to the department, the clinical director of the Utah State
1978 Hospital, the department, or the department's designee shall certify that fact to the
1979 court.
- 1980 (b) The court shall conduct a competency review hearing:
- 1981 (i) within 15 working days after the day on which the court receives the certification
1982 described in Subsection (18)(a); or
- 1983 (ii) within 30 working days after the day on which the court receives the certification
1984 described in Subsection (18)(a), if the court determines that more than 15 working
1985 days are necessary for good cause related to the defendant's competency.
- 1986 (19) The court may order a hearing at any time on the court's own motion or upon
1987 recommendations of the clinical director of the Utah State Hospital or other facility or
1988 the department.
- 1989 (20) Notice of a hearing on competency to stand trial shall be given to the prosecuting
1990 attorney and all counsel of record.
- 1991 Section 18. Section **77-19-203** is amended to read:
- 1992 **77-19-203 . Petition for inquiry as to competency to be executed -- Filing --**
1993 **Contents -- Successive petitions.**
- 1994 (1) If an inmate who has been sentenced to death is or becomes incompetent to be executed,
1995 a petition under Subsection (2) may be filed in the district court of the county where the
1996 inmate is confined.
- 1997 (2) The petition shall:
- 1998 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to
1999 believe the inmate is incompetent to be executed; and
- 2000 (b) contain a specific recital of the facts, observations, and conversations with the inmate

2001 that form the basis for the petition.

2002 (3) The petition may be based upon knowledge or information and belief and may be filed
2003 by the inmate alleged to be incompetent, legal counsel for the inmate, or by an attorney
2004 representing the state.

2005 (4) Before ruling on a petition filed by an inmate or his counsel alleging that the inmate is
2006 incompetent to be executed, the court shall give the state and the Department of
2007 Corrections an opportunity to respond to the allegations of incompetency.

2008 (5) If a petition is filed after an inmate has previously been found competent under either
2009 this chapter or under [~~Title 77, Chapter 15, Inquiry into Sanity of Defendant~~] Chapter 15,
2010 Defendant's Competency to Proceed, no further hearing on competency may be granted
2011 unless the successive petition:

2012 (a) alleges with specificity a substantial change of circumstances subsequent to the
2013 previous determination of competency; and

2014 (b) is sufficient to raise a significant question about the inmate's competency to be
2015 executed.

2016 Section 19. Section **77-29-3** is amended to read:

2017 **77-29-3 . Chapter inapplicable to incompetent persons.**

2018 The provisions of this chapter shall not apply to any person while adjudged to be
2019 incompetent to proceed under [~~Chapter 15, Inquiry into Sanity of Defendant~~] Chapter 15,
2020 Defendant's Competency to Proceed.

2021 Section 20. Section **80-6-402** is amended to read:

2022 **80-6-402 . Procedure -- Standard.**

2023 (1) When a written motion is filed in accordance with Section 80-6-401 [-]raising the issue
2024 of a minor's competency to proceed, or when the juvenile [-]court raises the issue of a
2025 minor's competency to proceed, the juvenile court shall stay all proceedings under this
2026 chapter .

2027 (2)(a) If a motion for inquiry is opposed by either party, the juvenile [-]court shall,
2028 before granting or denying the motion, hold a limited hearing solely for the purpose
2029 of determining the sufficiency of the motion.

2030 (b) If the juvenile [-]court finds that the allegations of incompetency raise a bona fide
2031 doubt as to the minor's competency to proceed, the juvenile court shall:

2032 (i) enter an order for an evaluation of the minor's competency to proceed; and

2033 (ii) set a date for a hearing on the issue of the minor's competency.

2034 (3)(a) After the granting of a motion, and before a full competency hearing, the juvenile [-]

2035 court may order the department to evaluate the minor and to report to the juvenile [-]
2036 court concerning the minor's mental condition.

2037 (b) In accordance with state licensing laws, the court may only order the department to
2038 provide an initial evaluation and progress toward competency evaluation for a minor
2039 who is located within the state.

2040 (4) The minor shall be evaluated by a forensic evaluator who:

- 2041 (a) has experience in juvenile forensic evaluations and juvenile brain development;
- 2042 (b) if it becomes apparent that the minor is not competent due to an intellectual disability
- 2043 or related condition, has experience in intellectual disability or related conditions; and
- 2044 (c) is not involved in the current treatment of the minor.

2045 (5) The petitioner or other party, as directed by the juvenile court, shall provide all
2046 information and materials relevant to a determination of the minor's competency to the
2047 department within seven days of the juvenile court's order, including:

- 2048 (a) the motion;
- 2049 (b) the arrest or incident reports pertaining to the charged offense;
- 2050 (c) the minor's known delinquency history information;
- 2051 (d) the minor's probation record relevant to competency;
- 2052 (e) known prior mental health evaluations and treatments; and
- 2053 (f) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the
- 2054 minor's education.

2055 (6)(a) The minor's parent or guardian, the prosecuting attorney, the defense attorney, and
2056 the attorney guardian ad litem, shall cooperate, by executing releases of information
2057 when necessary, in providing the relevant information and materials to the forensic
2058 evaluator, including:

- 2059 (i) medical records;
- 2060 (ii) prior mental evaluations; or
- 2061 (iii) records of diagnosis or treatment of substance abuse disorders.

2062 (b) The minor shall cooperate, by executing a release of information when necessary, in
2063 providing the relevant information and materials to the forensic evaluator regarding
2064 records of diagnosis or treatment of a substance abuse disorder.

2065 (7)(a) In conducting the evaluation and in the report determining if a minor is competent
2066 to proceed, the forensic evaluator shall inform the juvenile court of the forensic
2067 evaluator's opinion whether:

- 2068 (i) the minor has a present ability to consult with counsel with a reasonable degree of

- 2069 rational understanding; and
- 2070 (ii) the minor has a rational as well as factual understanding of the proceedings.
- 2071 (b) In evaluating the minor, the forensic evaluator shall consider the minor's present
- 2072 ability to:
- 2073 (i) understand the charges or allegations against the minor;
- 2074 (ii) communicate facts, events, and states of mind;
- 2075 (iii) understand the range of possible penalties associated with the allegations against
- 2076 the minor;
- 2077 (iv) engage in reasoned choice of legal strategies and options;
- 2078 (v) understand the adversarial nature of the proceedings against the minor;
- 2079 (vi) manifest behavior sufficient to allow the juvenile court to proceed;
- 2080 (vii) testify relevantly; and
- 2081 (viii) any other factor determined to be relevant to the forensic evaluator.
- 2082 (8)(a) The forensic evaluator shall provide an initial report to the juvenile court, the
- 2083 prosecuting and defense attorneys, and the attorney guardian ad litem, if applicable,
- 2084 within 30 days of the receipt of the juvenile court's order.
- 2085 (b) If the forensic evaluator informs the juvenile court that additional time is needed, the
- 2086 juvenile court may grant, taking into consideration the custody status of the minor, up
- 2087 to an additional 15 days to provide the report to the juvenile court and counsel.
- 2088 (c) The forensic evaluator must provide the report within 45 days from the receipt of the
- 2089 juvenile court's order unless, for good cause shown, the juvenile court authorizes an
- 2090 additional period of time to complete the evaluation and provide the report.
- 2091 (d) The report shall inform the juvenile court of the forensic evaluator's opinion
- 2092 concerning the minor's competency.
- 2093 (9) If the forensic evaluator's opinion is that the minor is not competent to proceed, the
- 2094 report shall indicate:
- 2095 (a) the nature of the minor's:
- 2096 (i) mental illness;
- 2097 (ii) intellectual disability or related condition; or
- 2098 (iii) developmental immaturity;
- 2099 (b) the relationship of the minor's mental illness, intellectual disability, related condition,
- 2100 or developmental immaturity to the minor's incompetence;
- 2101 (c) whether there is a substantial likelihood that the minor may attain competency in the
- 2102 foreseeable future;

- 2103 (d) the amount of time estimated for the minor to achieve competency if the minor
2104 undergoes competency attainment treatment, including medication;
- 2105 (e) the sources of information used by the forensic evaluator; and
- 2106 (f) the basis for clinical findings and opinions.
- 2107 (10) Regardless of whether a minor consents to a competency evaluation, any statement
2108 made by the minor in the course of the competency evaluation, any testimony by the
2109 forensic evaluator based upon any statement made by the minor in the competency
2110 evaluation, and any other fruits of the statement made by the minor in the competency
2111 evaluation:
- 2112 (a) may not be admitted in evidence against the minor in a proceeding under this
2113 chapter, except the statement may be admitted on an issue respecting the mental
2114 condition on which the minor has introduced evidence; and
- 2115 (b) may be admitted where relevant to a determination of the minor's competency.
- 2116 (11) Before evaluating the minor for a competency evaluation, a forensic evaluator shall
2117 specifically advise the minor, and the minor's parent or guardian if reasonably available,
2118 of the limits of confidentiality as provided under Subsection (10).
- 2119 (12) When the report is received, the juvenile court shall set a date for a competency
2120 hearing that shall be held in not less than five and not more than 15 days, unless the
2121 juvenile court enlarges the time for good cause.
- 2122 (13)(a) A minor shall be presumed competent unless the juvenile court, by a
2123 preponderance of the evidence, finds the minor not competent to proceed.
- 2124 (b) The burden of proof is upon the proponent of incompetency to proceed.
- 2125 (14)(a) Following the hearing, the juvenile court shall determine by a preponderance of
2126 evidence whether the minor is:
- 2127 (i) competent to proceed;
- 2128 (ii) not competent to proceed with a substantial probability that the minor may attain
2129 competency in the foreseeable future; or
- 2130 (iii) not competent to proceed without a substantial probability that the minor may
2131 attain competency in the foreseeable future.
- 2132 (b) If the juvenile court enters a finding described in Subsection (14)(a)(i), the juvenile
2133 court shall proceed with the proceedings in the minor's case.
- 2134 (c) If the juvenile court enters a finding described in Subsection (14)(a)(ii), the juvenile
2135 court shall proceed in accordance with Section 80-6-403.
- 2136 (d)(i) If the juvenile court enters a finding described in Subsection (14)(a)(iii), the

juvenile court shall terminate the competency proceeding, dismiss the charges against the minor without prejudice, and release the minor from any custody order related to the pending proceeding, unless the prosecutor informs the court that commitment proceedings will be initiated in accordance with:

(A) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability;

(B) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State Hospital and Other Mental Health Facilities; or

(C) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18.

(ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated within seven days after the day on which the juvenile court enters the order under Subsection (14)(a), unless the court enlarges the time for good cause shown.

(iii) The juvenile court may order the minor to remain in custody until the commitment proceedings have been concluded.

(15) If the juvenile court finds the minor not competent to proceed, the juvenile court's order shall contain findings addressing each of the factors in Subsection (7)(b).

Section 21. Section **80-6-403** is amended to read:

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

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

(2) The attainment plan shall include:

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

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

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

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

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

- 2171 (3) The department shall provide the attainment plan to the juvenile court, the prosecuting
2172 attorney, the defense attorney, and the attorney guardian ad litem at least three days
2173 before the competency disposition hearing.
- 2174 (4)(a) During the attainment period, the minor shall remain in the least restrictive
2175 appropriate setting.
- 2176 (b) A finding of not competent to proceed does not grant authority for a juvenile court to
2177 place a minor in the custody of a division of the department, or create eligibility for
2178 services from the Division of Services for People With Disabilities.
- 2179 (c) If the juvenile court orders the minor to be held in detention during the attainment
2180 period, the juvenile court shall make the following findings on the record:
2181 (i) the placement is the least restrictive appropriate setting;
2182 (ii) the placement is in the best interest of the minor;
2183 (iii) the minor will have access to the services and treatment required by the
2184 attainment plan in the placement; and
2185 (iv) the placement is necessary for the safety of the minor or others.
- 2186 (d) A juvenile court shall terminate an order of detention related to the pending
2187 proceeding for a minor who is not competent to proceed in that matter if:
2188 (i) the most severe allegation against the minor if committed by an adult is a class B
2189 misdemeanor;
2190 (ii) more than 60 days have passed after the day on which the juvenile court
2191 adjudicated the minor not competent to proceed; and
2192 (iii) the minor has not attained competency.
- 2193 (5)(a) At any time that the minor becomes competent to proceed during the attainment
2194 period, the department shall notify the juvenile court, the prosecuting attorney, the
2195 defense attorney, and the attorney guardian ad litem.
- 2196 (b) The juvenile court shall hold a hearing with 15 business days of notice from the
2197 department described in Subsection (5)(a).
- 2198 (6)(a) If at any time during the attainment period the juvenile court finds that there is not
2199 a substantial probability that the minor will attain competency in the foreseeable
2200 future, the juvenile court shall terminate the competency proceeding, dismiss the
2201 petition or information without prejudice, and release the minor from any custody
2202 order related to the pending proceeding, unless the prosecuting attorney or any other
2203 individual informs the juvenile court that commitment proceedings will be initiated in
2204 accordance with:

- 2205 (i) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for
2206 People with an Intellectual Disability;
- 2207 (ii) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State
2208 Hospital and Other Mental Health Facilities; or
- 2209 (iii) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons
2210 Under Age 18.
- 2211 (b) The prosecuting attorney shall initiate the proceedings described in Subsection (6)(a)
2212 within seven days after the juvenile court's order, unless the juvenile court enlarges
2213 the time for good cause shown.
- 2214 (7) During the attainment period, the juvenile court may order a hearing or rehearing at
2215 anytime on the juvenile court's own motion or upon recommendation of any interested
2216 party or the department.
- 2217 (8)(a) Within three months of the juvenile court's approval of the attainment plan, the
2218 department shall provide a report on the minor's progress towards competence.
- 2219 (b) The report described in Subsection (8)(a) shall address the minor's:
- 2220 (i) compliance with the attainment plan;
- 2221 (ii) progress towards competency based on the issues identified in the original
2222 competency evaluation; and
- 2223 (iii) current mental illness, intellectual disability or related condition, or
2224 developmental immaturity, and need for treatment, if any, and whether there is
2225 substantial likelihood of the minor attaining competency within six months.
- 2226 (9)(a) Within 30 days of receipt of the report, the juvenile court shall hold a hearing to
2227 determine the minor's current status.
- 2228 (b) At the hearing, the burden of proving the minor is competent is on the proponent of
2229 competency.
- 2230 (c) The juvenile court shall determine by a preponderance of the evidence whether the
2231 minor is competent to proceed.
- 2232 (10) If the minor has not attained competency after the initial three month attainment period
2233 but is showing reasonable progress towards attainment of competency, the juvenile court
2234 may extend the attainment period up to an additional three months.
- 2235 (11) The department shall provide an updated juvenile competency evaluation at the
2236 conclusion of the [~~six-month~~] extended attainment period under Subsection (10) to advise
2237 the juvenile court on the minor's current competency status.
- 2238 (12) If the minor does not attain competency within six months after the juvenile court

2239 initially finds the minor not competent to proceed, the court shall terminate the
2240 competency proceedings and dismiss the petition or information filed without prejudice,
2241 unless good cause is shown that there is a substantial likelihood the minor will attain
2242 competency within one year from the initial finding of not competent to proceed.

2243 (13) In the event a minor has an unauthorized leave lasting more than 24 hours, the
2244 attainment period shall toll until the minor returns.

2245 (14)(a) Regardless of whether a minor consents to attainment, any statement made by
2246 the minor in the course of attainment, any testimony by the forensic evaluator based
2247 upon any statement made by the minor in the course of attainment, and any other
2248 fruits of a statement made by the minor in the course of attainment:

2249 (i) may not be admitted in evidence against the minor in a proceeding under this
2250 chapter, except the statement may be admitted on an issue respecting the mental
2251 condition on which the minor has introduced evidence; and

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

2253 (b) Before evaluating the minor during the attainment period, a forensic evaluator shall
2254 specifically advise the minor, and the minor's parent or guardian if reasonably
2255 available, of the limits of confidentiality provided in Subsection (14)(a).

2256 Section 22. **Effective Date.**

2257 This bill takes effect on May 7, 2025.