

Keven J. Stratton proposes the following substitute bill:

Capacity and Disability Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Keven J. Stratton

LONG TITLE

General Description:

This bill addresses guardianships and supported decision-making agreements.

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 commitment;

- repeals a provision that provides for the future repeal of statutory language concerning when counsel is not required for an allegedly incapacitated person;
- amends provisions concerning the rights of certain individuals who are under a court-ordered guardianship;
- amends provisions concerning the procedure for determining incapacity and appointing a guardian for an incapacitated person;
- prescribes the principles by which provisions related to supported decision-making agreements should be interpreted;
- describes the requirements for a supported decision-making agreement;
- authorizes the use of a supported decision-making agreement by certain individuals, subject to the permission of the individual's guardian, conservator, or other qualified person, as applicable;
- describes the duties of an individual who is a supporter under a supported decision-making agreement;
- provides that a supported decision-making agreement may be revoked or terminated, with certain conditions;
- describes how a supported decision-making agreement interacts with and affects other laws and principles;
- provides protections for a person who relies, in good faith, on the provisions of a supported decision-making agreement;
- provides that when there is a conflict in the opinion of forensic evaluators, if a party seeks an additional competency evaluation then the party is responsible for selecting the evaluator and paying the cost of the evaluator;
- amends provisions regarding the release of a defendant determined to be incompetent to proceed from a secure setting;
- addresses when the department is required to provide an updated juvenile competency evaluation after an extended attainment period; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63 **7-5-1**, as last amended by Laws of Utah 2013, Chapter 364
64 **26B-2-121**, as renumbered and amended by Laws of Utah 2023, Chapter 305
65 **26B-2-122**, as last amended by Laws of Utah 2024, Chapter 240
66 **26B-5-301**, as renumbered and amended by Laws of Utah 2023, Chapter 308
67 **26B-5-310**, as renumbered and amended by Laws of Utah 2023, Chapter 308
68 **26B-5-322**, as last amended by Laws of Utah 2023, Chapter 184 and renumbered and
69 amended by Laws of Utah 2023, Chapter 308
70 **26B-5-332**, as last amended by Laws of Utah 2024, Chapters 287, 299 and 314
71 **26B-5-362**, as renumbered and amended by Laws of Utah 2023, Chapter 308
72 **26B-5-371**, as last amended by Laws of Utah 2023, Chapter 184 and renumbered and
73 amended by Laws of Utah 2023, Chapter 308
74 **26B-6-401**, as last amended by Laws of Utah 2024, Chapter 240
75 **26B-6-606**, as renumbered and amended by Laws of Utah 2023, Chapter 308
76 **26B-6-607**, as last amended by Laws of Utah 2024, Chapter 299
77 **26B-6-608**, as last amended by Laws of Utah 2024, Chapter 299
78 **26B-6-613**, as renumbered and amended by Laws of Utah 2023, Chapter 308
79 **63I-2-275**, as last amended by Laws of Utah 2024, Third Special Session, Chapter 5
80 **68-3-12.5**, as last amended by Laws of Utah 2024, Chapter 438
81 **75-1-201**, as last amended by Laws of Utah 2024, Chapter 364
82 **75-5-301.5**, as last amended by Laws of Utah 2024, Chapter 113
83 **75-5-303**, as last amended by Laws of Utah 2024, Chapter 113
84 **75-5-312**, as last amended by Laws of Utah 2022, Chapter 358 and repealed and
85 reenacted by Laws of Utah 2022, Chapter 441 and last amended by Coordination Clause, Laws
86 of Utah 2022, Chapter 358
87 **75-5-417**, as last amended by Laws of Utah 2022, Chapter 358
88 **77-15-2**, as last amended by Laws of Utah 2023, Chapter 171
89 **77-15-5**, as last amended by Laws of Utah 2023, Chapters 171, 417 and last amended by
90 Coordination Clause, Laws of Utah 2023, Chapter 417
91 **77-15-6**, as last amended by Laws of Utah 2024, Chapter 174
92 **77-19-203**, as enacted by Laws of Utah 2004, Chapter 137
93 **77-29-3**, as enacted by Laws of Utah 1980, Chapter 15
94 **80-6-402**, as last amended by Laws of Utah 2023, Chapter 330
95 **80-6-403**, as last amended by Laws of Utah 2023, Chapter 330

96 ENACTS:

97 **75-5-701**, Utah Code Annotated 1953

98 **75-5-702**, Utah Code Annotated 1953

99 **75-5-703**, Utah Code Annotated 1953

100 **75-5-704**, Utah Code Annotated 1953

101 **75-5-705**, Utah Code Annotated 1953

102 **75-5-706**, Utah Code Annotated 1953

103 **75-5-707**, Utah Code Annotated 1953

104 **75-5-708**, Utah Code Annotated 1953

105 **75-5-709**, Utah Code Annotated 1953

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

108 Section 1. Section **7-5-1** is amended to read:

109 **7-5-1 . Definitions -- Allowable trust companies -- Exceptions.**

110 (1) As used in this chapter:

111 (a) "Business trust" means an entity engaged in a trade or business that is created by a
112 declaration of trust that transfers property to trustees, to be held and managed by
113 them for the benefit of persons holding certificates representing the beneficial interest
114 in the trust estate and assets.

115 (b) "Trust business" means, except as provided in Subsection (1)(c), a business in which
116 one acts in any agency or fiduciary capacity, including that of personal
117 representative, executor, administrator, conservator, guardian, assignee, receiver,
118 depository, or trustee under appointment as trustee for any purpose permitted by law,
119 including the definition of "trust" set forth in [~~Subsection 75-1-201(55)] Section
120 75-1-201.~~

121 (c) "Trust business" does not include the following means of holding money, assets, or
122 other property:

123 (i) money held in a client trust account by an attorney authorized to practice law in
124 this state;

125 (ii) money held in connection with the purchase or sale of real estate by a person
126 licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate
127 Licensing and Practices Act;

128 (iii) money or other assets held in escrow by a person authorized by the department in
129 accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the
130 Utah Insurance Department to act as an escrow agent in this state;

- 131 (iv) money held by a homeowners' association or similar organization to pay
132 maintenance and other related costs for commonly owned property;
- 133 (v) money held in connection with the collection of debts or payments on loans by a
134 person acting solely as the agent or representative or otherwise at the sole
135 direction of the person to which the debt or payment is owed, including money
136 held by an escrow agent for payment of taxes or insurance;
- 137 (vi) money and other assets held in trust on an occasional or isolated basis by a
138 person who does not represent that the person is engaged in the trust business in
139 Utah;
- 140 (vii) money or other assets found by a court to be held in an implied, resulting, or
141 constructive trust;
- 142 (viii) money or other assets held by a court appointed conservator, guardian, receiver,
143 trustee, or other fiduciary if:
- 144 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to
145 the court in the same manner as a personal representative under Title 75,
146 Chapter 3, Part 5, Supervised Administration, or as a receiver under Rule 66,
147 Utah Rules of Civil Procedure; and
- 148 (B) the conservator, trustee, or other fiduciary is a certified public accountant or
149 has qualified for and received a designation as a certified financial planner,
150 chartered financial consultant, certified financial analyst, or similar designation
151 suitable to the court, that evidences the conservator's, trustee's, or other
152 fiduciary's professional competence to manage financial matters;
- 153 (ix) money or other assets held by a credit services organization operating in
154 compliance with Title 13, Chapter 21, Credit Services Organizations Act;
- 155 (x) money, securities, or other assets held in a customer account in connection with
156 the purchase or sale of securities by a regulated securities broker, dealer, or
157 transfer agent; or
- 158 (xi) money, assets, and other property held in a business trust for the benefit of
159 holders of certificates of beneficial interest if the fiduciary activities of the
160 business trust are merely incidental to conducting business in the business trust
161 form.
- 162 (d) "Trust company" means an institution authorized to engage in the trust business
163 under this chapter. Only the following may be a trust company:
- 164 (i) a Utah depository institution or its wholly owned subsidiary;

- (ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary;
- (iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103(8);
- (iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and
- (v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.
- (2) Only a trust company may engage in the trust business in this state.
- (3) The requirements of this chapter do not apply to:
- (a) an institution authorized to engage in a trust business in another state that is engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created and administered in another state;
- (b) a national bank, federal savings bank, federal savings and loan association, or federal credit union authorized to engage in business as a depository institution in Utah, or any wholly owned subsidiary of any of these, to the extent the institution is authorized by its primary federal regulator to engage in the trust business in this state; or
- (c) a state agency that is otherwise authorized by statute to act as a conservator, receiver, guardian, trustee, or in any other fiduciary capacity.

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

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

- (1) As used in 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 only the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002 and juvenile court records under Subsection 80-3-404(4), for the purpose of:
- (a)(i) determining whether a person associated with a licensee, with direct access to children:

- 199 (A) is listed in the Licensing Information System; or
200 (B) has a substantiated finding by a juvenile court of a severe type of child abuse
201 or neglect under Subsections 80-3-404(1) and (2); and
202 (ii) informing a licensee that a person associated with the licensee:
203 (A) is listed in the Licensing Information System; or
204 (B) has a substantiated finding by a juvenile court of a severe type of child abuse
205 or neglect under Subsections 80-3-404(1) and (2);
206 (b)(i) determining whether a direct service worker:
207 (A) is listed in the Licensing Information System; or
208 (B) has a substantiated finding by a juvenile court of a severe type of child abuse
209 or neglect under Subsections 80-3-404(1) and (2); and
210 (ii) informing a direct service worker or the direct service worker's employer that the
211 direct service worker:
212 (A) is listed in the Licensing Information System; or
213 (B) has a substantiated finding by a juvenile court of a severe type of child abuse
214 or neglect under Subsections 80-3-404(1) and (2); or
215 (c)(i) determining whether a personal care attendant:
216 (A) is listed in the Licensing Information System; or
217 (B) has a substantiated finding by a juvenile court of a severe type of child abuse
218 or neglect under Subsections 80-3-404(1) and (2); and
219 (ii) informing a person described in Subsections 26B-6-101(9)(a)(i) through (iv) that
220 a personal care attendant:
221 (A) is listed in the Licensing Information System; or
222 (B) has a substantiated finding by a juvenile court of a severe type of child abuse
223 or neglect under Subsections 80-3-404(1) and (2).
224 (3) Notwithstanding Subsection (2), the department may access the Division of Child and
225 Family Services' Management Information System under Section 80-2-1001:
226 (a) for the purpose of licensing and monitoring foster parents;
227 (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and
228 (c) for the purpose described in Section 26B-1-211.
229 (4) The department shall receive and process personal identifying information under
230 Subsection 26B-2-120(1) for the purposes described in Subsection (2).
231 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
232 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 3. 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:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation;

(b)(i) determining whether a direct service worker has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; or

(c)(i) determining whether a personal care attendant has a supported or substantiated

finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a person described in Subsections 26B-6-401(9)(a)(i) through (iv) that a personal care attendant has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation.

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

(4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this part and Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Section 4. 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:

- (a) apply for and provide certification for a temporary commitment; or
- (b) assist in the arrangement of transportation to a designated mental health facility.

~~[(18)]~~ (19) "Mental illness" means:

- (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or
- (b) the same as that term is defined in:
 - (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or
 - (ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

~~[(19)]~~ (20) "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, or admission to and retention in a facility for a period not to exceed 17 days.

~~[(20)]~~ (21) "Patient" means an individual who is:

- (a) under commitment to the custody or to the treatment services of a local mental health authority; or
- (b) undergoing essential treatment and intervention.

~~[(21)]~~ (22) "Physician" means an individual who is:

- (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

(b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

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

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

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

(a) suicide;

(b) serious bodily self-injury;

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

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

(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 5. 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;

- 403 (ii) be provided with letter-writing materials, including postage; and
404 (iii) have staff of the responsible mental health authority, local substance abuse
405 authority, or approved treatment facility or program assist the patient if the patient
406 is unable to write, prepare, or mail correspondence;
- 407 (b) have frequent and consistent opportunities to receive visitors[; and] at reasonable
408 times that do not interfere with clinical activities;
- 409 (c) speak or visit with the patient's attorney or clergy member within a reasonable period
410 of time;
- 411 (d) exercise all civil rights, including the right to dispose of property, execute
412 instruments, make purchases, enter contractual relationships, and vote, unless the
413 patient has been adjudicated to be incompetent and has not been restored to legal
414 capacity[-] ;
- 415 (e) while in an inpatient or residential facility, have access to adequate water and food
416 and have the patient's nutritional needs met in a manner that is consistent with
417 recognized dietary practices;
- 418 (f) be treated fairly, with respect and recognition of the patient's dignity and
419 individuality;
- 420 (g) not be discriminated against on the basis of a characteristic identified in Subsection
421 57-21-5(1);
- 422 (h) within 72 business hours after the patient's request, see and receive the services of a
423 patient representative, including a peer specialist or patient advocate, who is not
424 involved in the direct clinical care of the patient;
- 425 (i) have the patient's behavioral health orders for scope of treatment, declaration for
426 mental health treatment, or other psychiatric advance directive reviewed and
427 considered as the preferred treatment option for involuntary administration of
428 medications by the responsible local mental health authority, local substance abuse
429 authority, or approved treatment facility or program, unless by clear and convincing
430 evidence the patient's directive does not qualify as effective participation in
431 behavioral health decision-making;
- 432 (j) with the patient's consent, have the patient's information or records disclosed to an
433 adult family member, the patient's lay person, or, in accordance with state and federal
434 law, to a protection and advocacy system designated pursuant to 42 U.S.C. Sec.
435 10801 et seq.;
- 436 (k)(i) access to a telephone to make and receive private calls, unless determined a

clinical or safety risk; and

(ii) staff assistance to be able to communicate with others, if the patient does not have a contact list;

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

(m) be told:

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

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

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

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

(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 6. 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 7. 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:

- 505 (A) the proposed patient has been requested to, but has refused to, submit to an
506 examination of mental condition by a licensed physician or designated
507 examiner;
- 508 (B) is sworn to under oath; and
- 509 (C) states the facts upon which the application is based; and
- 510 (c) a statement whether the proposed patient has previously been under an assisted
511 outpatient treatment order, if known by the applicant.
- 512 (2) Before issuing a judicial order, the court:
- 513 (a) shall require the applicant to consult with the appropriate local mental health
514 authority at or before the hearing; and
- 515 (b) may direct a mental health professional from the local mental health authority to
516 interview the applicant and the proposed patient to determine the existing facts and
517 report the existing facts to the court.
- 518 (3) The court may issue an order, directed to a mental health officer or peace officer, to
519 immediately place a proposed patient in the custody of a local mental health authority or
520 in a temporary emergency facility, as described in Section 26B-5-334, to be detained for
521 the purpose of examination if:
- 522 (a) the court finds from the application, any other statements under oath, or any reports
523 from a mental health professional that there is a reasonable basis to believe that the
524 proposed patient has a mental illness that poses a danger to self or others and requires
525 involuntary commitment pending examination and hearing; or
- 526 (b) the proposed patient refuses to submit to an interview with a mental health
527 professional as directed by the court or to go to a treatment facility voluntarily.
- 528 (4)(a) The court shall provide notice of commencement of proceedings for involuntary
529 commitment, setting forth the allegations of the application and any reported facts,
530 together with a copy of any official order of detention, to a proposed patient before,
531 or upon, placement of the proposed patient in the custody of a local mental health
532 authority or, with respect to any proposed patient presently in the custody of a local
533 mental health authority whose status is being changed from voluntary to involuntary,
534 upon the filing of an application for that purpose with the court.
- 535 (b) The place of detention shall maintain a copy of the order of detention.
- 536 (5)(a) The court shall provide notice of commencement of proceedings for involuntary
537 commitment as soon as practicable to the applicant, any legal guardian, any
538 immediate adult family members, legal counsel for the parties involved, the local

539 mental health authority or the local mental health authority's designee, and any other
540 persons whom the proposed patient or the court designates.

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

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

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

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

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

555 (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a
556 judicial order, or after commitment of a proposed patient to a local mental health
557 authority or the local mental health authority's designee under court order for detention
558 or examination, the court shall appoint two designated examiners:

559 (a) who did not sign the civil commitment application nor the civil commitment
560 certification under Subsection (1);

561 (b) one of whom is:

562 (i) a licensed physician; or

563 (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health
564 clinical nurse specialist who:

565 (A) is nationally certified;

566 (B) is doctorally trained; and

567 (C) has at least two years of inpatient mental health experience, regardless of the
568 license the individual held at the time of that experience; and

569 (c) one of whom may be designated by the proposed patient or the proposed patient's
570 counsel, if that designated examiner is reasonably available.

571 (9) The court shall schedule a hearing to be held within 10 calendar days after the day on
572 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[;]~~ .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(c)]~~ (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

- 641 patient, which shall be included in the record.
- 642 (b) The court is authorized to exclude any person not necessary for the conduct of the
643 proceedings and may, upon motion of counsel, require the testimony of each
644 designated examiner to be given out of the presence of any other designated
645 examiners.
- 646 (c) The court shall:
- 647 (i) conduct the hearing in as informal a manner as may be consistent with orderly
648 procedure~~[-and]~~ ; and
- 649 (ii) while preserving the due process rights of the proposed patient:
- 650 (A) conduct the hearing remotely, in accordance with Utah Rules of Civil
651 Procedure, Rule 87, unless the court finds good cause under Rule 87 not to
652 conduct the hearing remotely; or
- 653 (B) if the court finds good cause under Rule 87 not to conduct the hearing
654 remotely, conduct the hearing in a physical setting that is not likely to have a
655 harmful effect on the mental health of the proposed patient~~[-while preserving~~
656 ~~the due process rights of the proposed patient]~~.
- 657 (d) The court shall consider any relevant historical and material information that is
658 offered, subject to the rules of evidence, including reliable hearsay under Utah Rules
659 of Evidence, Rule 1102.
- 660 (e)(i) A local mental health authority or the local mental health authority's designee
661 or the physician in charge of the proposed patient's care shall, at the time of the
662 hearing, provide the court with the following information:
- 663 (A) the detention order;
- 664 (B) admission notes;
- 665 (C) the diagnosis;
- 666 (D) any doctors' orders;
- 667 (E) progress notes;
- 668 (F) nursing notes;
- 669 (G) medication records pertaining to the current commitment; and
- 670 (H) whether the proposed patient has previously been civilly committed or under
671 an order for assisted outpatient treatment.
- 672 (ii) The local mental health authority or the local mental health authority's designee
673 or the physician in charge of the proposed patient's care shall also supply the
674 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 and needs; or

(ii)(A) the proposed patient has been charged with a criminal offense;

(B) with respect to the charged offense, the proposed patient is found incompetent to proceed as a result of a mental illness;

(C) the proposed patient has a mental illness;

(D) the proposed patient has a persistent unawareness of their mental illness and the negative consequences of that illness, or within the preceding six months has been requested or ordered to undergo mental health treatment but has unreasonably refused to undergo that treatment;

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

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

(b)(i) If, at the hearing, the court determines that the proposed patient has a mental illness but does not meet the other criteria described in Subsection (16)(a), the court may consider whether the proposed patient meets the criteria for assisted outpatient treatment under Section 26B-5-351.

- 709 (ii) The court may order the proposed patient to receive assisted outpatient treatment
710 in accordance with Section 26B-5-351 if, at the hearing, the court finds the
711 proposed patient meets the criteria for assisted outpatient treatment under Section
712 26B-5-351.
- 713 (iii) If the court determines that neither the criteria for commitment under Subsection
714 (16)(a) nor the criteria for assisted outpatient treatment under Section 26B-5-351
715 are met, the court shall dismiss the proceedings after the hearing.
- 716 (17)(a)(i) The order of commitment shall designate the period for which the patient
717 shall be treated.
- 718 (ii) If the patient is not under an order of commitment at the time of the hearing, the
719 patient's treatment period may not exceed six months without a review hearing.
- 720 (iii) Upon a review hearing, to be commenced before the expiration of the previous
721 order of commitment, an order for commitment may be for an indeterminate
722 period, if the court finds by clear and convincing evidence that the criteria
723 described in Subsection (16) will last for an indeterminate period.
- 724 (b)(i) The court shall maintain a current list of all patients under the court's order of
725 commitment and review the list to determine those patients who have been under
726 an order of commitment for the court designated period.
- 727 (ii) At least two weeks before the expiration of the designated period of any order of
728 commitment still in effect, the court that entered the original order of commitment
729 shall inform the appropriate local mental health authority or the local mental
730 health authority's designee of the expiration.
- 731 (iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local
732 mental health authority or the local mental health authority's designee shall
733 immediately reexamine the reasons upon which the order of commitment was
734 based.
- 735 (iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health
736 authority or the local mental health authority's designee determines that the
737 conditions justifying commitment no longer exist, the local mental health
738 authority or the local mental health authority's designee shall discharge the patient
739 from involuntary commitment and immediately report the discharge to the court.
- 740 (v) If, after reexamination under Subsection (17)(b)(iii), the local mental health
741 authority or the local mental health authority's designee determines that the
742 conditions justifying commitment continue to exist, the court shall immediately

- 743 appoint two designated examiners and proceed under Subsections (8) through (14).
- 744 (c)(i) The local mental health authority or the local mental health authority's designee
745 responsible for the care of a patient under an order of commitment for an
746 indeterminate period shall, at six-month intervals, reexamine the reasons upon
747 which the order of indeterminate commitment was based.
- 748 (ii) If the local mental health authority or the local mental health authority's designee
749 determines that the conditions justifying commitment no longer exist, the local
750 mental health authority or the local mental health authority's designee shall
751 discharge the patient from the local mental health authority's or the local mental
752 health authority designee's custody and immediately report the discharge to the
753 court.
- 754 (iii) If the local mental health authority or the local mental health authority's designee
755 determines that the conditions justifying commitment continue to exist, the local
756 mental health authority or the local mental health authority's designee shall send a
757 written report of the findings to the court.
- 758 (iv) [A] The local mental health authority or the local mental health authority's
759 designee shall notify the patient and the patient's counsel of record [shall be
760 ~~notified]~~ in writing that the involuntary commitment will be continued under
761 Subsection (17)(c)(iii), the reasons for the decision to continue, and that the
762 patient has the right to a review hearing by making a request to the court.
- 763 (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall
764 immediately appoint two designated examiners and proceed under Subsections (8)
765 through (14).
- 766 (18)(a) Any patient committed as a result of an original hearing or a patient's legally
767 designated representative who is aggrieved by the findings, conclusions, and order of
768 the court entered in the original hearing has the right to a new hearing upon filing a
769 petition ~~[filed]~~ with the court within 30 days after the day on which the court entered
770 the order ~~[is entered]~~.
- 771 (b) The petition shall allege error or mistake in the findings, in which case the court shall
772 appoint three impartial designated examiners previously unrelated to the case to
773 conduct an additional examination of the patient.
- 774 (c) Except as provided in Subsection (18)(b), the court shall, in all other respects,
775 conduct the new hearing in the manner otherwise permitted.
- 776 (19) The county in which the proposed patient resides or is found shall pay the costs of all

proceedings under this section.

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

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

- (i) a summary of why the individual was committed to the local mental health authority;
 - (ii) detailed information about why the individual is being discharged from the local mental health authority's custody;
 - (iii) a safety plan for the individual based on the individual's mental illness or mental or emotional state;
 - (iv) notification to the individual's primary care provider, if applicable;
 - (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual's community;
 - (vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;
 - (vii) a copy of any psychiatric advance directive presented to the local mental health authority, if applicable;
 - (viii) information about how to establish a psychiatric advance directive if one was not presented to the local mental health authority;
 - (ix) as applicable, information about medications that were changed or discontinued during the commitment;
 - (x) a list of any screening or diagnostic tests conducted during the commitment;
 - (xi) a summary of therapeutic treatments provided during the commitment;
 - (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
 - (xiii) information about how to contact the local mental health authority if needed.
- (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection (20)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.

- (d) If an individual refuses to accept discharge instructions, the local mental health authority shall document the refusal in the individual's medical record.
- (e) If an individual's discharge instructions include referrals to services under Subsection (20)(b)(v), the local mental health authority shall document those referrals in the individual's medical record.
- (f) The local mental health authority shall attempt to follow up with a discharged individual at least 48 hours after discharge, and may use peer support professionals when performing follow-up care or developing a continuing care plan.

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

Section 8. Section **26B-5-362** is amended to read:

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

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

Section 9. 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 10. 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:

- 879 (i)(A) has at least one year of specialized training in working with persons with an
880 intellectual disability; or
881 (B) has at least one year of clinical experience with persons with an intellectual
882 disability; and
883 (ii) is designated by the division as specially qualified, by training and experience, in
884 the treatment of an intellectual disability; or
885 (b) a clinical social worker, certified social worker, marriage and family therapist, or
886 professional counselor, licensed under Title 58, Chapter 60, Mental Health
887 Professional Practice Act, who:
888 (i) has at least two years of clinical experience with persons with an intellectual
889 disability; and
890 (ii) is designated by the division as specially qualified, by training and experience, in
891 the treatment of an intellectual disability.
- 892 (5) "Deteriorating disease" includes:
893 (a) multiple sclerosis;
894 (b) muscular dystrophy;
895 (c) Huntington's chorea;
896 (d) Alzheimer's disease;
897 (e) ataxia; or
898 (f) cancer.
- 899 (6) "Developmental center" means the Utah State Developmental Center, established in
900 accordance with Part 5, Utah State Developmental Center.
- 901 (7) "Director" means the director of the Division of Services for People with Disabilities.
- 902 (8) "Direct service worker" means a person who provides services to a person with a
903 disability:
904 (a) when the services are rendered in:
905 (i) the physical presence of the person with a disability; or
906 (ii) a location where the person rendering the services has access to the physical
907 presence of the person with a disability; and
908 (b)(i) under a contract with the division;
909 (ii) under a grant agreement with the division; or
910 (iii) as an employee of the division.
- 911 (9)(a) "Disability" means a severe, chronic disability that:
912 (i) is attributable to:

- 913 (A) an intellectual disability;
- 914 (B) a condition that qualifies a person as a person with a related condition, as
- 915 defined in 42 C.F.R. Sec. 435.1010;
- 916 (C) a physical disability; or
- 917 (D) a brain injury;
- 918 (ii) is likely to continue indefinitely;
- 919 (iii)(A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in
- 920 a substantial functional limitation in three or more of the following areas of
- 921 major life activity:
- 922 (I) self-care;
- 923 (II) receptive and expressive language;
- 924 (III) learning;
- 925 (IV) mobility;
- 926 (V) self-direction;
- 927 (VI) capacity for independent living; or
- 928 (VII) economic self-sufficiency; or
- 929 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial
- 930 limitation in three or more of the following areas:
- 931 (I) memory or cognition;
- 932 (II) activities of daily life;
- 933 (III) judgment and self-protection;
- 934 (IV) control of emotions;
- 935 (V) communication;
- 936 (VI) physical health; or
- 937 (VII) employment; and
- 938 (iv) requires a combination or sequence of special interdisciplinary or generic care,
- 939 treatment, or other services that:
- 940 (A) may continue throughout life; and
- 941 (B) must be individually planned and coordinated.
- 942 (b) "Disability" does not include a condition due solely to:
- 943 (i) mental illness;
- 944 (ii) personality disorder;
- 945 (iii) deafness or being hard of hearing;
- 946 (iv) visual impairment;

- (v) learning disability;
- (vi) behavior disorder;
- (vii) substance abuse; or
- (viii) the aging process.

(10) "Division" means the Division of Services for People with Disabilities.

(11) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division, to receive services that are administered by the division.

(12) "Endorsed program" means a facility or program that:

(a) is operated:

- (i) by the division; or
- (ii) under contract with the division; or

(b) provides services to a person committed to the division under Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

(13) "Licensed physician" means:

(a) an individual licensed to practice medicine under:

- (i) Title 58, Chapter 67, Utah Medical Practice Act; or
- (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(b) a medical officer of the United States Government while in this state in the performance of official duties.

(14) "Limited support services" means services that are administered by the division to individuals with a disability:

(a) under a waiver authorized under 42 U.S.C. Sec. 1396n(c) by the Centers for Medicare and Medicaid Services that permits the division to limit services to an individual who is eligible to receive division services; and

(b) through a program that:

- (i) was not operated by the division on or before January 1, 2020; and
- (ii)(A) limits the kinds of services that an individual may receive; or

(B) sets a maximum total dollar amount for program services provided to each individual.

(15) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.

(16) "Public funds" means state or federal funds that are disbursed by the division.

(17)(a) "Related condition" means a severe, chronic condition that:

- 981 (i) manifests before the day on which an individual turns 22 years old;
982 (ii) is likely to continue indefinitely;
983 (iii) results in substantial functional limitations;
984 (iv) is closely related to an intellectual disability because the condition results in the
985 impairment of:
986 (A) general intellectual functioning, similar to that of an individual with an
987 intellectual disability; or
988 (B) adaptive behavior, similar to that of an individual with an intellectual
989 disability; and
990 (v) requires treatment or services similar to the treatment or services required for an
991 individual with an intellectual disability.

992 (b) "Related condition" does not include mental illness, as that term is defined in Section
993 26B-5-301.

994 ~~[(17)]~~ (18) "Resident" means an individual under observation, care, or treatment in an
995 intermediate care facility for people with an intellectual disability.

996 (19) "Substantial danger" means that because of an intellectual disability or related
997 condition, an individual is at risk of:

- 998 (a) suicide;
999 (b) serious bodily self-injury;
1000 (c) serious bodily injury because the individual lacks capacity to provide the basic
1001 necessities of life, such as food, clothing, or shelter;
1002 (d) causing or attempting to cause serious bodily injury or serious emotional harm to
1003 another individual;
1004 (e) engaging in harmful sexual conduct, as that term is defined in Section 26B-5-301; or
1005 (f) suffering serious physical harm or serious emotional harm as a result of being
1006 exploited, abused, or neglected.

1007 ~~[(18)]~~ (20) "Sustainability fund" means the Utah State Developmental Center Long-Term
1008 Sustainability Fund created in Section 26B-1-331.

1009 Section 11. Section **26B-6-606** is amended to read:

1010 **26B-6-606 . Involuntary commitment.**

1011 An individual with an intellectual disability or related condition may not be involuntarily
1012 committed to ~~[an intermediate care facility for people with an intellectual disability]~~ the division
1013 except in accordance with Sections 26B-6-607 and 26B-6-608.

1014 Section 12. 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 immediate steps to assist the individual in contacting and communicating with an attorney.

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

- (b) Discharge instructions provided under Subsection (6)(a) shall include:
- (i) a summary of why the individual was committed;
 - (ii) detailed information about why the individual is being discharged;
 - (iii) a safety plan for the individual based on the individual's intellectual disability and condition;
 - (iv) notification to the individual's primary care provider, if applicable;
 - (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual's community;
 - (vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;

- (vii) a copy of any advance directive presented to the local mental health authority, if applicable;
- (viii) information about how to establish an advance directive if one was not presented to the division~~[-or intermediate care facility];~~
- (ix) as applicable, information about medications that were changed or discontinued during the commitment;
- (x) a list of any screening or diagnostic tests conducted during the commitment;
- (xi) a summary of therapeutic treatments provided during the commitment;
- (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
- (xiii) information about how to contact the division~~[-or intermediate care facility]~~ if needed.

- (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection (6)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.
- (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 13. 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 disability and may direct a designated intellectual disability professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.]

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

[(a) poses an immediate danger of physical injury to self or others;]

[(b) requires involuntary commitment pending examination and hearing;]

[(c) the individual was requested but refused to submit to an examination by a licensed physician or designated intellectual disability professional; or]

[(d) the individual refused to voluntarily go to the division or to an intermediate care facility for people with an intellectual disability recommended by the division.]

[(4)(a) If the court issues a detention order based on an application that did not include a certification by a designated intellectual disability professional or physician in accordance with Subsection (1)(a), the director or his designee shall within 24 hours

1151 after issuance of the detention order, excluding Saturdays, Sundays, and legal
1152 holidays, examine the individual, report the results of the examination to the court
1153 and inform the court:]

1154 [(i) whether the director or his designee believes that the individual has an intellectual
1155 disability; and]

1156 [(ii) whether appropriate treatment programs are available and will be used by the
1157 individual without court proceedings.]

1158 [(b) If the report of the director or his designee is based on an oral report of the
1159 examiner, the examiner shall immediately send the results of the examination in
1160 writing to the clerk of the court.]

1161 [(5) Immediately after an individual is involuntarily committed under a detention order or
1162 under Section 26B-6-607, the director or his designee shall inform the individual, orally
1163 and in writing, of his right to communicate with an attorney. If an individual desires to
1164 communicate with an attorney, the director or his designee shall take immediate steps to
1165 assist the individual in contacting and communicating with an attorney.]

1166 (1)(a) Any responsible person who has reason to know that an individual is in need of
1167 commitment, who has a belief that the individual has an intellectual disability or
1168 related condition, and who has personal knowledge of the conditions and
1169 circumstances supporting that belief, may make a referral to the division to conduct
1170 an assessment to determine if the individual meets the criteria for involuntary
1171 commitment under this section.

1172 (b)(i) To conduct an assessment of an individual who may be in need of commitment
1173 under this section, the division shall have two designated intellectual disability
1174 professionals examine the individual.

1175 (ii) The examinations described in Subsection (1)(b)(i) shall be conducted separately
1176 and at a suitable location not likely to have a harmful effect on the individual
1177 being examined.

1178 (c) If the designated intellectual disability professionals who conduct the examinations
1179 described in Subsection (1)(b)(i) both believe the examined individual meets the
1180 criteria for involuntary commitment under this section, the division may file a written
1181 petition to commence involuntary commitment proceedings with the district court, or
1182 with the juvenile court if the subject of the petition is less than 18 years old, of the
1183 county in which the subject of the petition is physically located at the time the
1184 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 division shall complete an assessment as described in Subsection (1)(b) within seven days after the day on which the prosecutor makes the referral unless the court enlarges the time for good cause shown.

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

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

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

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

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

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

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

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

1219 [(v)] (E) legal counsel of the individual to be committed, if any;

1220 [(vi)] (F) the division; and

1221 [(vii)] (G) any other person to whom the individual requests, or the court
1222 designates, notice to be given.

1223 (b) If an individual cannot or refuses to disclose the identity of persons to be notified,
1224 the extent of notice shall be determined by the court.

1225 [(7)] (4) ~~[That notice]~~ The notice described in Subsection (3) shall:

1226 (a) set forth the allegations of the petition and all supporting facts;

1227 (b) be accompanied by a copy of ~~[any detention]~~ an emergency order issued under [
1228 ~~Subsection (3)]~~ Section 26B-6-607, if applicable; and

1229 (c) state that a hearing will be held within the time provided by law, and give the time
1230 and place for that hearing.

1231 [(8)] (5) The court may transfer the case and the custody of the individual to be committed
1232 to any other district court within the state~~[, if:]~~ if the individual resides in another
1233 jurisdiction within the state.

1234 ~~[(a) there are no appropriate facilities for persons with an intellectual disability within~~
1235 ~~the judicial district; and]~~

1236 ~~[(b) the transfer will not be adverse to the interests of the individual.]~~

1237 [(9)(a) ~~Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any~~
1238 ~~order or commitment under a detention order, the court shall appoint two designated~~
1239 ~~intellectual disability professionals to examine the individual. If requested by the~~
1240 ~~individual's counsel, the court shall appoint a reasonably available, qualified person~~
1241 ~~designated by counsel to be one of the examining designated intellectual disability~~
1242 ~~professionals. The examinations shall be conducted:]~~

1243 ~~[(i) separately;]~~

1244 ~~[(ii) at the home of the individual to be committed, a hospital, an intermediate care~~
1245 ~~facility for people with an intellectual disability, or any other suitable place not~~
1246 ~~likely to have a harmful effect on the individual; and]~~

1247 ~~[(iii) within a reasonable period of time after appointment of the examiners by the~~
1248 ~~court.]~~

1249 ~~[(b) The court shall set a time for a hearing to be held within 10 court days of the~~
1250 ~~appointment of the examiners. However, the court may immediately terminate the~~
1251 ~~proceedings and dismiss the application if, prior to the hearing date, the examiners,~~
1252 ~~the director, or his designee informs the court that:]~~

1253 ~~[(i) the individual does not have an intellectual disability; or]~~
1254 ~~[(ii) treatment programs are available and will be used by the individual without court~~
1255 ~~proceedings.]~~
1256 ~~[(10)]~~ (6)(a)(i) Each individual has the right to be represented by counsel at the
1257 commitment hearing and in all preliminary proceedings.
1258 (ii) If neither the individual nor others provide counsel, [-]the court shall appoint
1259 counsel and allow sufficient time for counsel to consult with the individual prior
1260 to any hearing.
1261 (b) If the individual is indigent, the county in which the individual was physically
1262 located when taken into custody shall pay reasonable attorney fees as determined by
1263 the court.
1264 ~~[(11)]~~ (7) ~~[The division or a designated intellectual disability professional in charge of the~~
1265 ~~individual's care]~~ Upon order of the court, the division or the division's designee shall
1266 provide all [documented information on] relevant documentation on the individual to be
1267 committed ~~[and-]to the court [at the time of the hearing. The]~~ and the individual's
1268 attorney~~[- shall have access to all documented information on the individual at the time~~
1269 ~~of and prior to the hearing].~~
1270 ~~[(12)]~~ (8)(a) The court shall provide an opportunity to the individual, the petitioner, and
1271 all other persons to whom notice is required to be given to appear at the hearing, to
1272 testify, and to present and cross-examine witnesses.
1273 (b) The court may, in its discretion:
1274 (i) receive the testimony of any other person;
1275 (ii) allow a waiver of the right to appear only for good cause shown;
1276 (iii) exclude from the hearing all persons not necessary to conduct the proceedings;
1277 and
1278 (iv) upon motion of counsel, require the testimony of each examiner to be given out
1279 of the presence of any other examiner.
1280 (c)(i) The hearing shall be conducted in as informal a manner as may be consistent
1281 with orderly procedure, and in a physical setting that is not likely to have a
1282 harmful effect on the individual.
1283 (ii) The Utah Rules of Evidence apply, and the hearing shall be a matter of court
1284 record.
1285 (iii) A verbatim record of the proceedings shall be maintained.
1286 ~~[(13)]~~ (9) The court may order commitment if, upon completion of the hearing and

consideration of the record, [it] the court finds by clear and convincing evidence that all of the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

1321 days after the court enters the order of commitment, the individual files a petition
1322 with the court alleging error or mistake in the court's findings.

1323 (b) Upon a request for rehearing filed in accordance with Subsection (12)(a), the court
1324 shall:

1325 (i) appoint~~[-one impartial licensed physician and]~~ two impartial designated
1326 intellectual disability professionals who have not previously been involved in the
1327 case to examine the individual~~[-]~~ ; and

1328 (ii) schedule a rehearing to be held within 30 days after the court entered the order of
1329 commitment.

1330 (c) ~~[The]~~ In all other respects, the rehearing shall~~[- in all other respects,]~~ be conducted in
1331 accordance with this part.

1332 ~~[(17)]~~ (13)(a)(i) The court shall maintain a current list of all individuals under its
1333 orders of commitment.

1334 (ii) ~~[That list shall be reviewed in order]~~ The court shall review the list described in
1335 Subsection (13)(a)(i) to determine those patients who have been under an order of
1336 commitment for the designated period.

1337 (b) At least two weeks prior to the expiration of the designated period of any
1338 commitment order still in effect, the court that entered the original order shall ~~[inform~~
1339 ~~the director of the division of the impending expiration of the designated~~
1340 ~~commitment period]~~ commence and send notice to all parties of a review hearing for
1341 the committed individual.

1342 (c) Prior to the review hearing, a division-designated intellectual disability professional
1343 shall reexamine the basis for the order of commitment and provide a report of that
1344 reexamination to the court.

1345 (d) At the conclusion of a review hearing, the court may:

1346 (i) issue an order of commitment for up to a one-year period; or

1347 (ii) discharge the individual from involuntary commitment if the conditions justifying
1348 commitment no longer exist.

1349 ~~[(e) The staff of the division shall immediately:]~~

1350 ~~[(i) reexamine the reasons upon which the order of commitment was based and report~~
1351 ~~the results of the examination to the court;]~~

1352 ~~[(ii) discharge the resident from involuntary commitment if the conditions justifying~~
1353 ~~commitment no longer exist; and]~~

1354 ~~[(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 must be reexamined in accordance with this section, or discharged.]~~

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

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

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

- (i) a summary of why the individual was committed;
- (ii) detailed information about why the individual is being discharged;
- (iii) a safety plan for the individual based on the individual's intellectual disability and condition;
- (iv) notification to the individual's primary care provider, if applicable;
- (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual's community;

- (vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;
- (vii) a copy of any advance directive presented to the local mental health authority, if applicable;
- (viii) information about how to establish an advance directive if one was not presented to the division~~[-or intermediate care facility]~~;
- (ix) as applicable, information about medications that were changed or discontinued during the commitment;
- (x) a list of any screening or diagnostic tests conducted during the commitment;
- (xi) a summary of therapeutic treatments provided during the commitment;
- (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
- (xiii) information about how to contact the division~~[-or intermediate care facility]~~ if needed.

- (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection ~~[(19)(a)]~~ (15)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health 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 14. 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 15. Section **63I-2-275** is amended to read:

63I-2-275 . Repeal dates: Title 75.

[~~Subsection 75-5-303(5)(d), regarding counsel for a person alleged to be incapacitated,~~
is repealed July 1, 2028] Reserved.

Section 16. 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

- 1457 the state that determines the legal rights, duties, privileges, immunities, or other legal
1458 interests of one or more identifiable persons, including an action to grant, deny,
1459 revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license;
1460 and
- 1461 (b) judicial review of an action described in Subsection (2)(a).
- 1462 (3) "Administrator" includes "executor" when the subject matter justifies the use.
- 1463 (4) "Advisory board," "advisory commission," and "advisory council" mean a board,
1464 commission, committee, or council that:
- 1465 (a) is created by, and whose duties are provided by, statute or executive order;
- 1466 (b) performs its duties only under the supervision of another person as provided by
1467 statute; and
- 1468 (c) provides advice and makes recommendations to another person that makes policy for
1469 the benefit of the general public.
- 1470 (5) "Armed forces" means the United States Army, Navy, Air Force, Marine Corps, Space
1471 Force, and Coast Guard.
- 1472 (6) "County executive" means:
- 1473 (a) the county commission, in the county commission or expanded county commission
1474 form of government established under Title 17, Chapter 52a, Changing Forms of
1475 County Government;
- 1476 (b) the county executive, in the county executive-council optional form of government
1477 authorized by Section 17-52a-203; or
- 1478 (c) the county manager, in the council-manager optional form of government authorized
1479 by Section 17-52a-204.
- 1480 (7) "County legislative body" means:
- 1481 (a) the county commission, in the county commission or expanded county commission
1482 form of government established under Title 17, Chapter 52a, Changing Forms of
1483 County Government;
- 1484 (b) the county council, in the county executive-council optional form of government
1485 authorized by Section 17-52a-203; and
- 1486 (c) the county council, in the council-manager optional form of government authorized
1487 by Section 17-52a-204.
- 1488 (8) "Depose" means to make a written statement made under oath or affirmation.
- 1489 (9)(a) "Equal" means, with respect to biological sex, of the same value.
- 1490 (b) "Equal" does not mean, with respect to biological sex:

- 1491 (i) a characteristic of being the same or identical; or
1492 (ii) a requirement that biological sexes be ignored or co-mingled in every
1493 circumstance.
- 1494 (10) "Executor" includes "administrator" when the subject matter justifies the use.
- 1495 (11) "Father" means a parent who is of the male sex.
- 1496 (12) "Female" means the characteristic of an individual whose biological reproductive
1497 system is of the general type that functions in a way that could produce ova.
- 1498 (13) "Guardian" includes a person who:
- 1499 (a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary or
1500 court appointment; or
- 1501 (b) is appointed by a court to manage the estate of a minor or incapacitated person.
- 1502 (14) "Highway" includes:
- 1503 (a) a public bridge;
- 1504 (b) a county way;
- 1505 (c) a county road;
- 1506 (d) a common road; and
- 1507 (e) a state road.
- 1508 (15) "Intellectual disability" ~~[means a significant, subaverage general intellectual~~
1509 ~~functioning that:]~~ means the same as that term is defined in the most recent edition of the
1510 Diagnostic and Statistical Manual of Mental Disorders published by the American
1511 Psychiatric Association.
- 1512 ~~[(a) exists concurrently with deficits in adaptive behavior; and]~~
1513 ~~[(b) is manifested during the developmental period as defined in the current edition of~~
1514 ~~the Diagnostic and Statistical Manual of Mental Disorders, published by the~~
1515 ~~American Psychiatric Association.]~~
- 1516 (16) "Intermediate care facility for people with an intellectual disability" means an [
1517 ~~intermediate care facility for the mentally retarded, as defined in Title XIX of the Social~~
1518 ~~Security Act]~~ institution or distinct part thereof for people with an intellectual disability
1519 or related conditions, if the institution or distinct part thereof meets the requirements
1520 described in 42 U.S.C. Secs. 1396d(d)(1) through (3).
- 1521 (17) "Land" includes:
- 1522 (a) land;
- 1523 (b) a tenement;
- 1524 (c) a hereditament;

- 1525 (d) a water right;
- 1526 (e) a possessory right; and
- 1527 (f) a claim.
- 1528 (18) "Male" means the characteristic of an individual whose biological reproductive system
- 1529 is of the general type that functions to fertilize the ova of a female.
- 1530 (19) "Man" means an adult human male.
- 1531 (20) "Month" means a calendar month, unless otherwise expressed.
- 1532 (21) "Mother" means a parent who is of the female sex.
- 1533 (22) "Oath" includes "affirmation."
- 1534 (23) "Person" means:
- 1535 (a) an individual;
- 1536 (b) an association;
- 1537 (c) an institution;
- 1538 (d) a corporation;
- 1539 (e) a company;
- 1540 (f) a trust;
- 1541 (g) a limited liability company;
- 1542 (h) a partnership;
- 1543 (i) a political subdivision;
- 1544 (j) a government office, department, division, bureau, or other body of government; and
- 1545 (k) any other organization or entity.
- 1546 (24) "Personal property" includes:
- 1547 (a) money;
- 1548 (b) goods;
- 1549 (c) chattels;
- 1550 (d) effects;
- 1551 (e) evidences of a right in action;
- 1552 (f) a written instrument by which a pecuniary obligation, right, or title to property is
- 1553 created, acknowledged, transferred, increased, defeated, discharged, or diminished;
- 1554 and
- 1555 (g) a right or interest in an item described in Subsections (24)(a) through (f).
- 1556 (25) "Personal representative," "executor," and "administrator" include:
- 1557 (a) an executor;
- 1558 (b) an administrator;

- 1559 (c) a successor personal representative;
- 1560 (d) a special administrator; and
- 1561 (e) a person who performs substantially the same function as a person described in
- 1562 Subsections (25)(a) through (d) under the law governing the person's status.
- 1563 (26) "Policy board," "policy commission," or "policy council" means a board, commission,
- 1564 or council that:
- 1565 (a) is authorized to make policy for the benefit of the general public;
- 1566 (b) is created by, and whose duties are provided by, the constitution or statute; and
- 1567 (c) performs its duties according to its own rules without supervision other than under
- 1568 the general control of another person as provided by statute.
- 1569 (27) "Population" is shown by the most recent state or national census, unless expressly
- 1570 provided otherwise.
- 1571 (28) "Process" means a writ or summons issued in the course of a judicial proceeding.
- 1572 (29) "Property" includes both real and personal property.
- 1573 (30) "Real estate" or "real property" includes:
- 1574 (a) land;
- 1575 (b) a tenement;
- 1576 (c) a hereditament;
- 1577 (d) a water right;
- 1578 (e) a possessory right; and
- 1579 (f) a claim.
- 1580 (31) "Review board," "review commission," and "review council" mean a board,
- 1581 commission, committee, or council that:
- 1582 (a) is authorized to approve policy made for the benefit of the general public by another
- 1583 body or person;
- 1584 (b) is created by, and whose duties are provided by, statute; and
- 1585 (c) performs its duties according to its own rules without supervision other than under
- 1586 the general control of another person as provided by statute.
- 1587 (32) "Road" includes:
- 1588 (a) a public bridge;
- 1589 (b) a county way;
- 1590 (c) a county road;
- 1591 (d) a common road; and
- 1592 (e) a state road.

- (33) "Sex" means, in relation to an individual, the individual's biological sex, either male or female, at birth, according to distinct reproductive roles as manifested by:
- (a) sex and reproductive organ anatomy;
 - (b) chromosomal makeup; and
 - (c) endogenous hormone profiles.
- (34) "Signature" includes a name, mark, or sign written with the intent to authenticate an instrument or writing.
- (35) "State," when applied to the different parts of the United States, includes a state, district, or territory of the United States.
- (36) "Swear" includes "affirm."
- (37) "Testify" means to make an oral statement under oath or affirmation.
- (38) "Uniformed services" means:
- (a) the armed forces;
 - (b) the commissioned corps of the National Oceanic and Atmospheric Administration; and
 - (c) the commissioned corps of the United States Public Health Service.
- (39) "United States" includes each state, district, and territory of the United States of America.
- (40) "Utah Code" means the 1953 recodification of the Utah Code, as amended, unless the text expressly references a portion of the 1953 recodification of the Utah Code as it existed:
- (a) on the day on which the 1953 recodification of the Utah Code was enacted; or
 - (b)(i) after the day described in Subsection (40)(a); and
 - (ii) before the most recent amendment to the referenced portion of the 1953 recodification of the Utah Code.
- (41) "Vessel," when used with reference to shipping, includes a steamboat, canal boat, and every structure adapted to be navigated from place to place.
- (42)(a) "Veteran" means an individual who:
- (i) has served in the United States Armed Forces for at least 180 days:
 - (A) on active duty; or
 - (B) in a reserve component, to include the National Guard; or
 - (ii) has incurred an actual service-related injury or disability while in the United States Armed Forces regardless of whether the individual completed 180 days; and
 - (iii) was separated or retired under conditions characterized as honorable or general.

(b) This definition is not intended to confer eligibility for benefits.

(43) "Will" includes a codicil.

(44) "Woman" means an adult human female.

(45) "Writ" means an order or precept in writing, issued in the name of:

(a) the state;

(b) a court; or

(c) a judicial officer.

(46) "Writing" includes:

(a) printing;

(b) handwriting; and

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

Section 17. Section **75-1-201** is amended to read:

75-1-201 . Title definitions.

As used in this title:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

(3)(a) "Beneficiary," as it relates to trust beneficiaries, includes:

(i) a person who has any present or future interest, vested or contingent; and

(ii) the owner of an interest by assignment or other transfer.

(b) "Beneficiary," as it relates to a charitable trust, includes any person entitled to enforce the trust.

(c) "Beneficiary," as it relates to a beneficiary of a beneficiary designation, means a beneficiary of:

(i) an insurance or annuity policy;

(ii) an account with POD designation;

(iii) a security registered in beneficiary form (TOD);

(iv) a pension, profit-sharing, retirement, or similar benefit plan; or

(v) other nonprobate transfer at death.

(d) "Beneficiary," as it relates to a beneficiary designated in a governing instrument, includes:

- 1661 (i) a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary
1662 designation, a donee, appointee, or taker in default of a power of appointment; and
1663 (ii) a person in whose favor a power of attorney or a power held in any individual,
1664 fiduciary, or representative capacity is exercised.
- 1665 (4) "Beneficiary designation" means a governing instrument naming a beneficiary of an
1666 insurance or annuity policy, of an account with POD designation, of a security registered
1667 in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit
1668 plan, or other nonprobate transfer at death.
- 1669 (5)(a) "Child" includes any individual entitled to take as a child under this title by
1670 intestate succession from the parent whose relationship is involved.
- 1671 (b) "Child" does not include an individual who is only a stepchild, a foster child, a
1672 grandchild, or any more remote descendant.
- 1673 (6)(a) "Claims," in respect to estates of decedents and protected persons, includes
1674 liabilities of the decedent or protected person, whether arising in contract, in tort, or
1675 otherwise, and liabilities of the estate which arise at or after the death of the decedent
1676 or after the appointment of a conservator, including funeral expenses and expenses of
1677 administration.
- 1678 (b) "Claims" does not include estate or inheritance taxes, or demands or disputes
1679 regarding title of a decedent or protected person to specific assets alleged to be
1680 included in the estate.
- 1681 (7) "Community property with a right of survivorship" means joint tenants with the right of
1682 survivorship.
- 1683 (8) "Conservator" means a person who is appointed by a court to manage the estate of a
1684 protected person.
- 1685 (9) "Court" means any of the courts of record in this state having jurisdiction in matters
1686 relating to the affairs of decedents.
- 1687 (10) "Descendant" means all of an individual's descendants of all generations, with the
1688 relationship of parent and child at each generation being determined by the definition of
1689 child and parent contained in this title.
- 1690 (11) "Devise," when used as a noun, means a testamentary disposition of real or personal
1691 property and, when used as a verb, means to dispose of real or personal property by will.
- 1692 (12) "Devisee" means any person designated in a will to receive a devise. For the purposes
1693 of Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing
1694 trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee,

and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by Section 75-5-401.

(14) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative of another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "General personal representative" does not include a special administrator.

(21) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, a supported decision-making agreement, or a dispositive, appointive, or nominative instrument of any similar type.

(22)(a) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5.

(b) "Guardian" does not include a person who is merely a guardian ad litem.

(23) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.

(24) "Incapacitated" means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the

individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:

(a) receive and evaluate information;

(b) make and communicate decisions; or

(c) provide for necessities such as food, shelter, clothing, health care, or safety.

(25) "Incapacity" means incapacitated.

(26) "Informal proceedings" mean a proceeding conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(27)(a) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The meaning of interested person as it relates to particular persons may vary from time to time and is determined according to the particular purposes of, and matter involved in, any proceeding.

(b) "Interested person" includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated.

(28) "Issue" means a descendant of an individual.

(29)(a) "Joint tenants with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other.

(b) "Joint tenants with the right of survivorship" does not include forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(30) "Lease" includes an oil, gas, or other mineral lease.

(31) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(32) "Minor" means a person who is under 18 years old.

(33) "Minor protected person" means a minor for whom a conservator has been appointed because of minority.

(34) "Minor ward" means a minor for whom a guardian has been appointed solely because of minority.

- 1763 (35) "Mortgage" means any conveyance, agreement, or arrangement in which property is
1764 used as security.
- 1765 (36) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at
1766 the time of the decedent's death.
- 1767 (37) "Organization" includes a corporation, limited liability company, business trust, estate,
1768 trust, partnership, joint venture, association, government or governmental subdivision or
1769 agency, or any other legal or commercial entity.
- 1770 (38)(a) "Parent" includes any person entitled to take, or who would be entitled to take if
1771 the child died without a will, as a parent under this title by intestate succession from
1772 the child whose relationship is in question.
- 1773 (b) "Parent" does not include any person who is only a stepparent, foster parent, or
1774 grandparent.
- 1775 (39) "Payor" means a trustee, insurer, business entity, employer, government, governmental
1776 agency or subdivision, or any other person authorized or obligated by law or a governing
1777 instrument to make payments.
- 1778 (40) "Person" means an individual or an organization.
- 1779 (41) "Personal representative" includes executor, administrator, successor personal
1780 representative, special administrator, and persons who perform substantially the same
1781 function under the law governing their status.
- 1782 (42) "Petition" means a written request to the court for an order after notice.
- 1783 (43) "Proceeding" includes action at law and suit in equity.
- 1784 (44) "Property" includes both real and personal property or any interest therein and means
1785 anything that may be the subject of ownership.
- 1786 (45) "Protected person" means a person for whom a conservator has been appointed.
- 1787 (46) "Protective proceeding" means a proceeding described in Section 75-5-401.
- 1788 (47) "Record" means information that is inscribed on a tangible medium or that is stored in
1789 an electronic or other medium and is retrievable in perceivable form.
- 1790 (48) "Registrar" means the official of the court designated to perform the functions of
1791 registrar as provided in Section 75-1-307.
- 1792 (49) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of
1793 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease
1794 or in payments out of production under such a title or lease, collateral trust certificate,
1795 transferable share, voting trust certificate, and, in general, any interest or instrument
1796 commonly known as a security, or any certificate of interest or participation, any

- 1797 temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or
1798 right to subscribe to or purchase, any of the foregoing.
- 1799 (50) "Settlement," in reference to a decedent's estate, includes the full process of
1800 administration, distribution, and closing.
- 1801 (51) "Sign" means, with present intent to authenticate or adopt a record other than a will:
1802 (a) to execute or adopt a tangible symbol; or
1803 (b) to attach to or logically associate with the record an electronic symbol, sound, or
1804 process.
- 1805 (52) "Special administrator" means a personal representative as described in Sections
1806 75-3-614 through 75-3-618.
- 1807 (53) "State" means a state of the United States, the District of Columbia, the
1808 Commonwealth of Puerto Rico, any territory or insular possession subject to the
1809 jurisdiction of the United States, or a Native American tribe or band recognized by
1810 federal law or formally acknowledged by a state.
- 1811 (54) "Successor personal representative" means a personal representative, other than a
1812 special administrator, who is appointed to succeed a previously appointed personal
1813 representative.
- 1814 (55) "Successors" means persons, other than creditors, who are entitled to property of a
1815 decedent under the decedent's will or this title.
- 1816 (56) "Supervised administration" means the proceedings described in Chapter 3, Part 5,
1817 Supervised Administration.
- 1818 (57)(a) "Survive" means, except for Chapter 6, Part 3, Uniform Transfer on Death
1819 Security Registration Act, that an individual has neither predeceased an event,
1820 including the death of another individual, nor is considered to have predeceased an
1821 event under Section 75-2-104 or 75-2-702.
- 1822 (b) "Survive" includes its derivatives, such as "survives," "survived," "survivor," and
1823 "surviving."
- 1824 (58) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- 1825 (59) "Testator" includes an individual of either sex.
- 1826 (60)(a) "Trust" includes:
1827 (i) a health savings account, as defined in Section 223 of the Internal Revenue Code;
1828 (ii) an express trust, private or charitable, with additions thereto, wherever and
1829 however created; or
1830 (iii) a trust created or determined by judgment or decree under which the trust is to be

administered in the manner of an express trust.

(b) "Trust" does not include:

(i) a constructive trust;

(ii) a resulting trust;

(iii) a conservatorship;

(iv) a personal representative;

(v) a trust account as defined in Chapter 6, Nonprobate Transfers;

(vi) a custodial arrangement under Title 75A, Chapter 8, Uniform Transfers To Minors Act;

(vii) a business trust providing for certificates to be issued to beneficiaries;

(viii) a common trust fund;

(ix) a voting trust;

(x) a preneed funeral plan under Title 58, Chapter 9, Funeral Services Licensing Act;

(xi) a security arrangement;

(xii) a liquidation trust;

(xiii) a trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; or

(xiv) any arrangement under which a person is nominee or escrowee for another.

(61) "Trustee" includes an original, additional, and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.

(62) "Ward" means a person for whom a guardian has been appointed.

(63) "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 18. Section **75-5-301.5** is amended to read:

75-5-301.5 . Rights of a person alleged to be incapacitated -- Rights of an incapacitated person.

(1) Except as otherwise provided by this chapter or any other law, a person alleged to be incapacitated has the right to:

(a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding, except as provided in Subsection 75-5-303(6)(e);

(b) receive a copy of all documents filed in a guardianship proceeding;

(c) have a relative, physician, physician assistant, or any interested person speak about or raise any issue of concern on behalf of the person during the guardianship proceeding;

(d) receive information about guardianships from the court; and

(e) be treated with respect and dignity.

(2) For a guardianship granted before May 7, 2025, the rights of an incapacitated person for whom a guardian is appointed are in accordance with the statutory provisions in effect as of the date that the guardianship was granted, including, as applicable, Subsection 75-5-312(1)(c)(i) unless expressly limited by a court in the order of appointment.

(3) Except as otherwise provided by this chapter or any other law, for a guardianship granted on or after May 7, 2025, an incapacitated person for whom a guardian is appointed has the right to:

(a) have counsel represent the incapacitated person at any time after the guardian is appointed;

(b) have a relative, physician, physician assistant, or any interested person speak about or raise any issue of concern on behalf of the person in any court hearing about the guardianship;

(c) receive a copy of all documents filed in court regarding the guardianship;

(d) receive information about guardianships from the court;

(e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to the court;

~~[(f) participate in developing an individualized plan for the incapacitated person's care, including:]~~

~~[(i) managing the incapacitated person's assets and property;]~~

~~[(ii) determining the incapacitated person's residence; and]~~

~~[(iii) determining the services to be received by the incapacitated person;]~~

~~[(g) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;]~~

~~[(h) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living;]~~

~~[(i) as expressed or demonstrated before a determination of capacity was made; or]~~

~~[(ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;]~~

1899 ~~[(f)]~~ (f) be granted the greatest degree of freedom possible that is consistent with the
 1900 reasons for the guardianship;
 1901 ~~[(j) be able to exercise control over all aspects of the incapacitated person's life that are~~
 1902 ~~not granted to the guardian in the order of appointment;]~~
 1903 ~~[(k) engage in any activity that the court has not expressly reserved for the guardian,~~
 1904 ~~including marriage or domestic partnership, traveling, working, or having a driver~~
 1905 ~~license;]~~
 1906 ~~[(h)]~~ (g) be treated with respect and dignity;
 1907 ~~[(m)]~~ (h) be treated fairly by the incapacitated person's guardian;
 1908 ~~[(n) maintain privacy and confidentiality in personal matters;]~~
 1909 ~~[(o) receive telephone calls and personal mail and associate with relatives and~~
 1910 ~~acquaintances unless the guardian and the court determine that the association should~~
 1911 ~~be restricted or prohibited in accordance with Section 75-5-312.5;]~~
 1912 ~~[(p) receive timely, effective, and appropriate health care and medical treatment that~~
 1913 ~~does not violate the incapacitated person's rights;]~~
 1914 ~~[(q)]~~ (i) have all services provided by a guardian at a reasonable rate of compensation;
 1915 ~~[(r)]~~ (j) have a court review any request for payment by a guardian to avoid excessive or
 1916 unnecessary fees or duplicative billing;
 1917 ~~[(s)]~~ (k) receive prudent financial management of the incapacitated person's property;
 1918 ~~[(t)]~~ (l) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), and subject to the
 1919 exception provided in Subsection 75-5-312(7)(d), receive a copy of an accounting
 1920 report regarding the incapacitated person's estate that is submitted to the court by the
 1921 guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a
 1922 conservator is appointed for the incapacitated person; and
 1923 ~~[(u) receive and control the incapacitated person's salary;]~~
 1924 ~~[(v) maintain a bank account and manage the incapacitated person's personal money; and]~~
 1925 ~~[(w)]~~ (m) ask the court to:
 1926 (i) review the management activity of a guardian if a dispute cannot be resolved
 1927 regarding the guardian's management;
 1928 (ii) continue to review the need for a guardianship or to modify or terminate a
 1929 guardianship pursuant to Section 75-5-306 and Section 75-5-307; and
 1930 (iii) enter an order restoring the incapacitated person's capacity at the earliest possible
 1931 time pursuant to Section 75-5-306 and Section 75-5-307.
 1932 ~~[(3)]~~ (4) The court may not waive, suspend, or limit a right described in Subsection (3).

- (5) Except as otherwise provided by this chapter or any other law, and subject to Subsection (6), for a guardianship granted on or after May 7, 2025, an incapacitated person for whom a guardian is appointed has the right, to the extent practicable, to:
- (a) participate in developing an individualized plan for the incapacitated person's care, including:
 - (i) managing the incapacitated person's assets and property;
 - (ii) determining the incapacitated person's residence; and
 - (iii) determining the services to be received by the incapacitated person;
 - (b) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;
 - (c) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living:
 - (i) as expressed or demonstrated before a determination of capacity was made; or
 - (ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;
 - (d) be able to exercise control over all aspects of the incapacitated person's life that are not granted to the guardian in an order of appointment of a limited guardianship;
 - (e) maintain privacy and confidentiality in personal matters, to the extent that privacy and confidentiality does not inhibit the ability of the incapacitated person's guardian to fulfill the guardian's responsibilities or perform the guardian's duties;
 - (f) receive telephone calls and personal mail and associate with relatives and acquaintances unless the guardian and the court determine that the association should be restricted or prohibited in accordance with Section 75-5-312.5;
 - (g) receive timely, effective, and appropriate health care and medical treatment that does not violate the incapacitated person's rights;
 - (h) receive an allowance or control a reasonable amount of the incapacitated person's earnings or other income; and
 - (i) collaborate with the incapacitated person's guardian to use appropriate financial tools to maintain a bank account and manage the incapacitated person's personal money.
- (6) The court may waive or limit a right described in Subsection (5) if:
- (a) an interested party requests the waiver or limitation; and
 - (b) the court finds, by clear and convincing evidence, that there is a compelling reason for the waiver or limitation.

- (7)(a) The rights of an incapacitated person under this section do not abrogate any remedy provided by law.
- (b) This section may not be interpreted in a way that would permit or justify any action that violates a provision in Sections 76-5-111 through 76-5-111.4 or Section 76-5-112.5.
- [(4)] (8) Any right described in this section may be:
- (a) addressed in a guardianship proceeding; or
 - (b) enforced through a private cause of action.
- Section 19. Section **75-5-303** is amended to read:
- 75-5-303 . Procedure for court appointment of a guardian of an incapacitated person.**
- (1) An allegedly incapacitated person or any person interested in [the] an allegedly incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.
- (2)(a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.
- (b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the allegedly incapacitated person~~[-alleged to be incapacitated]~~, unless the allegedly incapacitated person and the allegedly incapacitated person's parents are indigent.
- (c) If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition.
- (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.
- (3) The legal representation of [the] an allegedly incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:
- (a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;
 - (b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or

(c) upon an express finding of good cause, the court orders otherwise.

(4)(a) The court may appoint a health care provider, as that term is defined in Section 75A-3-101, to examine the functional capabilities and limitations of the allegedly incapacitated person.

(b) An appointed health care provider shall submit to the court a report assessing, within the scope of the health care provider's license and experience, the functional capabilities and limitations of the allegedly incapacitated person to, with or without appropriate technological assistance:

(i) receive and evaluate information;

(ii) make and communicate decisions; and

(iii) provide for necessities such as food, shelter, clothing, health care, or safety.

(5) ~~[The person alleged to be incapacitated may be examined by a physician or physician assistant appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may]~~

(a) The court may appoint a court visitor to:

(i) interview the person seeking appointment as guardian[;] ;

(ii) visit the present place of abode of the allegedly incapacitated person[~~-alleged to be incapacitated~~] and the place it is proposed that the allegedly incapacitated person will be detained or reside if the requested appointment is made[;] ; or

(iii) conduct other investigations or observations as directed by the court[~~, and submit a report in writing to the court~~].

(b) The court visitor shall submit a written report to the court.

~~[(5)]~~ (6)(a) ~~The allegedly incapacitated person[~~-alleged to be incapacitated~~]~~ shall be present at the hearing ~~[in person]~~ and see or hear all evidence bearing upon the person's condition.

(b) ~~[If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated,]~~ The court may only waive the presence of the allegedly incapacitated person if all of the following criteria are met:

(i) the person is represented by an attorney;

(ii) ~~[the court shall order an investigation by]~~ a court visitor is appointed to investigate, the costs of which shall be paid by the person seeking the guardianship[;] ; and

(iii) following the investigation, the court finds that there is no reasonable

accommodation that will enable the allegedly incapacitated person to be present

for or participate in the hearing.

~~[(b)]~~ (c) ~~[The investigation by a]~~ A court visitor is not required to investigate under Subsection (6)(b)(ii) if there is clear and convincing evidence from a physician that the person alleged to be incapacitated ~~[has:]~~ is experiencing a state of extended comatosis that is likely to persist through the time of the hearing.

~~[(i) fourth-stage Alzheimer's Disease;]~~

~~[(ii) extended comatosis; or]~~

~~[(iii)(A) an intellectual disability; and]~~

~~[(B) an intelligence quotient score under 25.]~~

~~[(e)]~~ (d) ~~[The]~~ In addition to the rights described in Section 75-5-301.5, an allegedly incapacitated person~~[-alleged to be incapacitated]~~ is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed ~~[physieian]~~ health care provider and the court visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the allegedly incapacitated person~~[-alleged to be incapacitated]~~ or the person's counsel so requests.

~~[(d)]~~ (e) Counsel for the allegedly incapacitated person~~[-alleged to be incapacitated, as defined in Subsection 75-1-201(22);]~~ is not required if all of the following criteria are met:

(i) the allegedly incapacitated person is the biological or adopted child of the petitioner;

(ii) the value of the allegedly incapacitated person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;

(iii) the allegedly incapacitated person's appearance at the hearing has not been waived and the person appears in court with the petitioner, as described in Subsection (6)(a);

(iv) the allegedly incapacitated person is given the opportunity to communicate, to the extent possible, the person's acceptance of or objection to the appointment of [petitioner] the proposed guardian, including the opportunity to communicate that acceptance or objection to the court and, as applicable, to the person's supporters, health care providers, and attorney;

(v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the ~~[appointment]~~ hearing, as described in

Subsection (2)(b);

(vi) the court is satisfied that counsel is not necessary [~~in order~~]to protect the interests of the allegedly incapacitated person; and

(vii) the court appoints a court visitor and receives a report from the court visitor under Subsection [~~(4)~~] (5).

Section 20. Section **75-5-312** is amended to read:

75-5-312 . General powers and duties of guardian -- Penalties.

(1)(a) A guardian of an incapacitated person shall diligently and in good faith carry out the specific duties, powers, and rights that the guardian is granted:

(i) in an order of appointment by a court under Section 75-5-304; and

(ii) under this section.

(b) A court may, in the order of appointment, place specific limitations on the guardian's power, duties, and rights.

(c)(i) Except as provided in this Subsection (1), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor.

(ii) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (1)(c)(i).

(d) In carrying out duties, powers, and rights that a guardian is granted, the guardian shall encourage the ward, to the extent practicable, to participate in decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.

(e) To the extent known, a guardian, in making decisions about the ward, shall consider the expressed desires, preferences, and personal values of the ward.

(2) Except as modified by an order of appointment under Section 75-5-304, a guardian has the following duties and powers:

(a) to the extent that it is consistent with the terms of any order by a court relating to detention or commitment of the ward, a guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within, or outside of, this state, except that the guardian must give consideration to the ward's preference for the ward's place of residence in accordance with Section 75-5-301.5;

(b) if a guardian is entitled to custody of the ward, the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education;

- (c) without regard to custodial rights of the ward's person, a guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection;
- (d) a guardian may give the consent or approval that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service, except that the guardian must:
- (i) give consideration to the ward's current and previously stated desires for health care and medical treatment in accordance with Section 75-5-301.5; and
 - (ii) respect the ward's right to receive timely, effective, and appropriate health care in accordance with Section 75-5-301.5;
- (e) a guardian is required to notify any interested person named in the order of appointment under Subsection 75-5-304(4) of any significant health care or treatment received by the ward;
- (f) a guardian is required to immediately notify persons who request notification and are not restricted in associating with the ward in accordance with Section 75-5-312.5 of:
- (i) the ward's admission to a hospital for three or more days or to a hospice program;
 - (ii) the ward's death; or
 - (iii) the arrangements for the disposition of the ward's remains;
- (g) a guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 10 days, based on:
- (i) the guardian's own observations; or
 - (ii) information from the ward's physician or other medical care providers;
- (h) a guardian is required to:
- (i) unless emergency conditions exist:
 - (A) file with the court a notice of the guardian's intent to move the ward; and
 - (B) serve the notice on all interested persons at least 10 days before the day on which the guardian moves the ward; or
 - (ii) take reasonable steps to:
 - (A) notify all interested persons of the guardian's intent to move the ward; and
 - (B) file the notice of the move with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the ward is made known to the ward, the ward's care giver, or any other third party;

- 2137 (i) except as otherwise provided by Section 75-5-312.5, a guardian may not restrict or
2138 prohibit a ward's association, as defined in Section 75-5-312.5, with family, relatives,
2139 or friends;
- 2140 (j) if no conservator for the estate of the ward has been appointed, a guardian may:
- 2141 (i) institute proceedings to compel any person under a duty to support the ward or to
2142 pay sums for the welfare of the ward to perform that duty;
- 2143 (ii) compel the production of the ward's estate documents, including the ward's will,
2144 trust, power of attorney, and any advance health care directive; and
- 2145 (iii) receive money and tangible property deliverable to the ward and apply the
2146 money and property for support, care, and education of the ward, except that:
- 2147 (A) the guardian may not use funds from the ward's estate for room and board that
2148 the guardian or the guardian's spouse, parent, or child have furnished the ward
2149 unless a charge for the service is approved by order of the court made upon
2150 notice to at least one adult relative in the nearest degree of kinship to the ward
2151 in which there is an adult; and
- 2152 (B) the guardian shall exercise care to conserve any excess for the ward's needs;
- 2153 (k) if no conservator for the estate of the ward has been appointed:
- 2154 (i) for all estates in excess of \$50,000 excluding the residence owned by the ward, a
2155 guardian shall send a report with a full accounting to the court on an annual basis;
2156 or
- 2157 (ii) for estates less than \$50,000 excluding the residence owned by the ward, a
2158 guardian shall fill out an informal annual report and mail the report to the court;
- 2159 (l) a guardian shall provide an annual accounting of the status of the ward, including a
2160 report of the physical and mental condition of the ward, the ward's estate that has
2161 been subject to the guardian's possession, the ward's place of residence and others
2162 living in the same household, to the court in the petition or the annual report as
2163 required under Subsection (2)(k); and
- 2164 (m) a guardian shall comply with standards set by the National Guardianship
2165 Association for guardians to the extent that the standards are applicable to the
2166 guardian.
- 2167 (3) For the purposes of Subsections (2)(f), (g), and (h), an interested person is a person
2168 required to receive notice in guardianship proceedings as described in Section 75-5-309.
- 2169 (4)(a) An accounting report under Subsection (2)(k) shall include a statement regarding:
- 2170 (i) all assets at the beginning and end of the reporting year;

- 2171 (ii) any income received during the year;
- 2172 (iii) any disbursements for the support of the ward;
- 2173 (iv) any investments or trusts that are held for the ward's benefit;
- 2174 (v) any expenditures or fees charged to the ward's estate; and
- 2175 (vi) any other expenses incurred by the ward's estate.
- 2176 (b) The court may require additional information in an accounting report under
- 2177 Subsection (2)(k).
- 2178 (c) The Judicial Council shall approve forms for the accounting reports described in
- 2179 Subsection (2)(k).
- 2180 (d) An annual accounting report under Subsection (2)(k) shall be examined and
- 2181 approved by the court.
- 2182 (e) If the ward's income is limited to a federal or state program requiring an annual
- 2183 accounting report, a copy of that report may be submitted to the court in lieu of the
- 2184 required annual accounting report under Subsection (2)(k).
- 2185 (f)(i) A corporate fiduciary is not required to petition the court, but shall submit the
- 2186 corporate fiduciary's internal report annually to the court.
- 2187 (ii) The report under Subsection (4)(f)(i) shall be examined and approved by the court.
- 2188 (g) If a fee is paid for an accounting of an estate, a fee may not be charged for an
- 2189 accounting of the status of a ward under Subsection (2)(l).
- 2190 (h) Upon a motion and after a hearing, the court may alter the frequency of, or the
- 2191 information included in, an accounting report provided to a ward in accordance with
- 2192 Subsection [75-5-301.5(2)(t)] 75-5-301.5(3)(l).
- 2193 (5) If a conservator has been appointed for a ward:
- 2194 (a) all of the ward's estate received by the guardian in excess of those funds expended to
- 2195 meet current expenses for support, care, and education of the ward shall be paid to
- 2196 the conservator for management as provided in this chapter; and
- 2197 (b) the guardian shall account to the conservator for funds expended.
- 2198 (6)(a) Any guardian of a person for whom a conservator has been appointed:
- 2199 (i) shall control the custody and care of the ward; and
- 2200 (ii) is entitled to receive reasonable sums for services and for room and board
- 2201 furnished to the ward as agreed upon between the guardian and the conservator if
- 2202 the amounts agreed upon are reasonable under the circumstances.
- 2203 (b) The guardian may request the conservator to expend the ward's estate by payment to
- 2204 third persons or institutions for the ward's care and maintenance.

- (7)(a) The court may impose a penalty in an amount not to exceed \$5,000 if a guardian:
- (i) makes a substantial misstatement on filings of annual reports;
 - (ii) is guilty of gross impropriety in handling the property of the ward; or
 - (iii) willfully fails to file the report required by this section after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed.
- (b) The court may order restitution of funds misappropriated from the estate of a ward.
- (c) A penalty under this Subsection (7) shall be paid by the guardian and may not be paid by the ward or the ward's estate.
- (d) The provisions and penalties in Subsection (2)(k) or (l) governing annual reports do not apply if the guardian or a coguardian is the parent of the ward.
- (8) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the ward after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.
- Section 21. Section **75-5-417** is amended to read:
- 75-5-417 . General duty of conservator.**
- (1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth in Section 75-7-902.
- (2)(a) For all estates in excess of \$50,000 excluding the residence owned by the ward, the conservator shall send a report with a full accounting to the court on an annual basis.
- (b) For estates less than \$50,000 excluding the residence owned by the ward, the conservator shall fill out an informal annual report and mail the report to the court.
- (c) A report under Subsection (2)(a) or (b) shall include a statement regarding:
- (i) all assets at the beginning and end of the reporting year;
 - (ii) any income received during the year;
 - (iii) any disbursements for the support of the ward;
 - (iv) any investments or trusts that are held for the ward's benefit;
 - (v) any expenditures or fees charged to the ward's estate; and
 - (vi) any other expenses incurred by the ward's estate.
- (d) The Judicial Council shall approve the forms for the accounting reports described in Subsections (2)(a) and (b).

(e) An annual accounting report under Subsection (2)(a) or (b) shall be examined and approved by the court.

(3)(a) Corporate fiduciaries are not required to fully petition the court, but shall submit their internal report annually to the court.

(b) A report under Subsection (3)(a) shall be examined and approved by the court.

(4) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection ~~[75-5-301.5(2)(t)]~~ 75-5-301.5(3)(1).

(5)(a) The court may impose a fine in an amount not to exceed \$5,000, if, after receiving written notice of the failure to file and after a grace period of two months have elapsed, a conservator or corporate fiduciary:

(i) makes a substantial misstatement on filings of any required annual reports;

(ii) is guilty of gross impropriety in handling the property of the ward; or

(iii) willfully fails to file the report required by this section.

(b) The court may also order restitution of funds misappropriated from the estate of a ward.

(c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid by the estate.

(6) These provisions and penalties governing annual reports do not apply if the conservator is the parent of the ward.

Section 22. Section **75-5-701** is enacted to read:

Part 7. Supported Decision-making Agreements

75-5-701 . Definitions.

As used in this part:

(1) "Abuse" means the same as that term is defined in Section 26B-6-201.

(2) "Coercion" means influencing or attempting to influence a principal using force, threats, or intimidation.

(3) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(4) "Exploitation" means the same as that term is defined in Section 26B-6-201.

(5) "Good faith" means honesty in fact in the conduct or transaction concerned.

(6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 50 Pub. L. No. 104-191, 110 Stat. 1936, as amended.

(7) "Neglect" means the same as that term is defined in Section 26B-6-201.

(8) "Principal" means an individual who:

- 2273 (a) is 18 years old or older;
2274 (b) has a disability, as that term is defined in Section 26B-6-801; and
2275 (c) has entered into a supported decision-making agreement with at least one supporter.
2276 (9) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec.
2277 160.103.
2278 (10)(a) "Solicit" means to ask, command, encourage, importune, urge, or request.
2279 (b) "Solicit" does not include providing information, materials, resources, or education
2280 materials to an individual.
2281 (11) "Qualifying person" means a person who has a legal right to receive notice regarding,
2282 or legal decision-making authority for, an individual seeking to enter into a supported
2283 decision-making agreement, which may include:
2284 (a) the agent for a power of attorney;
2285 (b) the agent for an advance health care directive; or
2286 (c) the personal representative of a will or the trustee of a trust.
2287 (12) "Supported decision-making" means the process of supporting and accommodating an
2288 individual in the decision-making process to make, communicate, and effectuate life
2289 decisions, without impeding the self-determination of the individual.
2290 (13) "Supported decision-making agreement" means an agreement between a principal and
2291 at least one supporter, subject to the requirements described in Section 75-5-704.
2292 (14) "Supporter" means an individual:
2293 (a) who is 18 years old or older;
2294 (b) who is not being paid to provide support to the principal, unless the individual is
2295 receiving caregiver compensation through the Division of Services for People with
2296 Disabilities or is a sibling of the principal who cares for the principal;
2297 (c) who does not have any of the following:
2298 (i) a substantiated allegation of abuse, neglect, or exploitation;
2299 (ii) a protective or restraining order; or
2300 (iii) a conviction for:
2301 (A) harm of another;
2302 (B) theft; or
2303 (C) financial crime; and
2304 (d) who has agreed to provide specified assistance to a principal by entering into a
2305 supported decision-making agreement with the principal.
2306 (15) "Undue influence" means the same as that term is defined in Section 26B-6-201.

Section 23. Section **75-5-702** is enacted to read:

75-5-702 . Purposes of part.

The purposes of this part are to:

- (1) provide a principal assistance in:
 - (a) gathering and assessing information;
 - (b) understanding options, responsibilities, and consequences of a decision; and
 - (c) communicating decisions for a principal if the principal wants assistance with communicating decisions;
- (2) give a supporter legal status, as specified in a supported decision-making agreement, to be with a principal, to access information on behalf of a principal, and to participate in discussions with others when a principal is making decisions or seeking to obtain information; and
- (3) enable a supporter to assist in making and communicating decisions for a principal, but not to substitute as the decision maker for a principal.

Section 24. Section **75-5-703** is enacted to read:

75-5-703 . Interpretation of part.

This part shall be construed and applied in accordance with the following principles:

- (1) a principal should be able to:
 - (a) live in the manner in which the principal wishes; and
 - (b) make decisions about accepting or refusing support, assistance, or protection, as long as doing so does not cause serious bodily injury, as that term is defined in Section 26B-5-301, to the principal, or harm to others;
- (2) a principal should be informed about and, to the best of the principal's abilities, participate in the management of the principal's affairs;
- (3) a principal should receive the most effective, yet least restrictive and intrusive, form of support, assistance, or protection when the principal is unable to manage the principal's affairs alone; and
- (4) the values, beliefs, wishes, cultural norms, and traditions that a principal holds should be respected in supporting the principal.

Section 25. Section **75-5-704** is enacted to read:

75-5-704 . Supported decision-making agreement.

- (1) Subject to Subsections (2) and (6), an individual may enter into a supported decision-making agreement at any time if:
 - (a) the individual enters into the agreement voluntarily, without coercion or undue

- 2341 influence, and without being solicited to enter into the agreement; and
2342 (b) the individual understands the nature and effect of the agreement.
- 2343 (2)(a) If the individual seeking to enter into a supported decision-making agreement has
2344 a court-appointed guardian, court-appointed conservator, or qualifying person, the
2345 guardian, conservator, or qualifying person shall be given:
- 2346 (i) notice and an opportunity to participate in all discussions related to a proposed
2347 supported decision-making agreement; and
2348 (ii) 14 days to review a proposed supported decision-making agreement to determine
2349 whether the proposed agreement includes an area over which the guardian,
2350 conservator, or qualifying person has been granted legal decision-making
2351 authority.
- 2352 (b) If a guardian, conservator, or qualifying person determines, pursuant to Subsection
2353 (2)(a), that a proposed supported decision-making agreement includes an area over
2354 which the guardian, conservator, or qualifying person has been granted
2355 decision-making authority:
- 2356 (i) the supported decision-making agreement is not valid without the signature of the
2357 guardian, conservator, or qualifying person; and
2358 (ii) the proposed supported decision-making agreement shall describe how the
2359 guardian, conservator, or qualifying person will be provided timely notice of and
2360 an opportunity to participate in any discussion between parties to the supported
2361 decision-making agreement that relate to an area over which the guardian,
2362 conservator, or qualifying person has been granted legal decision-making
2363 authority.
- 2364 (c) If a guardian, conservator, or qualifying person described in Subsection (2)(a)
2365 determines that a proposed supported decision-making agreement includes an area
2366 over which the guardian, conservator, or other person has not been granted legal
2367 decision-making authority, nothing in this part shall be construed to:
- 2368 (i) require that the guardian, conservator, or qualifying person be excluded from any
2369 discussion relating to that area; or
2370 (ii) preclude the parties to the proposed supported decision-making agreement from
2371 giving the guardian, conservator, or qualifying person notice and an opportunity to
2372 participate in any discussion relating to that area.
- 2373 (3) A supported decision-making agreement shall:
2374 (a) be in writing;

- (b) state the date on which the agreement is effective;
- (c) designate at least one supporter;
- (d) describe:
- (i) how the principal uses supported decision-making to make decisions;
 - (ii) the rights of the principal;
 - (iii) the responsibilities of each supporter;
 - (iv) the decision-making supports and accommodations the principal chooses to receive from each supporter;
 - (v) the types of decisions, if any, with which a supporter is not authorized to assist the principal;
- (e) include the ink or electronic signature of:
- (i) the individual seeking to enter into the supported decision-making agreement;
 - (ii) each supporter;
 - (iii) a guardian, conservator, or qualifying person, if required under Subsection (2);
and
 - (iv)(A) two witnesses; or
(B) a notary public; and
- (f) describe how any perceived or actual conflict of interest between a supporter and the principal will be mitigated.
- (4)(a) A supported decision-making agreement executed other than in this state is valid in this state if, when the supported decision-making agreement was executed, the execution complied with the law of the jurisdiction that determines the meaning and effect of the supported decision-making agreement.
- (b) The meaning and effect of a supported decision-making agreement is determined by the law of the jurisdiction indicated in the supported decision-making agreement and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the supported decision-making agreement was executed.
- (5)(a) A supported decision-making agreement may include a release or other document by which the principal authorizes a supporter to access the principal's confidential information, subject to the terms of the supported decision-making agreement described in Subsection (3) and the supporter's duties described in Section 75-5-705.
- (b) Before a covered entity may share a principal's protected health information with a supporter, the principal shall sign a HIPAA consent form authorizing release of the protected health information to the supporter.

- 2409 (c) Nothing in this part shall be construed to alter or preempt the requirements for
2410 protecting health information under HIPAA.
- 2411 (6) Each supporter shall include with the supporter's signature:
- 2412 (a) a description of the supporter's relationship to the principal;
2413 (b) a statement of the supporter's willingness to act as a supporter;
2414 (c) an acknowledgment of the supporter's duties; and
2415 (d) an attestation that the supporter:
- 2416 (i) agrees to honor the right of the principal to make decisions;
2417 (ii) will not make decisions for the principal, including health care decisions; and
2418 (iii) will respect and work to further the independence of the principal.
- 2419 (7) A supported decision-making agreement may do one or more of the following:
- 2420 (a) specify a time period for which the supported decision-making agreement is valid;
2421 (b) designate more than one supporter;
2422 (c) designate an alternate individual to act in the place of a supporter under
2423 circumstances specified in the supported decision-making agreement; or
2424 (d) authorize a supporter to share information with another supporter or other individual
2425 named in the supported decision-making agreement.

2426 Section 26. Section **75-5-705** is enacted to read:

2427 **75-5-705 . Supporter duties.**

- 2428 (1) A supporter shall:
- 2429 (a) act with the care, competence, and diligence ordinarily exercised by individuals in
2430 similar circumstances, and in accordance with the supporter's skills or expertise;
2431 (b) act in good faith;
2432 (c) comply with the terms of the supported decision-making agreement;
2433 (d) maintain records, which the supporter shall make available to the principal upon
2434 request, concerning:
- 2435 (i) the supporter's actions under the supported decision-making agreement; and
2436 (ii) how the principal communicates and expresses opinions to the supporter; and
2437 (e) ensure that all information collected on behalf of the principal pursuant to the
2438 supported decision-making agreement and this section is:
- 2439 (i) kept confidential, as appropriate;
2440 (ii) not subject to unauthorized access, use, or disclosure; and
2441 (iii) properly disposed of when appropriate.
- 2442 (2) Except as otherwise provided in the supported decision-making agreement or

Subsection (3), a supporter may, as directed by the principal:

- (a) assist the principal in understanding information, options, responsibilities, and consequences of the principal's life decisions, including decisions relating to the principal's affairs or supportive services;
- (b) help the principal access, obtain, and understand information that is relevant to a life decision, including medical, psychological, financial, or educational decisions, or any treatment records or records related to the management of the principal's affairs or supportive services;
- (c) assist the principal with finding, obtaining, and making appointments for supportive services, and implement the principal's plans for supportive services;
- (d) help the principal monitor information about the principal's affairs or supportive services, including tracking future necessary or recommended services;
- (e) ascertain the wishes and decisions of the principal, assist in communicating those wishes and decisions to others, and advocate to ensure that the wishes and decisions of the principal are implemented; or
- (f) assist the principal with obtaining information to which the principal is entitled.

(3) A supporter may not:

- (a) coerce, exploit, exert undue influence on, or make decisions on behalf of the principal;
- (b) sign for the principal or provide an electronic signature of the principal to a third party;
- (c) make health care decisions for the principal; or
- (d) without the principal's consent:
 - (i) obtain information that is not reasonably related to matters with which the supporter is authorized to support or assist the principal pursuant to the supported decision-making agreement;
 - (ii) use information acquired in connection with the supported decision-making agreement for a purpose other than supporting or assisting the principal pursuant to the supported decision-making agreement; or
 - (iii) delegate the supporter's duties to a third party.

Section 27. Section **75-5-706** is enacted to read:

75-5-706 . Revocation -- Withdrawal.

- (1) A principal may revoke a supported decision-making agreement at any time by providing written notice to all other parties to the agreement.

(2) A supporter may withdraw from a supported decision-making agreement at any time by providing written notice to all other parties to the agreement.

(3) A written notice of revocation or withdrawal under this section may be provided by electronic means.

Section 28. Section **75-5-707** is enacted to read:

75-5-707 . Termination.

Unless otherwise provided in the supported decision-making agreement, a supported decision-making agreement is terminated upon the occurrence of any of the following:

(1) the death of the principal;

(2) revocation by the principal pursuant to Section 75-5-706;

(3) as to a specific supporter, if the supporter is no longer qualified by reason of failure to meet the requirements described in Subsection 75-5-701(14);

(4) withdrawal by all of the supporters pursuant to Section 75-5-706 without the designation of a successor supporter;

(5) the principal's execution of a valid power of attorney, healthcare directive, or declaration for mental health treatment, except to the extent the executed document expressly continues, in whole or in part, the supported decision-making agreement; or

(6) a court's:

(a) determination that the principal does not have capacity to execute or consent to a supported decision-making agreement; or

(b) appointment of a temporary or permanent guardian or conservator, unless the court's order of appointment:

(i) modifies but continues the supported decision-making agreement; and

(ii) limits the powers and duties of the guardian.

Section 29. Section **75-5-708** is enacted to read:

75-5-708 . Impact of supported decision-making agreement.

(1) A decision or request made or communicated by a principal with the assistance of a supporter in accordance with the terms of a supported decision-making agreement and this part shall, for the purposes of any provision of law, be recognized as the decision or request of the principal and may be enforced on the same basis as a decision or request of the principal without support.

(2) The availability of a supported decision-making agreement does not limit the informal use of supported decision making, or preclude judicial consideration of informal supported decision-making arrangements as a less restrictive alternative to a

guardianship or conservatorship.

(3) Execution of a supported decision-making agreement may not be a condition of participating in any activity, service, or program.

(4) A court may not consider an individual's execution of a supported decision-making agreement as evidence of the individual's incapacity.

(5) The existence of a supported decision-making agreement does not preclude the principal from acting independently of the supported decision-making agreement.

Section 30. Section **75-5-709** is enacted to read:

75-5-709 . Liability.

(1) A person who is not a party to a supported decision-making agreement, including a provider of health care or financial services, that in good faith accepts or relies upon a supported decision-making agreement:

(a) may presume that the signatures on the supported decision-making agreement are genuine, unless the person has actual knowledge that any signature on the supported decision-making agreement is not genuine;

(b) may presume that a supported decision-making agreement is valid and that a purported supporter's authority is valid, unless the person has actual knowledge that the supported decision-making agreement or the purported supporter's authority has been revoked, terminated, or is otherwise void or invalid; and

(c) is not subject to civil or criminal liability, or discipline for unprofessional conduct, for giving effect to a provision in a supported decision-making agreement, or for following the direction of a supporter given in accordance with the supported decision-making agreement.

(2) If a person has reason to believe a principal is or has been the subject of abuse, neglect, or exploitation, or observes a principal being subjected to conditions or circumstances that would reasonably result in abuse, neglect, or exploitation, the person shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective Services.

(3) The provisions of this part may not be construed to affect mandatory reporting obligations related to abuse, neglect, or exploitation.

(4) A supporter who violates this part or the terms of a supported decision-making agreement is liable to the principal or the principal's successor in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred.

- (5) A transaction between a supporter and a principal that occurs while a supported decision-making agreement is in effect, or while the supporter is in a position of trust with the principal, and from which the supporter obtains a benefit or advantage, is voidable by the principal unless the supporter establishes that the transaction was fair to the principal.

Section 31. Section **77-15-2** is amended to read:

77-15-2 . Definitions.

As used in this chapter:

- (1) "Competency evaluation" means an evaluation conducted by a forensic evaluator to determine if an individual is competent to stand trial.
- (2) "Competent to stand trial" means that a defendant has:
 - (a) a rational and factual understanding of the criminal proceedings against the defendant and of the punishment specified for the offense charged; and
 - (b) the ability to consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense.
- (3) "Department" means the Department of Health and Human Services.
- (4) "Forensic evaluator" means a licensed mental health professional who:
 - (a) is not involved in the defendant's treatment;
 - (b) is trained and qualified by the department to conduct a competency evaluation, a restoration screening, and a progress toward competency evaluation, based on knowledge, experience, or education relating to:
 - (i) intellectual functioning or psychopathology; and
 - (ii) the legal system and the rights of a defendant in a criminal trial; and
 - (c) if under contract with the department, demonstrates ongoing education and training relating to forensic mental health in accordance with rules established by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) "Incompetent to proceed" means that a defendant is not competent to stand trial as a result of:
 - (a) mental illness; or
 - (b) intellectual disability.
- ~~[(6) "Intellectual disability" means an intellectual disability as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.]~~

- 2579 ~~[(7)]~~ (6) "Mental illness" means the same as that term is defined in Section 26B-5-301.
- 2580 ~~[(8)]~~ (7) "Petition" means a petition to request a court to determine whether a defendant is
- 2581 competent to stand trial.
- 2582 ~~[(9)]~~ (8) "Progress toward competency evaluation" means an evaluation to determine
- 2583 whether an individual who is receiving restoration treatment is:
- 2584 (a) competent to stand trial;
- 2585 (b) incompetent to proceed but has a substantial probability of becoming competent to
- 2586 stand trial in the foreseeable future; or
- 2587 (c) incompetent to proceed and does not have a substantial probability of becoming
- 2588 competent to stand trial in the foreseeable future.
- 2589 ~~[(10)]~~ (9) "Restoration treatment" means training and treatment that is:
- 2590 (a) provided to an individual who is incompetent to proceed;
- 2591 (b) tailored to the individual's particular impairment to competency; and
- 2592 (c) limited to the purpose of restoring the individual to competency.

2593 Section 32. Section **77-15-5** is amended to read:

2594 **CHAPTER 15. DEFENDANT'S COMPETENCY TO PROCEED**

2595 **77-15-5 . Order for hearing -- Stay of other proceedings -- Examinations of**

2596 **defendant -- Scope of examination and report.**

- 2597 (1) A court in which criminal proceedings are pending shall stay all criminal proceedings, if:
- 2598 (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or
- 2599 (b) the court raises the issue of the defendant's competency under Section 77-15-4.
- 2600 (2) The court in which the petition described in Subsection (1)(a) is filed:
- 2601 (a) shall inform the court in which criminal proceedings are pending of the petition, if
- 2602 the petition is not filed in the court in which criminal proceedings are pending;
- 2603 (b) shall review the allegations of incompetency;
- 2604 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of
- 2605 the petition, if the court finds the petition is not clearly sufficient on its face;
- 2606 (d) shall hold a hearing, if the petition is opposed by either party; and
- 2607 (e) may not order an examination of the defendant or order a hearing on the mental
- 2608 condition of the defendant unless the court finds that the allegations in the petition
- 2609 raise a bona fide doubt as to the defendant's competency to stand trial.
- 2610 (3)(a) If the court finds that there is a bona fide doubt as to the defendant's competency
- 2611 to stand trial, the court shall order the department to have one or two forensic
- 2612 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

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

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

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

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

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

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

(i) with the defendant's consent, a forensic evaluator or the department on the department's request; or

- 2647 (ii) a forensic evaluator by court order.
- 2648 (d) A court order under Subsection (4)(c) shall include a protective order that expires
- 2649 180 days after the day on which:
- 2650 (i) the defendant is found guilty;
- 2651 (ii) the defendant enters a guilty plea;
- 2652 (iii) the court sentences the defendant; or
- 2653 (iv) if the case is appealed, the day on which the final appeal is resolved.
- 2654 (e)(i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f),
- 2655 the court shall order the forensic evaluator to destroy all records subject to the
- 2656 protective order within the 180 day period described in Subsection (4)(d).
- 2657 (ii) A forensic evaluator is not required to destroy the records subject to the
- 2658 protective order if destroying the records is a violation of ethical standards to
- 2659 which the forensic evaluator is subject for occupational licensing.
- 2660 (f) The court may extend the protective order described in Subsection (4)(d) if:
- 2661 (i) the court finds the defendant incompetent to proceed without a substantial
- 2662 probability that the defendant will become competent in the foreseeable future;
- 2663 (ii) the prosecutor or another individual indicates to the court that the prosecutor or
- 2664 other individual will seek civil commitment of the defendant under Section
- 2665 77-15-6; and
- 2666 (iii) the court orders the records be maintained and used only for the purposes of
- 2667 examining the defendant in connection with the petition for civil commitment.
- 2668 (g) An order for a competency evaluation may not contain an order for any other inquiry
- 2669 into the mental state of the defendant that is not described in this Subsection (4).
- 2670 (5) Pending a competency evaluation, unless the court or the department directs otherwise,
- 2671 the defendant shall be retained in the same custody or status that the defendant was in at
- 2672 the time the examination was ordered.
- 2673 (6) In the conduct of a competency evaluation and in a report to the court, a forensic
- 2674 evaluator shall consider and address, in addition to any other factors determined to be
- 2675 relevant by the forensic evaluator:
- 2676 (a)[(†)] the impact of the defendant's mental illness or intellectual disability on the
- 2677 defendant's present ability to:
- 2678 [(A)] (i) rationally and factually understand the criminal proceedings against the
- 2679 defendant; and
- 2680 [(B)] (ii) consult with the defendant's legal counsel with a reasonable degree of

- 2681 rational understanding in order to assist in the defense;
- 2682 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator
- 2683 shall consider, as applicable[:]
- 2684 [(+)] the defendant's present ability to:
- 2685 [(A)] (i) understand the charges or allegations against the defendant;
- 2686 [(B)] (ii) communicate facts, events, and states of mind;
- 2687 [(C)] (iii) understand the range of possible penalties associated with the charges or
- 2688 allegations against the defendant;
- 2689 [(D)] (iv) engage in reasoned choice of legal strategies and options;
- 2690 [(E)] (v) understand the adversarial nature of the proceedings against the defendant;
- 2691 [(F)] (vi) manifest behavior sufficient to allow the court to proceed; and
- 2692 [(G)] (vii) testify relevantly, if applicable; and
- 2693 (c) whether the defendant is exhibiting false or exaggerated physical or psychological
- 2694 symptoms relevant to the defendant's capacity to stand trial.
- 2695 (7) Upon a determination that the defendant is incompetent to proceed, the forensic
- 2696 evaluator shall indicate in the report to the court:
- 2697 (a) the factors that contribute to the defendant's incompetency, including the nature of
- 2698 the defendant's mental illness or intellectual disability, if any, and its relationship to
- 2699 the factors contributing to the defendant's incompetency;
- 2700 (b) whether there is a substantial probability that:
- 2701 (i) restoration treatment may bring the defendant to competency to stand trial in the
- 2702 foreseeable future; or
- 2703 (ii) the defendant cannot become competent to stand trial in the foreseeable future;
- 2704 (c) whether the defendant would benefit from restoration treatment; and
- 2705 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c),
- 2706 an explanation of the reason for the determination and a summary of the treatment
- 2707 provided to the defendant in the past.
- 2708 (8)(a) A forensic evaluator shall provide an initial report to the court and the prosecuting
- 2709 and defense attorneys within 30 days of the receipt of the court's order. The report
- 2710 shall inform the court of the examiner's opinion concerning the competency of the
- 2711 defendant to stand trial.
- 2712 (b)(i) If the forensic evaluator is unable to complete the report in the time specified in
- 2713 Subsection (8)(a), the forensic evaluator shall give written notice to the court.
- 2714 (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i)

shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day on which the forensic evaluator received the court's order to conduct a competency evaluation and file a report.

(iii) The court may further extend the deadline for completion of the evaluation and report if the court determines that there is good cause for the extension.

(iv) Upon receipt of an extension described in Subsection (8)(b)(iii), the forensic evaluator shall file the report as soon as reasonably possible.

(9) Any written report submitted by a forensic evaluator shall:

(a) identify the case ordered for evaluation by the case number;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each, the time spent by the forensic evaluator with the defendant for purposes of the examination, and the compensation to be paid to the evaluator for the report;

(c) state the forensic evaluator's clinical observations, findings, and opinions on each factor described in Subsection (6); and

(d) identify the sources of information used by the forensic evaluator and present the basis for the forensic evaluator's clinical findings and opinions.

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

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

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

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

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

- 2749 cross-examine the forensic evaluator.
- 2750 (d)(i) If the forensic evaluators are in conflict as to the competency of the defendant,
2751 all forensic evaluators should be called to testify at the hearing if reasonably
2752 available.
- 2753 (ii) A conflict in the opinions of the forensic evaluators does not require the
2754 appointment of an additional forensic evaluator unless the court finds good cause
2755 for the appointment.
- 2756 (iii) If a party seeks an additional competency evaluation under this Subsection (11),
2757 that party shall:
- 2758 (A) select the additional forensic evaluator; and
2759 (B) pay the costs of the additional forensic evaluator.
- 2760 (12)(a)(i) A defendant shall be presumed competent to stand trial unless the court, by
2761 a preponderance of the evidence, finds the defendant incompetent to proceed.
- 2762 (ii) The burden of proof is upon the proponent of incompetency at the hearing.
- 2763 (b) An adjudication of incompetent to proceed does not operate as an adjudication of
2764 incompetency to give informed consent for medical treatment or for any other
2765 purpose, unless specifically set forth in the court order.
- 2766 (13) In determining the defendant's competency to stand trial, the court shall consider the
2767 totality of the circumstances, including:
- 2768 (a) the petition;
2769 (b) the defendant's criminal and arrest history;
2770 (c) prior mental health evaluations and treatments provided to the court by the defendant;
2771 (d) subject to Subsection (15), whether the defendant was found incompetent to proceed
2772 in a criminal action unrelated to the charged offense for which the petition is filed;
2773 (e) the testimony of lay witnesses, if any;
2774 (f) the forensic evaluator's testimony and report;
2775 (g) the materials on which the forensic evaluator's report is based; and
2776 (h) any other relevant evidence or consideration bearing on the competency of the
2777 defendant.
- 2778 (14) If the court finds the defendant incompetent to proceed:
- 2779 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:
2780 (i) include findings addressing each of the factors in Subsection (6)(a);
2781 (ii) include a transportation order, if necessary;
2782 (iii) be accompanied by the forensic evaluators' reports, any psychiatric,

psychological, or social work reports submitted to the court relative to the mental condition of the defendant, and any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition; and

(iv) be sent by the court to the department; and

(b) the prosecuting attorney shall provide to the department:

(i) the charging document and probable cause statement, if any;

(ii) arrest or incident reports prepared by law enforcement and pertaining to the charged offense; and

(iii) additional supporting documents.

(15) The court may not find the defendant incompetent to proceed based solely on a court having ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6 in an unrelated criminal action if the court in the unrelated criminal action ordered the release more than one year before the day on which the petition described in Subsection (13)(a) is filed.

(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 33. 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 the commitment order from the department.

(c) The report shall:

(i) assess whether the defendant is exhibiting false or exaggerated physical or psychological symptoms;

(ii) describe any diagnostic instruments, methods, and observations used by the evaluator to make the determination;

(iii) describe the defendant's current mental illness or intellectual disability, if any;

(iv) state the forensic evaluator's opinion as to the effect of any false or exaggerated symptoms on the defendant's competency to stand trial;

(v) assess the facility's or program's capacity to provide appropriate restoration treatment for the defendant;

(vi) assess the nature of restoration treatment provided to the defendant;

(vii) assess what progress the defendant has made toward competency restoration, with respect to the factors identified by the court in its initial order;

(viii) assess whether the defendant can reasonably be restored to competency in the foreseeable future given the restoration treatment currently being provided and the facility's or program's capacity to provide appropriate restoration treatment for the defendant;

(ix) assess the likelihood of restoration to competency, the amount of time estimated to achieve competency, or the amount of time estimated to determine whether restoration to competency may be achieved; and

(x) include a statement by the facility's treating physician regarding:

(A) whether the defendant is taking any antipsychotic medication as prescribed;

(B) whether ongoing administration of antipsychotic medication is necessary to maintain the defendant's competency to stand trial;

(C) whether antipsychotic medication is substantially likely to maintain the defendant's competency to stand trial;

(D) whether antipsychotic medication is substantially unlikely to produce side effects which would significantly interfere with the defendant's ability to assist in the defendant's defense;

(E) that no less intrusive means are available, and whether any of those means have been attempted to render the defendant competent; and

(F) whether antipsychotic medication is medically appropriate and in the defendant's best medical interest in light of the defendant's medical condition.

(3)(a) The court on its own motion or upon motion by either party or the department may appoint an additional forensic evaluator to conduct a progress toward competency evaluation.

(b) If the court appoints an additional forensic evaluator upon motion of a party, that party shall pay the costs of the additional forensic evaluator.

(4)(a) Within 15 days after the day on which the court receives the forensic evaluator's report of the progress toward competency evaluation, the court shall hold a hearing to review the defendant's competency.

(b) At the hearing, the burden of proving that the defendant is competent to stand trial is on the proponent of competency.

(c) Following the hearing, the court shall determine by a preponderance of evidence whether the defendant:

(i) is competent to stand trial;

(ii) is competent, but requires the ongoing administration of antipsychotic medication in order to maintain the defendant's competency to stand trial;

(iii) is incompetent to proceed, with a substantial probability that the defendant may become competent in the foreseeable future; or

(iv) is incompetent to proceed, without a substantial probability that the defendant may become competent in the foreseeable future.

(5)(a) If at any time the court determines that the defendant is competent to stand trial, the court shall:

- 2885 (i) proceed with the trial or other procedures as may be necessary to adjudicate the
2886 charges;
- 2887 (ii) order that the defendant be returned to the placement and status that the defendant
2888 was in at the time when the petition for the adjudication of competency was filed
2889 or raised by the court, unless the court determines that placement of the defendant
2890 in a less restrictive environment is more appropriate;
- 2891 (iii) order the ongoing administration of antipsychotic medication to the defendant for
2892 the purpose of maintaining the defendant's competency to stand trial, if the court
2893 finds that the administration of antipsychotic medication is necessary to maintain
2894 the defendant's competency to stand trial under Subsection (4)(c)(ii); and
- 2895 (iv) require the agency, jail, or prison with custody over the defendant to report to the
2896 court any noncompliance with the court's orders under this Subsection (5) within
2897 48 hours of the noncompliance.
- 2898 (b) If the court determines that the defendant is incompetent to proceed with a
2899 substantial probability that the defendant may become competent in the foreseeable
2900 future, the court may order that the defendant remain committed to the department or
2901 the department's designee for the purpose of restoration treatment.
- 2902 (c)(i) If the court determines that the defendant is incompetent to proceed without a
2903 substantial probability that the defendant may become competent in the
2904 foreseeable future, the court shall order the defendant released from commitment
2905 to the department, unless the prosecutor or another individual informs the court
2906 that civil commitment proceedings pursuant to Title 26B, Chapter 5, Health Care -
2907 Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of
2908 Services for People with Disabilities, will be initiated.
- 2909 (ii) The commitment proceedings must be initiated by a petition filed within seven
2910 days after the day on which the court makes the determination described in
2911 Subsection (4)(c)(iv), unless the court finds that there is good cause to delay the
2912 initiation of the civil commitment proceedings.
- 2913 (iii) The court may order the defendant to remain committed to the department until
2914 the civil commitment proceedings conclude.
- 2915 (iv) If the defendant is civilly committed and admitted to a secure setting, the
2916 department shall provide notice to the court that adjudicated the defendant
2917 incompetent to proceed and to the prosecution agency that prosecuted the case at
2918 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.

(6)(a) At any time following the court's order under Subsection (5)(a)(iii), the defendant, the prosecuting attorney, the department, the treating physician, or the agency, jail, or prison with custody over the defendant, may notify the court of the need to review the medication order under Subsection (5)(a)(iii) for continued appropriateness and feasibility.

(b) The court shall set the matter for a hearing if the notification under Subsection (6)(a) establishes good cause to review the matter.

(7) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall schedule a competency review hearing for the earlier of:

(a) the department's best estimate of when the defendant may be restored to competency; or

(b) three months after the day on which the court determined under Subsection (5)(b) to extend the defendant's commitment.

(8) Unless the defendant is charged with a crime listed in Subsection (9), if a defendant is incompetent to proceed by the day of the competency review hearing that follows the extension of a defendant's commitment, the court shall:

(a) order the defendant be:

(i) released or temporarily detained pending civil commitment proceedings as described in Subsection (5)(c); and

(ii) terminate the defendant's commitment to the department for restoration treatment; or

(b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment up to 45 additional days.

(9) If the defendant is charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (7), the court may extend the commitment for a period not to exceed nine months for the purpose of restoration treatment, with a mandatory review hearing at the end of the nine-month period.

(10) Unless the defendant is charged with aggravated murder or murder, if, at the nine-month review hearing described in Subsection (9), the court determines that the defendant is incompetent to proceed, the court shall:

- (a)(i) order the defendant be released or temporarily detained pending civil commitment proceedings as provided in Subsection (5)(c); and
 - (ii) terminate the defendant's commitment to the department for restoration treatment;
- or

(b) if the forensic evaluator reports to the court that there is a substantial probability that restoration treatment will bring the defendant to competency to stand trial in the foreseeable future, extend the defendant's commitment for restoration treatment for up to 135 additional days.

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

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

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

- (a)(i) order the defendant be released or temporarily detained pending civil commitment proceedings as provided in Subsection (5)(c); and
- (ii) terminate the defendant's commitment to the department for restoration treatment;

2987 or

2988 (b) if the forensic evaluator reports to the court that there is a substantial probability that
2989 restoration treatment will bring the defendant to competency to stand trial in the
2990 foreseeable future, extend the defendant's commitment for restoration treatment for
2991 up to 12 additional months.

2992 (14)(a) Neither release from a pretrial incompetency commitment under the provisions
2993 of this section nor civil commitment requires dismissal of criminal charges.

2994 (b) The court may retain jurisdiction over the criminal case and may order periodic
2995 reviews.

2996 (15) A defendant who is civilly committed pursuant to Title 26B, Chapter 5, Health Care -
2997 Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services
2998 for People with Disabilities, may still be adjudicated competent to stand trial under this
2999 chapter.

3000 (16)(a) The remedy for a violation of the time periods specified in this section, other
3001 than those specified in Subsection (5)(c), (8), (10), or (13), shall be a motion to
3002 compel the hearing, or mandamus, but not release from detention or dismissal of the
3003 criminal charges.

3004 (b) The remedy for a violation of the time periods specified in Subsection (5)(c), (8), (9),
3005 or (13), or is not dismissal of the criminal charges.

3006 (17) In cases in which the treatment of the defendant is precluded by court order for a
3007 period of time, that time period may not be considered in computing time limitations
3008 under this section.

3009 (18)(a) If, at any time, the defendant becomes competent to stand trial while the
3010 defendant is committed to the department, the clinical director of the Utah State
3011 Hospital, the department, or the department's designee shall certify that fact to the
3012 court.

3013 (b) The court shall conduct a competency review hearing:

3014 (i) within 15 working days after the day on which the court receives the certification
3015 described in Subsection (18)(a); or

3016 (ii) within 30 working days after the day on which the court receives the certification
3017 described in Subsection (18)(a), if the court determines that more than 15 working
3018 days are necessary for good cause related to the defendant's competency.

3019 (19) The court may order a hearing at any time on the court's own motion or upon
3020 recommendations of the clinical director of the Utah State Hospital or other facility or

the department.

(20) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney and all counsel of record.

Section 34. Section **77-19-203** is amended to read:

**77-19-203 . Petition for inquiry as to competency to be executed -- Filing --
Contents -- Successive petitions.**

(1) If an inmate who has been sentenced to death is or becomes incompetent to be executed, a petition under Subsection (2) may be filed in the district court of the county where the inmate is confined.

(2) The petition shall:

(a) contain a certificate stating that it is filed in good faith and on reasonable grounds to believe the inmate is incompetent to be executed; and

(b) contain a specific recital of the facts, observations, and conversations with the inmate that form the basis for the petition.

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

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

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

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

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

Section 35. Section **77-29-3** is amended to read:

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

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

Section 36. Section **80-6-402** is amended to read:

80-6-402 . Procedure -- Standard.

- (1) When a written motion is filed in accordance with Section 80-6-401 [-]raising the issue of a minor's competency to proceed, or when the juvenile [-]court raises the issue of a minor's competency to proceed, the juvenile court shall stay all proceedings under this chapter .
- (2)(a) If a motion for inquiry is opposed by either party, the juvenile [-]court shall, before granting or denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of the motion.
- (b) If the juvenile [-]court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, the juvenile court shall:
- (i) enter an order for an evaluation of the minor's competency to proceed; and
 - (ii) set a date for a hearing on the issue of the minor's competency.
- (3)(a) After the granting of a motion, and before a full competency hearing, the juvenile [-]court may order the department to evaluate the minor and to report to the juvenile [-]court concerning the minor's mental condition.
- (b) In accordance with state licensing laws, the court may only order the department to provide an initial evaluation and progress toward competency evaluation for a minor who is located within the state.
- (4) The minor shall be evaluated by a forensic evaluator who:
- (a) has experience in juvenile forensic evaluations and juvenile brain development;
 - (b) if it becomes apparent that the minor is not competent due to an intellectual disability or related condition, has experience in intellectual disability or related conditions; and
 - (c) is not involved in the current treatment of the minor.
- (5) The petitioner or other party, as directed by the juvenile court, shall provide all information and materials relevant to a determination of the minor's competency to the department within seven days of the juvenile court's order, including:
- (a) the motion;
 - (b) the arrest or incident reports pertaining to the charged offense;
 - (c) the minor's known delinquency history information;
 - (d) the minor's probation record relevant to competency;
 - (e) known prior mental health evaluations and treatments; and
 - (f) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the minor's education.
- (6)(a) The minor's parent or guardian, the prosecuting attorney, the defense attorney, and

the attorney guardian ad litem, shall cooperate, by executing releases of information when necessary, in providing the relevant information and materials to the forensic evaluator, including:

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

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

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

(i) the minor has a present ability to consult with counsel with a reasonable degree of rational understanding; and

(ii) the minor has a rational as well as factual understanding of the proceedings.

(b) In evaluating the minor, the forensic evaluator shall consider the minor's present ability to:

(i) understand the charges or allegations against the minor;

(ii) communicate facts, events, and states of mind;

(iii) understand the range of possible penalties associated with the allegations against the minor;

(iv) engage in reasoned choice of legal strategies and options;

(v) understand the adversarial nature of the proceedings against the minor;

(vi) manifest behavior sufficient to allow the juvenile court to proceed;

(vii) testify relevantly; and

(viii) any other factor determined to be relevant to the forensic evaluator.

(8)(a) The forensic evaluator shall provide an initial report to the juvenile court, the prosecuting and defense attorneys, and the attorney guardian ad litem, if applicable, within 30 days of the receipt of the juvenile court's order.

(b) If the forensic evaluator informs the juvenile court that additional time is needed, the juvenile court may grant, taking into consideration the custody status of the minor, up to an additional 15 days to provide the report to the juvenile court and counsel.

(c) The forensic evaluator must provide the report within 45 days from the receipt of the juvenile court's order unless, for good cause shown, the juvenile court authorizes an

- 3123 additional period of time to complete the evaluation and provide the report.
- 3124 (d) The report shall inform the juvenile court of the forensic evaluator's opinion
3125 concerning the minor's competency.
- 3126 (9) If the forensic evaluator's opinion is that the minor is not competent to proceed, the
3127 report shall indicate:
- 3128 (a) the nature of the minor's:
- 3129 (i) mental illness;
- 3130 (ii) intellectual disability or related condition; or
- 3131 (iii) developmental immaturity;
- 3132 (b) the relationship of the minor's mental illness, intellectual disability, related condition,
3133 or developmental immaturity to the minor's incompetence;
- 3134 (c) whether there is a substantial likelihood that the minor may attain competency in the
3135 foreseeable future;
- 3136 (d) the amount of time estimated for the minor to achieve competency if the minor
3137 undergoes competency attainment treatment, including medication;
- 3138 (e) the sources of information used by the forensic evaluator; and
- 3139 (f) the basis for clinical findings and opinions.
- 3140 (10) Regardless of whether a minor consents to a competency evaluation, any statement
3141 made by the minor in the course of the competency evaluation, any testimony by the
3142 forensic evaluator based upon any statement made by the minor in the competency
3143 evaluation, and any other fruits of the statement made by the minor in the competency
3144 evaluation:
- 3145 (a) may not be admitted in evidence against the minor in a proceeding under this
3146 chapter, except the statement may be admitted on an issue respecting the mental
3147 condition on which the minor has introduced evidence; and
- 3148 (b) may be admitted where relevant to a determination of the minor's competency.
- 3149 (11) Before evaluating the minor for a competency evaluation, a forensic evaluator shall
3150 specifically advise the minor, and the minor's parent or guardian if reasonably available,
3151 of the limits of confidentiality as provided under Subsection (10).
- 3152 (12) When the report is received, the juvenile court shall set a date for a competency
3153 hearing that shall be held in not less than five and not more than 15 days, unless the
3154 juvenile court enlarges the time for good cause.
- 3155 (13)(a) A minor shall be presumed competent unless the juvenile court, by a
3156 preponderance of the evidence, finds the minor not competent to proceed.

- 3157 (b) The burden of proof is upon the proponent of incompetency to proceed.
- 3158 (14)(a) Following the hearing, the juvenile court shall determine by a preponderance of
- 3159 evidence whether the minor is:
- 3160 (i) competent to proceed;
- 3161 (ii) not competent to proceed with a substantial probability that the minor may attain
- 3162 competency in the foreseeable future; or
- 3163 (iii) not competent to proceed without a substantial probability that the minor may
- 3164 attain competency in the foreseeable future.
- 3165 (b) If the juvenile court enters a finding described in Subsection (14)(a)(i), the juvenile
- 3166 court shall proceed with the proceedings in the minor's case.
- 3167 (c) If the juvenile court enters a finding described in Subsection (14)(a)(ii), the juvenile
- 3168 court shall proceed in accordance with Section 80-6-403.
- 3169 (d)(i) If the juvenile court enters a finding described in Subsection (14)(a)(iii), the
- 3170 juvenile court shall terminate the competency proceeding, dismiss the charges
- 3171 against the minor without prejudice, and release the minor from any custody order
- 3172 related to the pending proceeding, unless the prosecutor informs the court that
- 3173 commitment proceedings will be initiated in accordance with:
- 3174 (A) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for
- 3175 People with an Intellectual Disability;
- 3176 (B) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State
- 3177 Hospital and Other Mental Health Facilities; or
- 3178 (C) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons
- 3179 Under Age 18.
- 3180 (ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated
- 3181 within seven days after the day on which the juvenile court enters the order under
- 3182 Subsection (14)(a), unless the court enlarges the time for good cause shown.
- 3183 (iii) The juvenile court may order the minor to remain in custody until the
- 3184 commitment proceedings have been concluded.
- 3185 (15) If the juvenile court finds the minor not competent to proceed, the juvenile court's
- 3186 order shall contain findings addressing each of the factors in Subsection (7)(b).
- 3187 Section 37. Section **80-6-403** is amended to read:
- 3188 **80-6-403 . Disposition on finding of not competent to proceed -- Subsequent**
- 3189 **hearings -- Notice to prosecuting attorneys.**
- 3190 (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.

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

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

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

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

- (i) the placement is the least restrictive appropriate setting;
- (ii) the placement is in the best interest of the minor;
- (iii) the minor will have access to the services and treatment required by the attainment plan in the placement; and
- (iv) the placement is necessary for the safety of the minor or others.

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

- (i) the most severe allegation against the minor if committed by an adult is a class B misdemeanor;
- (ii) more than 60 days have passed after the day on which the juvenile court adjudicated the minor not competent to proceed; and

- 3225 (iii) the minor has not attained competency.
- 3226 (5)(a) At any time that the minor becomes competent to proceed during the attainment
3227 period, the department shall notify the juvenile court, the prosecuting attorney, the
3228 defense attorney, and the attorney guardian ad litem.
- 3229 (b) The juvenile court shall hold a hearing with 15 business days of notice from the
3230 department described in Subsection (5)(a).
- 3231 (6)(a) If at any time during the attainment period the juvenile court finds that there is not
3232 a substantial probability that the minor will attain competency in the foreseeable
3233 future, the juvenile court shall terminate the competency proceeding, dismiss the
3234 petition or information without prejudice, and release the minor from any custody
3235 order related to the pending proceeding, unless the prosecuting attorney or any other
3236 individual informs the juvenile court that commitment proceedings will be initiated in
3237 accordance with:
- 3238 (i) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for
3239 People with an Intellectual Disability;
- 3240 (ii) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State
3241 Hospital and Other Mental Health Facilities; or
- 3242 (iii) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons
3243 Under Age 18.
- 3244 (b) The prosecuting attorney shall initiate the proceedings described in Subsection (6)(a)
3245 within seven days after the juvenile court's order, unless the juvenile court enlarges
3246 the time for good cause shown.
- 3247 (7) During the attainment period, the juvenile court may order a hearing or rehearing at
3248 anytime on the juvenile court's own motion or upon recommendation of any interested
3249 party or the department.
- 3250 (8)(a) Within three months of the juvenile court's approval of the attainment plan, the
3251 department shall provide a report on the minor's progress towards competence.
- 3252 (b) The report described in Subsection (8)(a) shall address the minor's:
- 3253 (i) compliance with the attainment plan;
- 3254 (ii) progress towards competency based on the issues identified in the original
3255 competency evaluation; and
- 3256 (iii) current mental illness, intellectual disability or related condition, or
3257 developmental immaturity, and need for treatment, if any, and whether there is
3258 substantial likelihood of the minor attaining competency within six months.

- (9)(a) Within 30 days of receipt of the report, the juvenile court shall hold a hearing to determine the minor's current status.
- (b) At the hearing, the burden of proving the minor is competent is on the proponent of competency.
- (c) The juvenile court shall determine by a preponderance of the evidence whether the minor is competent to proceed.
- (10) If the minor has not attained competency after the initial three month attainment period but is showing reasonable progress towards attainment of competency, the juvenile court may extend the attainment period up to an additional three months.
- (11) The department shall provide an updated juvenile competency evaluation at the conclusion of the ~~[six month]~~ extended attainment period under Subsection (10) to advise the juvenile court on the minor's current competency status.
- (12) If the minor does not attain competency within six months after the juvenile court initially finds the minor not competent to proceed, the court shall terminate the competency proceedings and dismiss the petition or information filed without prejudice, unless good cause is shown that there is a substantial likelihood the minor will attain competency within one year from the initial finding of not competent to proceed.
- (13) In the event a minor has an unauthorized leave lasting more than 24 hours, the attainment period shall toll until the minor returns.
- (14)(a) Regardless of whether a minor consents to attainment, any statement made by the minor in the course of attainment, any testimony by the forensic evaluator based upon any statement made by the minor in the course of attainment, and any other fruits of a statement made by the minor in the course of attainment:
- (i) may not be admitted in evidence against the minor in a proceeding under this chapter, except the statement may be admitted on an issue respecting the mental condition on which the minor has introduced evidence; and
 - (ii) may be admitted where relevant to a determination of the minor's competency.
- (b) Before evaluating the minor during the attainment period, a forensic evaluator shall specifically advise the minor, and the minor's parent or guardian if reasonably available, of the limits of confidentiality provided in Subsection (14)(a).

Section 38. Effective Date.

This bill takes effect on May 7, 2025.