

1

**Capital Felony Case Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Candice B. Pierucci**

Senate Sponsor: Daniel McCay

Cosponsor:	Stephanie Gricius	Jake Sawyer
Carl R. Albrecht	Matthew H. Gwynn	Mike Schultz
Tiara Auxier	Katy Hall	Troy Shelley
Jefferson S. Burton	Jon Hawkins	Rex P. Shipp
Kristen Chevrier	Ken Ivory	Casey Snider
Kay J. Christofferson	Karianne Lisonbee	Mark A. Strong
Tyler Clancy	Matt MacPherson	Christine F. Watkins
Ariel Defay	Nicholeen P. Peck	Stephen L. Whyte
James A. Dunnigan	Michael J. Petersen	Ryan D. Wilcox
Joseph Elison	Thomas W. Peterson	
Doug Fiefia	Calvin Roberts	

2

---

---

**LONG TITLE**

3

4

**General Description:**

5

This bill amends statutes related to capital felony cases.

6

**Highlighted Provisions:**

7

This bill:

8

▸ defines and modifies terms related to capital felony cases;

9

▸ clarifies the statutory provisions regarding a sentencing proceeding in a capital felony

10

case;

11

▸ requires the sentencing court to advise a defendant in a capital felony case of the right to a

12

direct appeal and of the statutory provisions for postconviction relief;

13

▸ requires the sentencing court to appoint appellate counsel for a defendant who is

- 14 sentenced to death;
- 15       ▶ modifies the automatic review process by the Utah Supreme Court in a capital felony case
- 16 in which the defendant is sentenced to death;
- 17       ▶ addresses the priority of capital felony cases;
- 18       ▶ addresses the extension of a report on a defendant's competency to stand trial;
- 19       ▶ allows for the appointment of a psychologist to determine if a defendant is intellectually
- 20 disabled when a prosecutor intends to seek a sentence of death;
- 21       ▶ modifies statutory provisions regarding the pretrial process for determining whether an
- 22 individual is intellectually disabled and not subject to a sentence of death;
- 23       ▶ allows for an appeal of an order determining whether a defendant is intellectually
- 24 disabled and not subject to a sentence of death;
- 25       ▶ clarifies statutes regarding the execution of a sentence of death;
- 26       ▶ modifies the requirements for a stay or suspension of a sentence of death and for an order
- 27 of execution;
- 28       ▶ modifies statutory provisions regarding a notification of pregnancy or incompetency of an
- 29 inmate who is sentenced to death;
- 30       ▶ addresses a petition for an inquiry on whether a defendant is competent to be executed,
- 31 including the requirements for a successive petition;
- 32       ▶ amends the examination process for a petition to determine whether an inmate is
- 33 competent to be executed;
- 34       ▶ addresses the procedures when there is a finding of competency or incompetency for an
- 35 inmate sentenced to death;
- 36       ▶ amends the subject matter jurisdiction of the Utah Supreme Court and the district court
- 37 with regard to a capital felony case;
- 38       ▶ provides that the Utah Supreme Court, after a direct appeal, appoint defense counsel to
- 39 represent an individual sentenced to death on a petition for postconviction relief;
- 40       ▶ requires the Utah Supreme Court to maintain a list of qualified defense counsel for
- 41 purposes of appointing defense counsel for an individual sentenced to death on a petition
- 42 for postconviction relief;
- 43       ▶ increases the amount of attorney fees and litigation expenses that a court may authorize
- 44 for a petition for postconviction relief in a death penalty case;
- 45       ▶ repeals a statute pertaining to capital cases; and
- 46       ▶ makes technical and conforming changes.

47 **Money Appropriated in this Bill:**

48 None

49 **Other Special Clauses:**

50 None

51 **Utah Code Sections Affected:**

52 AMENDS:

53 **76-3-206**, as last amended by Laws of Utah 2016, Chapter 277

54 **76-3-207**, as last amended by Laws of Utah 2016, Chapter 277

55 **77-15-5**, as last amended by Laws of Utah 2025, Chapter 46

56 **77-15a-104**, as last amended by Laws of Utah 2023, Chapter 330

57 **77-15a-105**, as last amended by Laws of Utah 2023, Chapter 330

58 **77-18a-1**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 4

59 **77-19-6**, as last amended by Laws of Utah 2008, Chapter 382

60 **77-19-8**, as last amended by Laws of Utah 2011, Chapter 165

61 **77-19-9**, as last amended by Laws of Utah 2008, Chapter 382

62 **77-19-10**, as last amended by Laws of Utah 2025, Chapter 299

63 **77-19-203**, as last amended by Laws of Utah 2025, Chapter 46

64 **77-19-204**, as last amended by Laws of Utah 2023, Chapter 330

65 **77-19-205**, as last amended by Laws of Utah 2023, Chapter 330

66 **78A-3-102**, as last amended by Laws of Utah 2025, Second Special Session, Chapter 3

67 **78A-5-102**, as last amended by Laws of Utah 2025, Chapter 426

68 **78B-9-202**, as last amended by Laws of Utah 2022, Chapter 120

69 ENACTS:

70 **77-19-202.5**, Utah Code Annotated 1953

71 **77-19-203.5**, Utah Code Annotated 1953

72 **77-19-204.5**, Utah Code Annotated 1953

73 REPEALS AND REENACTS:

74 **77-19-201**, as last amended by Laws of Utah 2005, Chapter 71

75 **77-19-202**, as last amended by Laws of Utah 2008, Chapter 382

76 RENUMBERS AND AMENDS:

77 **77-15a-101.1**, (Renumbered from 77-15a-102, as last amended by Laws of Utah 2016,  
78 Chapter 115)

79 **77-15a-101.5**, (Renumbered from 77-15a-101, as last amended by Laws of Utah 2016,  
80 Chapter 115)

81 REPEALS:

82 **77-15a-103**, as last amended by Laws of Utah 2016, Chapter 115

83 **77-18a-2**, as enacted by Laws of Utah 1990, Chapter 7

84 **77-19-7**, as last amended by Laws of Utah 1994, Chapter 13

85

---

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

87 Section 1. Section **76-3-206** is amended to read:

88 **76-3-206 . Capital felony -- Penalties.**

89 (1) ~~[A person]~~ An individual who has pled guilty to or been convicted of a capital felony  
90 shall be sentenced in accordance with this section and Section 76-3-207.

91 (2)(a) If the ~~[person]~~ individual described in Subsection (1) was 18 years ~~[of age]~~ old or  
92 older at the time the offense was committed, the sentence shall be:

93 (i) death;

94 (ii) an indeterminate prison term of not less than 25 years and that may be for life; or

95 (iii) on or after April 27, 1992, life in prison without parole.

96 (b) Subsections (2)(a)(i) and (2)(a)(iii) do not apply if the ~~[person was younger than 18~~  
97 ~~years of age]~~ individual was under 18 years old at the time the offense was committed  
98 and was sentenced on or after May 10, 2016.

99 ~~[(3)(a) The judgment of conviction and sentence of death is subject to automatic review~~  
100 ~~by the Utah State Supreme Court within 60 days after certification by the sentencing~~  
101 ~~court of the entire record unless time is extended an additional period not to exceed~~  
102 ~~30 days by the Utah State Supreme Court for good cause shown.]~~

103 ~~[(b) The review by the Utah State Supreme Court has priority over all other cases and~~  
104 ~~shall be heard in accordance with rules promulgated by the Utah State Supreme Court.]~~

105 Section 2. Section **76-3-207** is amended to read:

106 **76-3-207 . Capital felony -- Sentencing proceeding -- Appeals.**

107 (1)(a) When a defendant has pled guilty to or been found guilty of a capital felony, [  
108 ~~there shall be further proceedings before the court or jury on the issue of sentence]~~ a  
109 further proceeding shall be conducted on the issue of the defendant's sentence for the  
110 capital felony.

111 (b) ~~[In the case of a plea of]~~ When a defendant has pled guilty to a capital felony, the  
112 sentencing [proceedings shall be] proceeding described in Subsection (1)(a) is  
113 conducted before:

114 (i) a jury~~[-or,]~~ ; or

115 (ii) upon request of the defendant and with the approval of the court and the consent  
116 of the prosecution, ~~[by the court which]~~ the court that accepted the plea.

117 (c)(i) When a defendant has been found guilty of a capital felony, the ~~[proceedings~~  
118 ~~shall be]~~ sentencing proceeding described in Subsection (1)(a) is conducted before~~[~~  
119 ~~the court or jury which found the defendant guilty, provided the defendant may~~  
120 ~~waive hearing before the jury with the approval of the court and the consent of the~~  
121 ~~prosecution, in which event the hearing shall be before the court.] :~~

122 (A) the jury that found the defendant guilty; or

123 (B) the court upon a waiver by the defendant of the sentencing proceeding being  
124 conducted before a jury, with approval of the court and the consent of the  
125 prosecution.

126 (ii) If circumstances make it impossible or impractical to ~~[reconvene]~~ continue with  
127 the same jury for the [sentencing proceedings] sentencing proceeding, the court  
128 may dismiss that jury and convene a new jury for the ~~[proceedings]~~ proceeding.

129 (d) If a retrial of the sentencing ~~[proceedings]~~ proceeding is necessary as a consequence  
130 of a remand from an appellate court, the sentencing authority ~~[shall be determined as~~  
131 ~~provided in]~~ is determined in accordance with Subsection [(6)] (13).

132 (2)(a) In ~~[capital sentencing proceedings]~~ a sentencing proceeding described in  
133 Subsection (1)(a), evidence may be presented on:

134 (i) the nature and circumstances of the crime;

135 (ii) the defendant's character, background, history, and mental and physical condition;

136 (iii) the victim and the impact of the crime on the victim's family and community  
137 without comparison to other persons or victims; and

138 (iv) any other facts in aggravation or mitigation of the penalty that ~~[the court~~  
139 ~~considers]~~ are relevant to the sentence.

140 (b)(i) Any evidence the court considers to have probative force may be received  
141 regardless of ~~[its]~~ the evidence's admissibility under the ~~[exclusionary]~~ rules of  
142 evidence.

143 (ii) The ~~[state's attorney]~~ prosecuting attorney and the defendant shall be permitted to  
144 present argument for or against the sentence of death.

145 (3) Aggravating circumstances include those outlined in Section 76-5-202.

146 (4)(a) As used in this Subsection (4), "mental condition" does not include an  
147 abnormality manifested primarily by repeated criminal conduct.

148 (b) Mitigating circumstances include:

- 149 [(a)] (i) the defendant has no significant history of prior criminal activity;
- 150 [(b)] (ii) the homicide was committed while the defendant was under the influence of  
151 mental or emotional disturbance;
- 152 [(c)] (iii) the defendant acted under duress or under the domination of another person;
- 153 [(d)] (iv) at the time of the homicide, the capacity of the defendant to appreciate the  
154 wrongfulness of [his] the defendant's conduct or to conform [his] the defendant's  
155 conduct to the requirement of law was impaired as a result of a mental condition,  
156 intoxication, or influence of drugs[, except that "mental condition" under this  
157 Subsection (4)(d) does not mean an abnormality manifested primarily by repeated  
158 criminal conduct];
- 159 [(e)] (v) the youth of the defendant at the time of the crime;
- 160 [(f)] (vi) the defendant was an accomplice in the homicide committed by another [  
161 person] individual and the defendant's participation was relatively minor; and  
162 [(g)] (vii) any other fact in mitigation of the penalty.
- 163 (5)[(a)] The court or jury, as the case may be, shall retire to consider the [penalty]  
164 defendant's sentence. [~~Except as provided in Subsections 76-3-207.5(2) and~~  
165 ~~76-3-206(2)(b), in all proceedings before a jury, under this section, it shall be~~  
166 ~~instructed as to the punishment to be imposed upon a unanimous decision for death~~  
167 ~~and that the penalty of either an indeterminate prison term of not less than 25 years~~  
168 ~~and which may be for life or life in prison without parole, shall be imposed if a~~  
169 ~~unanimous decision for death is not found.]~~
- 170 [(b)]
- 171 (6)(a) Except as provided in Subsections 76-3-206(2)(b) and 76-3-207.5(2), the court  
172 shall instruct a jury in a sentencing proceeding for a capital felony on the punishment  
173 to be imposed in accordance with this Subsection (6).
- 174 (b) The [~~death penalty~~] sentence of death shall only be imposed if, after considering the  
175 totality of the aggravating and mitigating circumstances, the jury is persuaded beyond  
176 a reasonable doubt that:
- 177 (i) total aggravation outweighs total mitigation[, and is further persuaded, beyond a  
178 reasonable doubt, that] ; and
- 179 (ii) the imposition of the [~~death penalty~~] sentence of death is justified and appropriate  
180 in the circumstances.
- 181 (c) If the jury reports a unanimous [agreement] decision to impose the sentence of death,  
182 the court shall;

- 183 (i) discharge the jury; and~~[-shall-]~~
- 184 (ii) impose the sentence of death.
- 185 [~~(e)~~]
- 186 (d) If the jury is unable to reach a unanimous decision imposing the sentence of death,
- 187 the jury shall ~~[then-]~~determine whether the penalty of life in prison without parole
- 188 shall be imposed, except as provided in Subsection 76-3-207.5(2).
- 189 (e) The penalty of life in prison without parole shall only be imposed if the jury
- 190 determines that the sentence of life in prison without parole is appropriate.
- 191 (f) If the jury reports agreement by 10 jurors or more to impose the sentence of life in
- 192 prison without parole, the court shall:
- 193 (i) discharge the jury~~[-and shall] ; and~~
- 194 (ii) impose the sentence of life in prison without parole.
- 195 (g) If 10 jurors or more do not agree upon a sentence of life in prison without parole, the
- 196 court shall:
- 197 (i) discharge the jury; and
- 198 (ii) impose an indeterminate prison term of not less than 25 years and which may be
- 199 for life.
- 200 [~~(d)~~] (7) [~~If the defendant waives hearing before the jury as to sentencing, with the approval~~
- 201 ~~of the court and the consent of the prosecution]~~ If the sentencing proceeding described in
- 202 Subsection (1)(a) is conducted before the court as described in Subsection (1)(b) or (c),
- 203 the court shall determine the appropriate penalty according to the standards of [~~]~~
- 204 Subsections (5)(b) and (e)] Subsection (6).
- 205 [~~(e)~~] (8) If the defendant is sentenced to more than one term of life in prison with or without
- 206 the possibility of parole, or in addition to a sentence of life in prison with or without the
- 207 possibility of parole the defendant is sentenced for other offenses [~~which]~~ that result in
- 208 terms of imprisonment, the [~~judge]~~ court shall determine whether the terms of
- 209 imprisonment shall be imposed as concurrent or consecutive sentences in accordance
- 210 with Section 76-3-401.
- 211 [~~(6)~~] ~~Upon any appeal by the defendant where the sentence is of death, the appellate court, if~~
- 212 ~~it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of~~
- 213 ~~death and remand the case to the trial court for new sentencing proceedings to the extent~~
- 214 ~~necessary to correct the error or errors. An error in the sentencing proceedings may not~~
- 215 ~~result in the reversal of the conviction of a capital felony. In cases of remand for new~~
- 216 ~~sentencing proceedings, all exhibits and a transcript of all testimony and other evidence~~

217 properly admitted in the prior trial and sentencing proceedings are admissible in the new  
 218 sentencing proceedings, and if the sentencing proceeding was before a:]

219 [(a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the  
 220 defendant waives the hearing before the jury with the approval of the court and the  
 221 consent of the prosecution, in which case the proceeding shall be held according to  
 222 Subsection (6)(b) or (c), as applicable;]

223 [(b) judge, the original trial judge shall conduct the new sentencing proceeding; or]

224 [(c) judge, and the original trial judge is unable or unavailable to conduct a new  
 225 sentencing proceeding, then another judge shall be designated to conduct the new  
 226 sentencing proceeding, and the new proceeding will be before a jury unless the  
 227 defendant waives the hearing before the jury with the approval of the court and the  
 228 consent of the prosecution.]

229 (9)(a) If a defendant is sentenced to death, the court shall:

230 (i) advise the defendant, at the sentencing proceeding, of the defendant's right to a  
 231 direct appeal and of the provisions for postconviction relief in Title 78B, Chapter  
 232 9, Part 1, General Provisions; and

233 (ii) appoint appellate counsel for the defendant in accordance with the requirements  
 234 for a capital case under Rule 8 of the Utah Rules of Criminal Procedure and Title  
 235 78B, Chapter 22, Indigent Defense Act.

236 (b) Subsection (9)(a)(ii) does not prevent the defendant from obtaining private counsel  
 237 or waiving the appointment of appellate counsel.

238 (10)(a) If a defendant is convicted and sentenced to death for a capital felony and the  
 239 defendant waives the defendant's right to an appeal or fails to file a timely notice of  
 240 appeal:

241 (i) the judgment is subject to automatic review by the Supreme Court as to whether  
 242 there was manifest injustice; and

243 (ii) the sentencing court shall promptly certify the entire record of the defendant's  
 244 case to the Supreme Court.

245 (b) The Supreme Court shall conduct the automatic review of a defendant's case within  
 246 120 days after the day on which the sentencing court certifies the entire record of the  
 247 defendant's case.

248 (c) Except as provided in Subsection (10)(d), an automatic review is conducted without  
 249 briefing from any party.

250 (d) If the Supreme Court determines that the conviction should be modified, or the

- 251 conviction or sentence should be vacated, upon an automatic review:
- 252 (i) the Supreme Court shall request that the attorney general submit briefing to
- 253 address the error for which the Supreme Court determined that the conviction
- 254 should be modified or the conviction or sentence should be vacated; and
- 255 (ii) the Supreme Court may appoint an amicus curae to submit briefing in place of the
- 256 defendant.
- 257 (e) Upon any briefing described in Subsection (10)(d), the Supreme Court may modify
- 258 the conviction, or affirm or vacate the conviction or sentence, of the defendant.
- 259 (11)(a) A reversible error in a sentencing proceeding for a capital felony does not result
- 260 in the reversal of the conviction for the capital felony.
- 261 (b) If the Supreme Court remands a capital felony case for a new sentencing proceeding,
- 262 all exhibits and a transcript of all testimony and other evidence that was properly
- 263 admitted in the prior trial and sentencing proceeding are admissible in the new
- 264 sentencing proceeding.
- 265 (12)(a) An automatic review described in Subsection (10) has priority over all other
- 266 cases before the Supreme Court.
- 267 (b) An appeal or petition for extraordinary relief in a capital felony case has priority over
- 268 all noncapital felony cases before the Supreme Court and should be expedited.
- 269 (c) A petition for postconviction relief in a capital case has priority over all other cases
- 270 in the district court, except for a trial of a capital felony case, and should be expedited.
- 271 (13) On a remand for a new sentencing proceeding, the new sentencing proceeding is
- 272 conducted before:
- 273 (a) except as provided in Subsection (13)(b) or (c), a new jury if:
- 274 (i) the prior sentencing proceeding was conducted before a jury; or
- 275 (ii) the prior sentencing proceeding was conducted before the court and the original
- 276 trial judge is unable or unavailable to conduct the new sentencing proceeding;
- 277 (b) the original trial judge if:
- 278 (i) the defendant waives the new sentencing proceeding being conducted before a
- 279 jury, with the approval of the court and the consent of the prosecution; and
- 280 (ii) the prior sentencing proceeding was conducted before the court; or
- 281 (c) a new trial judge if:
- 282 (i) the defendant waives the new sentencing proceeding being conducted before a
- 283 jury, with the approval of the court and the consent of the prosecution; and
- 284 (ii) the original trial judge is unable or unavailable to conduct the new sentencing

- 285 proceeding.
- 286 ~~[(7)]~~ (14) If the ~~[penalty]~~ sentence of death is held to be unconstitutional by the Utah  
 287 Supreme Court or the United States Supreme Court, the court having jurisdiction over a [  
 288 ~~person]~~ defendant previously sentenced to death for a capital felony shall:
- 289 (a) cause the ~~[person]~~ defendant to be brought before the court~~[-, and the court shall]~~ ; and  
 290 (b) sentence the ~~[person]~~ defendant to life in prison without parole.
- 291 ~~[(8)]~~ (15)(a) If the appellate court's final decision regarding any appeal of a sentence of  
 292 death precludes the imposition of ~~[the death penalty due to mental retardation or~~  
 293 ~~subaverage general intellectual functioning under Section 77-15a-101]~~ the sentence of  
 294 death due to an intellectual disability as described in Section 77-15a-101.5, the court  
 295 having jurisdiction over a defendant previously sentenced to death for a capital  
 296 felony shall:
- 297 (i) cause the defendant to be brought before the ~~[sentencing court, and the court shall]~~  
 298 court; and
- 299 (ii) sentence the defendant to life in prison without parole.
- 300 (b) If the appellate court precludes the imposition of the ~~[death penalty]~~ sentence of death  
 301 under Subsection ~~[(8)(a)]~~ (15)(a), but the appellate court finds that sentencing the  
 302 defendant to life in prison without parole is likely to result in a manifest injustice, ~~[it]~~  
 303 the appellate court may remand the case to the sentencing court for ~~[further~~  
 304 ~~sentencing proceedings]~~ a sentencing proceeding to determine if the defendant should  
 305 serve a sentence of life in prison without parole or an indeterminate prison term of  
 306 not less than 25 years and which may be for life.
- 307 Section 3. Section **77-15-5** is amended to read:
- 308 **77-15-5 . Order for hearing -- Stay of other proceedings -- Examinations of**  
 309 **defendant -- Scope of examination and report.**
- 310 (1) A court in which criminal proceedings are pending shall stay all criminal proceedings, if:  
 311 (a) a petition is filed under Section 77-15-3 or 77-15-3.5; or  
 312 (b) the court raises the issue of the defendant's competency under Section 77-15-4.
- 313 (2) The court in which the petition described in Subsection (1)(a) is filed:  
 314 (a) shall inform the court in which criminal proceedings are pending of the petition, if  
 315 the petition is not filed in the court in which criminal proceedings are pending;  
 316 (b) shall review the allegations of incompetency;  
 317 (c) may hold a limited hearing solely for the purpose of determining the sufficiency of  
 318 the petition, if the court finds the petition is not clearly sufficient on its face;

- 319 (d) shall hold a hearing, if the petition is opposed by either party; and  
320 (e) may not order an examination of the defendant or order a hearing on the mental  
321 condition of the defendant unless the court finds that the allegations in the petition  
322 raise a bona fide doubt as to the defendant's competency to stand trial.
- 323 (3)(a) If the court finds that there is a bona fide doubt as to the defendant's competency  
324 to stand trial, the court shall order the department to have one or two forensic  
325 evaluators complete a competency evaluation for the defendant in accordance with  
326 Subsection (3)(b) and provide a report to the court regarding the competency of the  
327 defendant to stand trial.
- 328 (b) The court shall order the department to have the defendant evaluated by one forensic  
329 evaluator unless:
- 330 (i) the defendant is charged with a capital felony; or  
331 (ii) the defendant is charged with a felony that is not a capital felony, and the court  
332 determines, based on the allegations in the petition, that good cause exists to order  
333 two competency evaluations.
- 334 (c)(i) This section does not prohibit a party from seeking an additional forensic  
335 evaluator to conduct a competency evaluation of the defendant.
- 336 (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c),  
337 the party shall:
- 338 (A) select the additional forensic evaluator; and  
339 (B) pay the costs of the additional forensic evaluator.
- 340 (d) The stipulation by parties to a bona fide doubt as to the defendant's competency to  
341 stand trial alone may not take the place of a competency evaluation ordered under  
342 this Subsection (3).
- 343 (e) In accordance with state licensing laws, the court may only order the department to  
344 provide an initial evaluation and progress toward competency evaluation for a  
345 defendant who is located within the state.
- 346 (4)(a) If the petition or other information sufficiently raises concerns that the defendant  
347 may have an intellectual disability, at least one forensic evaluator who is experienced  
348 in assessments of intellectual disabilities shall conduct a competency evaluation.
- 349 (b) The petitioner or other party, as directed by the court or requested by the department,  
350 shall provide to the forensic evaluator nonmedical information and materials relevant  
351 to a determination of the defendant's competency, including the charging document,  
352 arrest or incident reports pertaining to the charged offense, known criminal history

- 353 information, and known prior mental health evaluations and treatments.
- 354 (c) For purposes of a competency evaluation, a custodian of mental health records  
355 pertaining to the defendant, including the defendant's prior mental health evaluations  
356 or records relating to the defendant's substance use disorder, may provide the records  
357 to:
- 358 (i) with the defendant's consent, a forensic evaluator or the department on the  
359 department's request; or
- 360 (ii) a forensic evaluator by court order.
- 361 (d) A court order under Subsection (4)(c) shall include a protective order that expires  
362 180 days after the day on which:
- 363 (i) the defendant is found guilty;
- 364 (ii) the defendant enters a guilty plea;
- 365 (iii) the court sentences the defendant; or
- 366 (iv) if the case is appealed, the day on which the final appeal is resolved.
- 367 (e)(i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f),  
368 the court shall order the forensic evaluator to destroy all records subject to the  
369 protective order within the 180 day period described in Subsection (4)(d).
- 370 (ii) A forensic evaluator is not required to destroy the records subject to the  
371 protective order if destroying the records is a violation of ethical standards to  
372 which the forensic evaluator is subject for occupational licensing.
- 373 (f) The court may extend the protective order described in Subsection (4)(d) if:
- 374 (i) the court finds the defendant incompetent to proceed without a substantial  
375 probability that the defendant will become competent in the foreseeable future;
- 376 (ii) the prosecutor or another individual indicates to the court that the prosecutor or  
377 other individual will seek civil commitment of the defendant under Section  
378 77-15-6; and
- 379 (iii) the court orders the records be maintained and used only for the purposes of  
380 examining the defendant in connection with the petition for civil commitment.
- 381 (g) An order for a competency evaluation may not contain an order for any other inquiry  
382 into the mental state of the defendant that is not described in this Subsection (4).
- 383 (5) Pending a competency evaluation, unless the court or the department directs otherwise,  
384 the defendant shall be retained in the same custody or status that the defendant was in at  
385 the time the examination was ordered.
- 386 (6) In the conduct of a competency evaluation and in a report to the court, a forensic

- 387 evaluator shall consider and address, in addition to any other factors determined to be  
388 relevant by the forensic evaluator:
- 389 (a) the impact of the defendant's mental illness or intellectual disability on the  
390 defendant's present ability to:
- 391 (i) rationally and factually understand the criminal proceedings against the defendant;  
392 and
- 393 (ii) consult with the defendant's legal counsel with a reasonable degree of rational  
394 understanding in order to assist in the defense;
- 395 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator  
396 shall consider, as applicable the defendant's present ability to:
- 397 (i) understand the charges or allegations against the defendant;  
398 (ii) communicate facts, events, and states of mind;  
399 (iii) understand the range of possible penalties associated with the charges or  
400 allegations against the defendant;  
401 (iv) engage in reasoned choice of legal strategies and options;  
402 (v) understand the adversarial nature of the proceedings against the defendant;  
403 (vi) manifest behavior sufficient to allow the court to proceed; and  
404 (vii) testify relevantly, if applicable; and
- 405 (c) whether the defendant is exhibiting false or exaggerated physical or psychological  
406 symptoms relevant to the defendant's capacity to stand trial.
- 407 (7) Upon a determination that the defendant is incompetent to proceed, the forensic  
408 evaluator shall indicate in the report to the court:
- 409 (a) the factors that contribute to the defendant's incompetency, including the nature of  
410 the defendant's mental illness or intellectual disability, if any, and its relationship to  
411 the factors contributing to the defendant's incompetency;
- 412 (b) whether there is a substantial probability that:
- 413 (i) restoration treatment may bring the defendant to competency to stand trial in the  
414 foreseeable future; or
- 415 (ii) the defendant cannot become competent to stand trial in the foreseeable future;
- 416 (c) whether the defendant would benefit from restoration treatment; and
- 417 (d) if the forensic evaluator makes the determination under Subsection (7)(b)(i) or (7)(c),  
418 an explanation of the reason for the determination and a summary of the treatment  
419 provided to the defendant in the past.
- 420 (8)(a)(i) A forensic evaluator shall provide an initial report to the court and the

421 prosecuting and defense attorneys within 30 days of the receipt of the court's  
422 order.

423 (ii) The report shall inform the court of the examiner's opinion concerning the  
424 competency of the defendant to stand trial.

425 (b)(i) If the forensic evaluator is unable to complete the report in the time specified in  
426 Subsection (8)(a), the forensic evaluator shall give written notice to the court.

427 (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i)  
428 shall receive a 15-day extension, giving the forensic evaluator a total of 45 days  
429 after the day on which the forensic evaluator received the court's order to conduct  
430 a competency evaluation and file a report.

431 (iii) ~~[The]~~ Except as provided in Subsection (8)(b)(iv), the court may further extend  
432 the deadline for completion of the evaluation and report if the court determines  
433 that there is good cause for the extension.

434 (iv) If an extension is sought because the forensic evaluator has been appointed to  
435 examine an inmate for competency to be executed or has been called to testify at a  
436 competency hearing described in Section 77-19-204, the court shall further extend  
437 the deadline to complete the report on the defendant's competency to stand trial.

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

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

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

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

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

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

450 (10)(a) Any statement made by the defendant in the course of any competency  
451 examination, whether the examination is with or without the consent of the  
452 defendant, any testimony by a forensic evaluator based upon the statement, and any  
453 other fruits of the statement may not be admitted in evidence against the defendant in  
454 any criminal proceeding except on an issue respecting mental condition on which the

- 455 defendant has introduced evidence, unless the evidence is relevant to a determination  
456 of the defendant's competency.
- 457 (b) Before examining the defendant, the forensic evaluator shall specifically advise the  
458 defendant of the limits of confidentiality as provided under Subsection (10)(a).
- 459 (11)(a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a  
460 competency hearing. The hearing shall be held not less than five and not more than  
461 15 days after the day on which the court received the forensic evaluators' reports,  
462 unless for good cause the court sets a later date.
- 463 (b) Any person directed by the department to conduct the competency evaluation may be  
464 subpoenaed to testify at the hearing.
- 465 (c) The court may call any forensic evaluator to testify at the hearing who is not called  
466 by the parties. If the court calls a forensic evaluator, counsel for the parties may  
467 cross-examine the forensic evaluator.
- 468 (d)(i) If the forensic evaluators are in conflict as to the competency of the defendant,  
469 all forensic evaluators should be called to testify at the hearing if reasonably  
470 available.
- 471 (ii) A conflict in the opinions of the forensic evaluators does not require the  
472 appointment of an additional forensic evaluator unless the court finds good cause  
473 for the appointment.
- 474 (iii) If a party seeks an additional competency evaluation under this Subsection (11),  
475 that party shall:
- 476 (A) select the additional forensic evaluator; and  
477 (B) pay the costs of the additional forensic evaluator.
- 478 (12)(a)(i) A defendant shall be presumed competent to stand trial unless the court, by  
479 a preponderance of the evidence, finds the defendant incompetent to proceed.
- 480 (ii) The burden of proof is upon the proponent of incompetency at the hearing.
- 481 (b) An adjudication of incompetent to proceed does not operate as an adjudication of  
482 incompetency to give informed consent for medical treatment or for any other  
483 purpose, unless specifically set forth in the court order.
- 484 (13) In determining the defendant's competency to stand trial, the court shall consider the  
485 totality of the circumstances, including:
- 486 (a) the petition;  
487 (b) the defendant's criminal and arrest history;  
488 (c) prior mental health evaluations and treatments provided to the court by the defendant;

- 489 (d) subject to Subsection (15), whether the defendant was found incompetent to proceed  
 490 in a criminal action unrelated to the charged offense for which the petition is filed;  
 491 (e) the testimony of lay witnesses, if any;  
 492 (f) the forensic evaluator's testimony and report;  
 493 (g) the materials on which the forensic evaluator's report is based; and  
 494 (h) any other relevant evidence or consideration bearing on the competency of the  
 495 defendant.

496 (14) If the court finds the defendant incompetent to proceed:

- 497 (a) the court shall issue the order described in Subsection 77-15-6(1), which shall:  
 498 (i) include findings addressing each of the factors in Subsection (6)(a);  
 499 (ii) include a transportation order, if necessary;  
 500 (iii) be accompanied by the forensic evaluators' reports, any psychiatric,  
 501 psychological, or social work reports submitted to the court relative to the mental  
 502 condition of the defendant, and any other documents made available to the court  
 503 by either the defense or the prosecution, pertaining to the defendant's current or  
 504 past mental condition; and  
 505 (iv) be sent by the court to the department; and  
 506 (b) the prosecuting attorney shall provide to the department:  
 507 (i) the charging document and probable cause statement, if any;  
 508 (ii) arrest or incident reports prepared by law enforcement and pertaining to the  
 509 charged offense; and  
 510 (iii) additional supporting documents.

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

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

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

518 Section 4. Section **77-15a-101.1**, which is renumbered from Section 77-15a-102 is renumbered  
 519 and amended to read:

520 **[77-15a-102] 77-15a-101.1 . Definitions for chapter.**

521 As used in this chapter~~[, a defendant is "intellectually disabled" if]~~:

522 (1) "Intellectually disabled" means:

523 (a) ~~[the defendant has]~~ significant subaverage general intellectual functioning that [  
524 results in and] exists concurrently with significant deficiencies in adaptive functioning [  
525 that exist primarily in the areas of reasoning or impulse control, or in both of these  
526 areas]; and

527 ~~[(2)]~~ (b) the subaverage general intellectual functioning and the significant deficiencies  
528 in adaptive functioning ~~[under Subsection (1)]~~ described in Subsection (1)(a) are both  
529 manifested ~~[prior to age 22]~~ before the individual is 22 years old.

530 (2) "Prescreening psychologist" means a psychologist who:

531 (a) is licensed in accordance with Title 58, Chapter 61, Psychologist Licensing Act; and  
532 (b) has at least five years of experience in testing, evaluating, and diagnosing individuals  
533 as intellectually disabled.

534 Section 5. Section **77-15a-101.5**, which is renumbered from Section 77-15a-101 is renumbered  
535 and amended to read:

536 **[77-15a-101] 77-15a-101.5 . Intellectually disabled defendant not subject to a**  
537 **sentence of death.**

538 ~~[(1)]~~ A defendant who is found by the court to be intellectually disabled ~~[as defined in~~  
539 ~~Section 77-15a-102]~~ is not subject to ~~[the death penalty]~~ a sentence of death.

540 ~~[(2)]~~ A defendant who does not meet the definition of intellectually disabled under Section  
541 ~~77-15a-102 is not subject to the death penalty if:]~~

542 ~~[(a) the defendant has significantly subaverage general intellectual functioning that~~  
543 ~~exists concurrently with significant deficiencies in adaptive functioning;]~~

544 ~~[(b) the functioning described in Subsection (2)(a) is manifested prior to age 22; and]~~

545 ~~[(c) the state intends to introduce into evidence a confession by the defendant which is~~  
546 ~~not supported by substantial evidence independent of the confession.]~~

547 Section 6. Section **77-15a-104** is amended to read:

548 **77-15a-104 . Hearing -- Notice -- Stay of proceeding -- Examinations of defendant**  
549 **-- Scope of examination -- Report -- Procedures.**

550 ~~[(1)(a) If a defendant proposes to offer evidence concerning or argue that he qualifies~~  
551 ~~for an exemption from the death penalty under Subsection 77-15a-101(1) or (2), the~~  
552 ~~defendant shall file and serve the prosecuting attorney with written notice of his~~  
553 ~~intention as soon as practicable, but not fewer than 60 days before trial.]~~

554 ~~[(b) If the defendant wishes to claim the exemption provided in Subsection~~  
555 ~~77-15a-101(2), the defendant shall file and serve the prosecuting attorney with~~  
556 ~~written notice of his intention as soon as practicable, but not fewer than 60 days~~

557 before trial.]

558 [~~(2) When notice is given under Subsection (1), the court raises the issue, or a motion is~~  
559 ~~filed regarding Section 77-15a-101, the court may stay all proceedings in order to~~  
560 ~~address the issue.]~~

561 (1) If a prosecuting attorney files a notice of intent to seek a sentence of death, and unless  
562 the defendant objects to the appointment, the court shall appoint a prescreening  
563 psychologist to determine the defendant's intelligence quotient using the procedures for  
564 determining an intelligence quotient that are the medical community's standards at the  
565 time of appointment.

566 (2)(a) If a defendant objects to the appointment of a prescreening psychologist as  
567 described in Subsection (1), the defendant waives the right to assert that the  
568 defendant is intellectually disabled for purposes of establishing that the defendant is  
569 not subject to a sentence of death.

570 (b) The court shall make a determination on the record as to whether the defendant's  
571 waiver under Subsection (2)(a) is knowing and voluntary.

572 (c) A waiver under this Subsection (2) does not preclude the defendant from offering  
573 evidence of the defendant's mental capacity as mitigation evidence in the sentencing  
574 proceeding described in Section 76-3-207.

575 (3)(a) Within 30 days after that day on which the defendant is tested by an appointed  
576 prescreening psychologist, the prescreening psychologist shall submit a written report  
577 to the court on the prescreening psychologist's determination of the defendant's  
578 intelligence quotient.

579 (b) The court may grant the prescreening psychologist an extension under Subsection  
580 (3)(a) upon a showing of good cause.

581 (4)(a)(i) If a prescreening psychologist determines that the defendant's intelligence  
582 quotient is higher than 75:

583 (A) the defendant shall present any evidence of significant subaverage general  
584 intellectual functioning or significant deficiencies in adaptive functioning  
585 within 30 days after the day on which the prescreening psychologist submits  
586 the report described in Subsection (3); and

587 (B) except as provided in Subsection (4)(c), the court shall make the prescreening  
588 psychologist's report available to the defendant but seal the report as to all  
589 other persons.

590 (ii) The court may grant the defendant an extension under Subsection (4)(a)(i)(A)

- 591                   upon a showing of good cause.
- 592           (b) If a prescreening psychologist determines that the defendant's intelligence quotient is  
593           higher than 75 and the defendant presents no contrary evidence under Subsection  
594           (4)(a)(i)(A):
- 595           (i) no further examination of the defendant may be ordered under this section; and  
596           (ii) the court shall enter an order stating that a sentence of death is a sentencing  
597           option in the case before the court.
- 598           (c) The court shall release the prescreening psychologist's report on the motion of any  
599           party if:
- 600           (i) the court orders an examination as described in Subsection (6); or  
601           (ii) the defendant introduces the report in the case before or after conviction or in any  
602           related collateral proceeding.
- 603           (d) A determination by a prescreening psychologist that the defendant's intelligence  
604           quotient is higher than 75 does not preclude the defendant from introducing evidence  
605           of the defendant's mental capacity at the sentencing proceeding described in Section  
606           76-3-207.
- 607           (5) If the prescreening psychologist determines that the defendant's intelligence quotient is  
608           75 or less, or the defendant presents evidence of an intellectual disability as described in  
609           Subsection (4)(a)(i)(A):
- 610           (a) the court may stay all proceedings in order to address the issue of whether the  
611           defendant is intellectually disabled; and
- 612           (b) the court shall order an examination of the defendant as described in Subsection (6).
- 613           ~~(3)~~ (6)(a) The court shall order the Department of Health and Human Services to  
614           appoint at least two mental health experts to examine the defendant and report to the  
615           court.
- 616           (b) ~~[The experts]~~ An examiner described in Subsection (6)(a):
- 617           (i) may not be involved in the current treatment of the defendant; and  
618           (ii) shall have expertise in intellectual disability assessment.
- 619           ~~(b)~~ (c) Upon appointment of ~~[the experts]~~ the examiners, the defendant, or other party as  
620           directed by the court, shall provide information and materials to the examiners  
621           relevant to a determination ~~[of the defendant's intellectual disability]~~ of whether the  
622           defendant is intellectually disabled, including:
- 623           (i) copies of the charging document~~[-]~~ ;  
624           (ii) arrest or incident reports pertaining to the charged offense~~[-]~~ ;

625           (iii) known criminal history information~~[, and]~~ ; and  
626           (iv) known prior mental health evaluations and treatments.

627       ~~[(e)]~~ (d) The court may make the necessary orders to provide the information listed in  
628           Subsection ~~[(3)(b)]~~ (6)(c) to the examiners.

629       ~~[(d)]~~ (e) The court may provide in ~~[its]~~ the court's order appointing the examiners that  
630           custodians of mental health records pertaining to the defendant shall provide those  
631           records to the examiners without the need for consent of the defendant or further  
632           order of the court.

633       ~~[(e)]~~ (f) ~~[Prior to]~~ Before examining the defendant, ~~[examiners]~~ an examiner shall  
634           specifically advise the defendant of the limits of confidentiality as provided under  
635           Section 77-15a-106.

636       ~~[(4)]~~ (7) During any examinations under Subsection ~~[(3)]~~ (6), and unless the court directs  
637           otherwise, the defendant shall be retained in the same custody or status ~~[he]~~ the defendant  
638           was in at the time the examination was ordered.

639       ~~[(5)]~~ (8) ~~[The experts]~~ An examiner described in Subsection (6)(a) shall, in the conduct of [  
640           ~~their examinations and in their reports]~~ the examiner's examinations and reports to the  
641           court, consider and address:

642           (a) whether the defendant is intellectually disabled~~[as defined in Section 77-15a-102];~~  
643               and

644           ~~[(b) the degree of any intellectual disability the expert finds to exist;]~~

645           ~~[(c) whether the defendant is intellectually disabled as specified in Subsection~~  
646               ~~77-15a-101(2); and]~~

647           ~~[(d)]~~ (b) the degree of any intellectual disability the ~~[expert]~~ examiner finds to exist.

648       ~~[(6)]~~ (9)(a) ~~[The experts examining the defendant]~~ An examiner shall provide ~~[written~~  
649           ~~reports]~~ a written report to the court, the prosecution, and the defense within 60 days [  
650           ~~of the receipt of]~~ after the day on which the examiner receives the court's order, unless  
651           the ~~[expert]~~ examiner submits to the court a written request for additional time in  
652           accordance with Subsection ~~[(6)(e)]~~ (9)(c).

653           (b) The ~~[reports]~~ written report shall provide, to the court and to prosecution and defense  
654           counsel, the ~~[examiners']~~ examiner's written opinions concerning ~~[the intellectual~~  
655           ~~disability of the defendant]~~ whether the defendant is intellectually disabled.

656           (c) If an examiner requests of the court additional time, the examiner shall provide the  
657           report to the court and counsel within 90 days ~~[from the receipt of the court's order~~  
658           ~~unless, for good cause shown,]~~ after the day on which the examiner receives the

659 court's order, unless the court authorizes, for good cause shown, an additional period  
660 of time to complete the examination and provide the report.

661 ~~[(7)]~~ (10) Any written report submitted by an [expert] examiner under Subsection (9) shall:

662 (a) identify the specific matters referred for evaluation;

663 (b) describe the procedures, techniques, and tests used in the examination and the  
664 purpose or purposes for each;

665 (c) state the [expert's] examiner's clinical observations, findings, and opinions; and

666 (d) identify the sources of information used by the [expert] examiner and present the  
667 basis for the [expert's] examiner's clinical findings and opinions.

668 ~~[(8)]~~ (11) Within 30 days after ~~[receipt of]~~ receiving the report from the Department of  
669 Health and Human Services, but not later than five days before hearing, or at any other  
670 time the court directs, the prosecuting attorney shall file and serve upon the defendant a  
671 notice of witnesses the prosecuting attorney proposes to call in rebuttal.

672 ~~[(9)]~~ (12)(a) Except pursuant to Section 77-15a-105, this chapter does not prevent any  
673 party from producing any other testimony as to the ~~[mental condition]~~ intellectual or  
674 adaptive functioning of the defendant.

675 (b) Expert witnesses who are not appointed by the court are not entitled to compensation  
676 under Subsection ~~[(10)]~~ (13).

677 ~~[(10)]~~ (13)(a) ~~[Expenses]~~ The Department of Health and Human Services shall pay the  
678 expenses of examinations of the defendant ordered by the court under this section [  
679 ~~shall be paid by the Department of Health and Human Services]~~.

680 (b) ~~[Travel]~~ The Department of Health and Human Services shall charge travel expenses  
681 associated with any court-ordered examination that are incurred by the defendant [  
682 ~~shall be charged by the Department of Health and Human Services]~~ to the county  
683 where prosecution is commenced.

684 ~~[(11)]~~ (14)(a)(i) When the report is received, the court shall set a date for a hearing  
685 that is within a reasonable time before jury selection to determine if the exemption  
686 under Section ~~[77-15a-101]~~ 77-15a-101.5 applies. ~~[The hearing shall be held and~~  
687 ~~the judge shall make the determination within a reasonable time prior to jury~~  
688 ~~selection.]~~

689 (ii) The court shall make a determination described in Subsection (14)(a)(i) within a  
690 reasonable time before jury selection.

691 (b) Prosecution and defense counsel may subpoena to testify at the hearing any person or  
692 organization appointed by the Department of Health and Human Services to conduct

693 the examination and any independent examiner.

694 (c)(i) The court may call any examiner to testify at the hearing who is not called by  
695 the parties.

696 (ii) If the court calls an examiner, counsel for the parties may cross-examine that  
697 examiner.

698 [(12)] (15)(a) A defendant is presumed not to be intellectually disabled unless the court,  
699 by a preponderance of the evidence, finds the defendant to be intellectually disabled.

700 (b) The burden of proof is upon the proponent of intellectual disability at the hearing.

701 [(b)] (c) A finding of intellectual disability does not operate as an adjudication of  
702 intellectual disability for any purpose other than exempting the [person] defendant  
703 from a sentence of death in the case before the court.

704 [(13)(a) The defendant is presumed not to possess the mental deficiencies listed in  
705 Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds  
706 that the defendant has significant subaverage general intellectual functioning that  
707 exists concurrently with significant deficiencies in adaptive functioning and that this  
708 functioning was manifested prior to age 22. The burden of proof is upon the  
709 proponent of that proposition.]

710 [(b) If the court finds by a preponderance of the evidence that the defendant has  
711 significant subaverage general intellectual functioning that exists concurrently with  
712 significant deficiencies in adaptive functioning and that this functioning was  
713 manifested prior to age 22, then the burden is upon the state to establish that any  
714 confession by the defendant which the state intends to introduce into evidence is  
715 supported by substantial evidence independent of the confession.]

716 [(14)] (16)(a) If the court finds the defendant is intellectually disabled, [it] the court shall  
717 issue an order:

718 (i) containing findings of fact and conclusions of law, and addressing each of the  
719 factors in Subsections [(5)(a)] (8)(a) and (b); and

720 (ii) stating that [the death penalty] a sentence of death is not a sentencing option in the  
721 case before the court.

722 [(b) If the court finds by a preponderance [of the evidence that the defendant possesses  
723 the mental deficiencies listed in Subsection 77-15a-101(2) and that the state fails to  
724 establish that any confession is supported by substantial evidence independent of the  
725 confession, the state may proceed with its case and:]

726 [(i) introduce the confession into evidence, and the death penalty will not be a

- 727                   sentencing option in the case; or]
- 728           [(ii) ~~not introduce into evidence any confession or the fruits of a confession that the~~
- 729                   ~~court has found is not supported by substantial evidence independent of the~~
- 730                   ~~confession, and the death penalty will be a sentencing option in the case.]~~
- 731           [(e)] (b)(i) A finding by the court regarding whether the defendant qualifies for an
- 732                   exemption under Section ~~[77-15a-101]~~ 77-15a-101.5 is a final determination of
- 733                   that issue for purposes of this chapter.
- 734           (ii) ~~[The following questions]~~ Whether the defendant is intellectually disabled for
- 735                   purposes of this chapter may not be submitted to the jury by instruction, special
- 736                   verdict, argument, or other means[.].
- 737                   ~~[(A) whether the defendant is intellectually disabled for purposes of this chapter;~~
- 738                   ~~and]~~
- 739                   ~~[(B) whether the defendant possesses the mental deficiencies specified in~~
- 740                   ~~Subsection 77-15a-101(2).]~~
- 741           (iii) This chapter does not prevent the defendant from submitting evidence of
- 742                   intellectual disability or other mental deficiency to establish a mental condition as
- 743                   a mitigating circumstance under Section 76-3-207.
- 744           ~~[(15) A ruling by the court that the defendant is exempt from the death penalty may be~~
- 745                   ~~appealed by the state pursuant to Section 77-18a-1.]~~
- 746           ~~[(16)]~~ (17) Failure to comply with this section does not result in the dismissal of criminal
- 747                   charges.
- 748           Section 7. Section **77-15a-105** is amended to read:
- 749                   **77-15a-105 . Defendant's wilful failure to cooperate -- Expert testimony**
- 750           **regarding intellectual disability is barred.**
- 751           (1) ~~[If the defendant files notice, raises the issue, or intends to present evidence or make an~~
- 752                   ~~argument that the defendant is exempt from the death penalty]~~ If the defendant presents
- 753                   evidence or makes an argument that the defendant is exempt from a sentence of death
- 754                   under this chapter, the defendant shall make himself or herself available and fully
- 755                   cooperate in any examination by mental health experts appointed by the Department of
- 756                   Health and Human Services and any other independent examiners for the defense or the
- 757                   prosecution.
- 758           (2) If the defendant wilfully fails to make himself or herself available and fully cooperate in
- 759                   the examination, and that failure is established to the satisfaction of the court, the
- 760                   defendant is barred from presenting expert testimony relating to any exemption from [

761 ~~the death penalty]~~ a sentence of death under this chapter.

762 Section 8. Section **77-18a-1** is amended to read:

763 **77-18a-1 . Appeals -- When proper.**

764 (1) A defendant may, as a matter of right, appeal from:

765 (a) a final judgment of conviction, whether by verdict or plea;

766 (b) an order made after judgment that affects the substantial rights of the defendant;

767 (c) an order adjudicating the defendant's competency to proceed further in a pending  
768 prosecution; or

769 (d) an order denying bail under Chapter 20, Bail.

770 (2) In addition to any appeal permitted by Subsection (1), a defendant may seek  
771 discretionary appellate review of any interlocutory order.

772 (3) The prosecution may, as a matter of right, appeal from:

773 (a) a final judgment of dismissal, including a dismissal of a felony information following  
774 a refusal to bind the defendant over for trial;

775 (b) a pretrial order dismissing a charge on the ground that the court's suppression of  
776 evidence has substantially impaired the prosecution's case;

777 (c) an order granting a motion to withdraw a plea of guilty or no contest;

778 (d) an order arresting judgment or granting a motion for merger;

779 (e) an order terminating the prosecution because of a finding of double jeopardy or  
780 denial of a speedy trial;

781 (f) an order granting a new trial;

782 (g) an order holding a statute or any part of it invalid;

783 (h) an order adjudicating the defendant's competency to proceed further in a pending  
784 prosecution;

785 (i) an order finding, [~~pursuant to Title 77, Chapter 19, Part 2, Competency for Execution]~~  
786 in accordance with Chapter 19, Part 2, Competency for Execution, that an inmate  
787 sentenced to death is incompetent to be executed;

788 (j) an order holding that a defendant is exempt from a sentence of death under Section  
789 77-15a-104;

790 [~~(j)~~] (k) an order reducing the degree of offense pursuant to Section 76-3-402;

791 [~~(k)~~] (l) an illegal sentence; or

792 [~~(l)~~] (m) an order dismissing a charge pursuant to Subsection 76-2-309(3).

793 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek  
794 discretionary appellate review of any interlocutory order entered before jeopardy

795 attaches.

796 Section 9. Section **77-19-6** is amended to read:

797 **77-19-6 . Sentence of death -- Warrant -- Delivery of warrant -- Determination of**  
798 **execution time.**

799 [~~(1)(a) When judgment of death is rendered, a warrant, signed by the judge and attested~~  
800 ~~by the clerk under the seal of the court, shall be drawn and delivered to the sheriff of~~  
801 ~~the county where the conviction is had.]~~

802 (1)(a) When a judgment of death is rendered for a defendant, the sentencing court shall:

803 (i) immediately transmit a statement of the conviction and sentence and a summary of  
804 the evidence given at trial to the Board of Pardons and Parole; and

805 (ii) draw and deliver a warrant, signed by the judge and attested by the clerk under  
806 seal of the court, to the sheriff of the county where the conviction occurred.

807 (b) The sheriff shall deliver the warrant and a certified copy of the judgment to the  
808 executive director of the Department of Corrections, or the executive director's  
809 designee, at the time of delivering the defendant to the custody of the Department of  
810 Corrections.

811 (2)(a) [The] Subject to Subsection (2)(b), the warrant shall state the conviction, the [  
812 judgment] sentence, the method of execution, and the [appointed day the judgment is  
813 to be executed, which may not be fewer than 30 days nor more than 60 days from the  
814 date of issuance of the warrant, and may not be] day on which the sentence is to be  
815 executed.

816 (b) The day on which a sentence is to be executed may not be:

817 (i) sooner than 30 days after, or later than 60 days after, the day on which the  
818 sentencing court issues the warrant; or

819 (ii) a Sunday, Monday, or a legal holiday[, as defined in] under Section 63G-1-301.

820 (3) The Department of Corrections shall determine the hour, within the appointed day, at  
821 which the [judgment] sentence is to be executed.

822 Section 10. Section **77-19-8** is amended to read:

823 **77-19-8 . Sentence of death, when suspended, and by whom.**

824 [~~(1) Except as stated in Subsection (2), a judge, tribunal, or officer, other than the governor~~  
825 ~~or the Board of Pardons and Parole, may not stay or suspend the execution of a~~  
826 ~~judgment of death.]~~

827 [~~(2)(a) A court of competent jurisdiction shall issue a temporary stay of judgment of~~  
828 ~~death when:]~~

- 829           ~~[(i) the judgment is appealed;]~~  
830           ~~[(ii) the judgment is automatically reviewed;]~~  
831           ~~[(iii) the person sentenced to death files a first petition for postconviction relief after~~  
832           ~~the direct appeal under Title 78B, Chapter 9, Postconviction Remedies Act;]~~  
833           ~~[(iv) the person sentenced to death requests counsel under Subsection~~  
834           ~~78B-9-202(2)(a) to represent the person in a first action for postconviction relief~~  
835           ~~under Title 78B, Chapter 9, Postconviction Remedies Act; or]~~  
836           ~~[(v) counsel enters an appearance to represent the person sentenced to death in a first~~  
837           ~~action for postconviction relief under Title 78B, Chapter 9, Postconviction~~  
838           ~~Remedies Act.]~~  
839           ~~[(b) A court may not issue a temporary stay of judgment of death when the person~~  
840           ~~sentenced to death files a petition for postconviction relief under Title 78B, Chapter~~  
841           ~~9, Postconviction Remedies Act, after a first petition has been denied or dismissed,~~  
842           ~~unless the court first finds all of the following:]~~  
843           ~~[(i) the claims would not be barred under Section 78B-9-106;]~~  
844           ~~[(ii) the claims are potentially meritorious; and]~~  
845           ~~[(iii) the petition may not be reasonably disposed of before the execution date.]~~  
846           ~~[(e)]~~  
847           (1) Except as provided in this section, a court, tribunal, or officer, other than the governor  
848           or the Board of Pardons and Parole, may not stay or suspend the execution of a sentence  
849           of death.  
850           (2) A court may only stay the execution of a sentence of death as described in Utah Rules  
851           of Criminal Procedure, Rule 27.  
852           ~~[(†)]~~ (3)(a) The executive director of the Department of Corrections~~[or a designee under~~  
853           Section 77-19-202] ~~, or the executive director's designee,~~ may temporarily suspend  
854           the execution of a sentence of death under Section 77-19-202 if the ~~[person]~~ individual  
855           sentenced to death appears to be incompetent or pregnant.  
856           ~~[(††)]~~ (b) A temporary suspension under Subsection ~~[(2)(e)(†)]~~ (3)(a) shall end if the ~~[~~  
857           ~~person]~~ individual is determined to be:  
858           ~~[(A)]~~ (i) competent;  
859           ~~[(B)]~~ (ii) not pregnant; or  
860           ~~[(C)]~~ (iii) no longer incompetent or pregnant.  
861           (4) If a stay is vacated or expires before the day on which the sentence is to be executed and  
862           the sentence remains in force, the issuance of a new order of execution and warrant is

863 not required to execute the sentence.

864 [(3)(a) The court must vacate a stay issued pursuant to Subsection (2)(a) when the  
865 appeal, automatic review, or action under Title 78B, Chapter 9, Postconviction  
866 Remedies Act is concluded.]

867 [(b) A request for counsel under Section 78B-9-202 does not constitute an application  
868 for postconviction or other collateral review and does not toll the statute of  
869 limitations under Section 78B-9-107.]

870 Section 11. Section **77-19-9** is amended to read:

871 **77-19-9 . Sentence of death not executed -- Order for execution.**

872 [(1) If for any reason a judgment of death has not been executed and remains in force, the  
873 court where the conviction was had, on application of the prosecuting attorney, shall  
874 order the defendant to be brought before it or, if the defendant is at large, issue a warrant  
875 for the defendant's apprehension.]

876 [(2) When the defendant is brought before the court, it shall inquire into the facts and, if no  
877 legal reason exists against the execution of judgment, the court shall make an order  
878 requiring the executive director of the Department of Corrections or the executive  
879 director's designee to ensure that the judgment is executed on a specified day, which  
880 may not be fewer than 30 nor more than 60 days after the court's order, and may not be a  
881 Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301. The court shall  
882 also draw and have delivered another warrant under Section 77-19-6.]

883 (1) If for any reason a sentence of death has not been executed and remains in force, the  
884 attorney general, or the county or district attorney in the county or district in which the  
885 conviction occurred, may apply for an order of execution from the court in which the  
886 conviction occurred.

887 (2)(a) Within 21 days after the application is filed, the court shall:

888 (i) subject to Subsections (2)(b) and (c), enter an order requiring the executive  
889 director of the Department of Corrections, or the executive director's designee, to  
890 ensure that the sentence is executed on a specified day if no legal reason exists  
891 against the execution of a sentence for death; and

892 (ii) draw and deliver another warrant for the execution of the sentence for death in  
893 accordance with Section 77-19-6.

894 (b) Except as provided in Subsection (2)(c), the specified day described in Subsection  
895 (2)(a)(i) may not be:

896 (i) sooner than 30 days after, or later than 60 days after, the day on which the court

- 897 enters the order for execution; or
- 898 (ii) a Sunday, Monday, or legal holiday under Section 63G-1-301.
- 899 (c) If the defendant seeks review of a finding of competency by the Supreme Court and  
 900 the Supreme Court does not set the finding of competency aside, the specified day  
 901 described in Subsection (2)(a)(i) may not be:
- 902 (i) sooner than 15 days after, or later than 30 days after, the day on which the court  
 903 enters the order for execution; and
- 904 (ii) a Sunday, Monday, or legal holiday under Section 63G-1-301.
- 905 (d) No legal reason exists under Subsection (2)(a)(i) if:
- 906 (i) there is no stay in effect for the sentence; and
- 907 (ii) there is no procedural defect in the warrant application process.
- 908 (3) The Department of Corrections shall determine the hour, within the [~~appointed~~] specified  
 909 day, at which the [judgment] sentence is to be executed.
- 910 Section 12. Section **77-19-10** is amended to read:
- 911 **77-19-10 . Sentence of death -- Location and procedures for execution.**
- 912 (1) The executive director of the Department of Corrections, or [a] the executive director's  
 913 designee, shall ensure that the method of [judgment] a sentence of death specified in the  
 914 warrant or as required under Section 77-18-113 is carried out at a secure correctional  
 915 facility operated by the department and at an hour determined by the department on the  
 916 date specified in the warrant.
- 917 (2) When the [~~judgment~~] sentence of death is to be carried out by lethal intravenous  
 918 injection, the executive director of the department or a designee shall select two or more  
 919 persons trained in accordance with accepted medical practices to administer intravenous  
 920 injections, who shall each administer a continuous intravenous injection, consisting of  
 921 one or more substances of a type and amount that is sufficiently effective to cause death  
 922 without a substantial risk of severe pain.
- 923 (3) If the [~~judgment~~] sentence of death is to be carried out by firing squad under Subsection  
 924 77-18-113(2), (3), or (4) the executive director of the department or a designee shall  
 925 select a five-person firing squad of peace officers.
- 926 (4) Compensation for persons administering intravenous injections and for members of a  
 927 firing squad under Subsection 77-18-113(2), (3), or (4) shall be in an amount determined  
 928 by the director of the Division of Finance.
- 929 (5) Death under this section shall be certified by a physician.
- 930 (6) The department shall adopt and enforce rules governing procedures for the execution of [

931 judgments] sentences of death.

932 Section 13. Section **77-19-201** is repealed and reenacted to read:

933 **Part 2. Issues of Pregnancy and Competency for Execution**

934 **77-19-201 . Definitions for part.**

935 As used in this part:

936 (1) "Incompetent to be executed" means that, due to a mental condition, the individual  
937 sentenced to death lacks a rational understanding that the individual is to be executed as  
938 punishment for the individual's commission of the crime of murder.

939 (2) "Sentencing court" means the court in which the sentence of death was rendered.

940 Section 14. Section **77-19-202** is repealed and reenacted to read:

941 **77-19-202 . Notification of pregnancy or incompetency of inmate sentenced to**  
942 **death.**

943 (1) As used in this section, "executive director" means the executive director, or the  
944 executive director's designee, of the Department of Corrections.

945 (2) The executive director shall immediately give written notice to the sentencing court, the  
946 prosecuting attorney, the attorney general, and defense counsel for an inmate if:

947 (a) the inmate has been sentenced to death;

948 (b) all state and federal appeals or review attacking the sentence have been exhausted;

949 (c) an active warrant for execution has been signed and an execution date has been set as  
950 described in Sections 77-19-6 and 77-19-9; and

951 (d) the executive director has good reason to believe that:

952 (i) the inmate is pregnant; or

953 (ii) the inmate's competency to be executed under this chapter should be addressed by  
954 the sentencing court.

955 (3) If the sentencing court receives a notice under Subsection (2) that there is good reason  
956 for the sentencing court to address an inmate's competency to be executed, the  
957 sentencing court shall order that the mental condition of the inmate be examined under  
958 the provisions of Section 77-19-204, including holding a hearing at which the state and  
959 the inmate may appear as parties.

960 Section 15. Section **77-19-202.5** is enacted to read:

961 **77-19-202.5 . Procedures for pregnant inmate sentenced to death.**

962 (1) If the sentencing court finds that an inmate sentenced to death is pregnant, the  
963 sentencing court shall immediately transmit a certificate of the finding to the Department  
964 of Corrections and the Board of Pardons and Parole.

- 965 (2) When the sentencing court finds that an inmate sentenced to death is no longer  
 966 pregnant, the sentencing court shall:  
 967 (a) immediately transmit a certificate of the finding to the Board of Pardons and Parole;  
 968 and  
 969 (b) except as provided in Subsection 77-18-8(4), draw and deliver another warrant in  
 970 accordance with Section 77-19-6, with a copy of the certificate of the finding.  
 971 (3)(a) Subject to Subsection (3)(b), the warrant shall state the day on which the sentence  
 972 is to be executed.  
 973 (b) The day on which the sentence is executed may not be:  
 974 (i) sooner than 30 days after, or later than 60 days after, the day on which the  
 975 sentencing court issues the warrant; or  
 976 (ii) a Sunday, Monday, or legal holiday under Section 63G-1-301.

977 Section 16. Section **77-19-203** is amended to read:

978 **77-19-203 . Petition for inquiry as to competency to be executed -- Filing --**

979 **Contents.**

- 980 (1) If an inmate who has been sentenced to death is or becomes incompetent to be executed,  
 981 a petition under Subsection (2) may be filed in the district court of the county where the  
 982 inmate is confined.
- 983 (2) The petition shall:
- 984 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to  
 985 believe the inmate is incompetent to be executed; and
- 986 (b) contain a specific recital of the facts, observations, and conversations with the inmate [  
 987 ~~that form the basis for the petition]~~ that give rise to the belief that the inmate may not  
 988 be competent to be executed.
- 989 (3) The petition may be:
- 990 (a) based upon knowledge or information and belief~~[and may be]~~ ; and
- 991 (b) filed by the inmate alleged to be incompetent, legal counsel for the inmate, or by an  
 992 attorney representing the state.
- 993 (4)(a) A petition for an examination of the inmate that is filed fewer than 21 days before  
 994 the day on which the inmate is scheduled to be executed is untimely.  
 995 (b) A court may not consider a petition that is untimely under Subsection (4)(a) unless  
 996 the petition is accompanied by:  
 997 (i) at least one affidavit from a licensed physician or licensed psychologist who has  
 998 examined the inmate and determined that, in the physician's or psychologist's

999 opinion, the inmate is not competent to proceed; and  
 1000 (ii) a statement that establishes good cause for the failure to file a petition for  
 1001 examination in a timely manner.  
 1002 ~~[(4)] (5) Before ruling on a petition filed by an inmate or [his] the inmate's counsel alleging~~  
 1003 ~~that the inmate is incompetent to be executed, the court shall give the state and the~~  
 1004 ~~Department of Corrections an opportunity to respond to the allegations of incompetency.~~  
 1005 (6) The court shall prioritize any proceeding regarding the examination of the inmate for  
 1006 competency to be executed so that the proceeding is completed before the scheduled  
 1007 execution date.

1008 ~~[(5) If a petition is filed after an inmate has previously been found competent under either~~  
 1009 ~~this chapter or under Chapter 15, Defendant's Competency to Proceed, no further~~  
 1010 ~~hearing on competency may be granted unless the successive petition:]~~  
 1011 ~~[(a) alleges with specificity a substantial change of circumstances subsequent to the~~  
 1012 ~~previous determination of competency; and]~~  
 1013 ~~[(b) is sufficient to raise a significant question about the inmate's competency to be~~  
 1014 ~~executed.]~~

1015 Section 17. Section **77-19-203.5** is enacted to read:

1016 **77-19-203.5 . Successive petitions on competency of an inmate sentenced to death.**

1017 (1) If a petition described in Section 77-19-203 is filed after an inmate has previously been  
 1018 found competent to be executed under this part, the court may not grant a hearing on the  
 1019 competency to be executed unless the successive petition:

1020 (a) alleges with specificity a substantial change of circumstances after the previous  
 1021 finding of competency by the court;

1022 (b) is sufficient to raise a significant question about the inmate's competency to be  
 1023 executed; and

1024 (c) is accompanied by at least one affidavit from a licensed physician or licensed  
 1025 psychologist who has:

1026 (i) examined the inmate after the previous finding of competency by the court; and

1027 (ii) determined, in the physician's or psychologist's opinion, that the inmate is not  
 1028 competent to be executed due to a substantial change in circumstances.

1029 (2) An affidavit described in Subsection (1)(c):

1030 (a) shall contain new and specific facts that support the opinion of the licensed physician  
 1031 or licensed psychologist; and

1032 (b) does not meet the requirements of Subsection (1)(c) if any of the new facts described

1033 in Subsection (2)(a) were known to the defense before the previous finding of the  
1034 court that the inmate was competent to be executed.

1035 (3) In determining whether a successive petition involves a substantial change of  
1036 circumstances under Subsection (1)(a) and raises a significant question under Subsection  
1037 (1)(b), the court may consider evidence given by the state in opposition to the petition.

1038 Section 18. Section **77-19-204** is amended to read:

1039 **77-19-204 . Order for hearing -- Examinations of inmate -- Scope of examination**  
1040 **and report.**

1041 [~~(1) When a court has good reason to believe an inmate sentenced to death is incompetent~~  
1042 ~~to be executed, it shall stay the execution and shall order the Department of Health and~~  
1043 ~~Human Services to examine the inmate and report to the court concerning the inmate's~~  
1044 ~~mental condition.]~~

1045 (1) A court shall order the Department of Health and Human Services to immediately  
1046 examine an inmate sentenced to death and report to the court concerning the inmate's  
1047 mental condition if:

1048 (a) the court receives notice of a good reason to address the inmate's incompetency to be  
1049 executed under Section 77-19-202;

1050 (b) a petition is filed with the court that complies with Section 77-19-203 and the court  
1051 has good reason to believe the inmate may be incompetent to be executed; or

1052 (c) a successive petition is filed with the court that complies with Section 77-19-203.5  
1053 and the court has a significant question about the inmate's competency to be executed.

1054 (2)(a) The inmate subject to examination under Subsection (1) shall be examined by at  
1055 least two mental health experts who are not involved in the inmate's current treatment.

1056 (b) The Department of Corrections shall provide information and materials to the  
1057 examiners relevant to a determination of the inmate's competency to be executed.

1058 (c) The court may provide, in the court's order appointing examiners, that a custodian of  
1059 mental or physical health records pertaining to the inmate shall provide the mental or  
1060 physical health records to the examiners without the need for consent of the  
1061 defendant or any further order of the court.

1062 (3) The inmate shall make himself or herself available and fully cooperate in the  
1063 examination by the Department of Health and Human Services and any other  
1064 independent examiners for the defense or the state.

1065 (4) [~~The examiners~~] An examiner shall in the conduct of [their] the examiner's examinations  
1066 and in [their] the examiner's reports to the court consider and address, in addition to any

- 1067 other factors determined to be relevant by the ~~[examiners]~~ examiner:
- 1068 (a) the inmate's awareness of the fact of the inmate's impending execution;
- 1069 (b) the inmate's understanding that the inmate is to be executed for the crime of murder;
- 1070 (c) the nature of the inmate's mental disorder, if any, and its relationship to the factors
- 1071 relevant to the inmate's competency; and
- 1072 (d) whether psychoactive medication is necessary to maintain or restore the inmate's
- 1073 competency.
- 1074 (5)(a) ~~[The examiners who are]~~ An examiner who is examining the inmate shall ~~[each~~
- 1075 ~~provide an initial]~~ provide a report to the court and the attorneys for the state and the
- 1076 inmate within ~~[60 days of the receipt of the court's order]~~ 30 days after the day on
- 1077 which the examiner received the court's order for an examination of the inmate.
- 1078 (b) The report described in Subsection (5)(a) shall inform the court of the examiner's
- 1079 opinion concerning the competency of the inmate to be executed~~[, or, in the~~
- 1080 ~~alternative, the examiner may inform the court in writing that additional time is~~
- 1081 ~~needed to complete the report. If the examiner informs the court that additional time~~
- 1082 ~~is needed, the examiner shall have up to an additional 30 days to provide the report to~~
- 1083 ~~the court and counsel. The examiner shall provide the report within 90 days from the~~
- 1084 ~~receipt of the court's order unless, for good cause shown, the court authorizes an~~
- 1085 ~~additional period of time to complete the examination and provide the report].~~
- 1086 (6)(a) All interviews with the inmate conducted by the examiners shall be videotaped,
- 1087 unless otherwise ordered by the court for good cause shown.
- 1088 (b) The Department of Corrections shall provide the videotaping equipment and
- 1089 facilitate the videotaping of the interviews.
- 1090 ~~[(b)]~~ (c) Immediately following the videotaping, the videotape shall be provided to the
- 1091 attorney for the state, who shall deliver ~~[it]~~ the videotape as soon as practicable to the ~~[~~
- 1092 ~~judge]~~ court in whose court the competency determination is pending.
- 1093 ~~[(e)]~~ (d) The court shall grant counsel for the state and for the inmate, and ~~[examiners~~
- 1094 ~~who are]~~ an examiner who is examining the inmate under this part access to view the
- 1095 videotape at the court building where the court is located that is conducting the
- 1096 competency determination under this part.
- 1097 (7) Any written report submitted by an examiner shall:
- 1098 (a) identify the specific matters referred for evaluation;
- 1099 (b) describe the procedures, techniques, and tests used in the examination and the
- 1100 purpose or purposes for each;

- 1101 (c) state the examiner's clinical observations, findings, and opinions on each issue  
 1102 referred for examination by the court, and indicate specifically those issues, if any, on  
 1103 which the examiner could not give an opinion; and
- 1104 (d) identify the sources of information used by the examiner and present the basis for the  
 1105 examiner's clinical findings and opinions.
- 1106 (8)(a)(i) When ~~[the reports]~~ all reports from examiners are received, the court shall set  
 1107 a date for a competency hearing~~[- which shall be held within not less than five and~~  
 1108 ~~not more than 15 days, unless the court extends the time for good cause.]~~ .
- 1109 (ii) The competency hearing shall be held no sooner than five days after, or later than  
 1110 15 days after, the day on which the reports are received by the court.
- 1111 (b)(i) Any examiner directed by the Department of Health and Human Services to  
 1112 conduct the examination may be subpoenaed to provide testimony at the hearing.
- 1113 (ii) If the examiners are in conflict as to the competency of the inmate, all of them  
 1114 should be called to testify at the hearing if they are reasonably available.
- 1115 (c)(i) The court may call any examiner to testify at the hearing who is not called by  
 1116 the parties.
- 1117 (ii) An examiner called by the court may be cross-examined by counsel for the  
 1118 parties.
- 1119 (9)(a)(i) An inmate shall be presumed competent to be executed unless the court, by a  
 1120 preponderance of the evidence, finds the inmate incompetent to be executed.
- 1121 (ii) The burden of proof is upon the proponent of incompetency at the hearing.
- 1122 (b) An adjudication of incompetency to be executed does not operate as an adjudication  
 1123 of the inmate's incompetency to give informed consent for medical treatment or for  
 1124 any other purpose~~[- unless specifically set forth in the court order].~~
- 1125 (10)(a) If the court finds the inmate incompetent to be executed, ~~[its]~~ the court's order  
 1126 shall contain findings addressing each of the factors in Subsections (4)(a) through (d).
- 1127 (b) The order finding the inmate incompetent to be executed shall be:
- 1128 (i) delivered to the Department of Health and Human Services[- and shall be -] ; and  
 1129 (ii) accompanied by:
- 1130 ~~[(i)]~~ (A) copies of the reports of the examiners filed with the court pursuant to the  
 1131 order of examination, if not provided previously;
- 1132 ~~[(ii)]~~ (B) copies of any of the psychiatric, psychological, or social work reports  
 1133 submitted to the court relative to the mental condition of the inmate; and
- 1134 ~~[(iii)]~~ (C) any other documents made available to the court by either the defense or

1135 the state, pertaining to the inmate's current or past mental condition.

1136 (c) A copy of the order finding the inmate incompetent to be executed shall be delivered  
1137 to the Department of Corrections.

1138 Section 19. Section **77-19-204.5** is enacted to read:

1139 **77-19-204.5 . Procedures on finding of competency to be executed.**

1140 (1) If an inmate is found competent to be executed at any time during a proceeding under  
1141 this chapter, the court shall immediately transmit a certificate of the findings to the  
1142 Board of Pardons and Parole and the Department of Corrections.

1143 (2) Upon a finding that the inmate is competent to be executed:

1144 (a) any stay imposed by the court is automatically lifted as described in Utah Rules of  
1145 Criminal Procedure, Rule 27; and

1146 (b) except as provided in Subsection 77-19-8(4), the court shall draw and deliver another  
1147 warrant of execution, with a copy of the certificate of findings, in accordance with  
1148 Section 77-19-6.

1149 Section 20. Section **77-19-205** is amended to read:

1150 **77-19-205 . Procedures on finding of incompetency to be executed -- Subsequent**  
1151 **hearings -- Notice to attorneys.**

1152 (1)~~(a)(i) If after the hearing under Section 77-19-204 the inmate is found to be~~  
1153 ~~incompetent to be executed, the court shall continue the stay of execution and the~~  
1154 ~~inmate shall receive appropriate mental health treatment.]~~

1155 (a)(i) Upon an inmate being found incompetent to be executed after a hearing  
1156 described in Section 77-19-204:

1157 (A) the court shall immediately transmit a certificate of the findings to the Board  
1158 of Pardons and Parole and the Department of Corrections;

1159 (B) if a stay has not been issued by the court, the court shall issue a stay as  
1160 described in Utah Rules of Criminal Procedure, Rule 27; and

1161 (C) the inmate shall receive appropriate mental health treatment.

1162 (ii) Appropriate mental health treatment under Subsection [(1)(a)(i)] (1)(b)(i)(B) does  
1163 not include the forcible administration of psychoactive medication for the sole  
1164 purpose of restoring the inmate's competency to be executed.

1165 (b) The court shall order the executive director of the Department of Health and Human  
1166 Services to provide periodic assessments to the court regarding the inmate's  
1167 competency to be executed.

1168 (c) The inmate shall be held in secure confinement, either at the prison or the State

- 1169 Hospital, as agreed upon by the executive director of the Department of Corrections  
1170 and the executive director of the Department of Health and Human Services.
- 1171 (d) If the inmate remains at the prison, the Department of Health and Human Services  
1172 shall consult with the Department of Corrections regarding the inmate's mental health  
1173 treatment.
- 1174 (2)(a) ~~[The examiner or examiners]~~ An examiner designated by the executive director of  
1175 the Department of Health and Human Services to assess the inmate's progress toward  
1176 competency may not be involved in the routine treatment of the inmate.
- 1177 (b) ~~[The examiner or examiners]~~ An examiner shall each provide a full report to the  
1178 court and counsel for the state and the inmate within 90 days ~~[of receipt of the court's  
1179 order]~~ after the day on which the examiner receives the court's order.
- 1180 (c) If any examiner is unable to complete the assessment within 90 days, that examiner  
1181 shall provide to the court~~[and]~~ , the counsel for the state, and the inmate a summary  
1182 progress report ~~[which]~~ that informs the court that additional time is necessary to  
1183 complete the assessment, in which case the examiner has up to an additional 90 days  
1184 to provide the full report, unless the court ~~[enlarges]~~ extends the time for good cause.
- 1185 (d) The full report shall assess:
- 1186 (i) the facility's or program's capacity to provide appropriate treatment for the inmate;  
1187 (ii) the nature of treatments provided to the inmate;  
1188 (iii) what progress toward restoration of competency has been made;  
1189 (iv) the inmate's current level of mental disorder and need for treatment, if any; and  
1190 (v) the likelihood of restoration of competency and the amount of time estimated to  
1191 achieve it.
- 1192 (3) ~~[The court on its]~~ Upon the court's own motion or upon motion by either party, the court  
1193 may order the Department of Health and Human Services to appoint additional mental  
1194 health examiners to examine the inmate and advise the court on the inmate's current  
1195 mental status and progress toward competency restoration.
- 1196 (4)(a) Upon receipt of the full report, the court shall hold a hearing to determine the  
1197 inmate's current status.
- 1198 (b) At the hearing, the burden of proving that the inmate is competent is on the  
1199 proponent of competency.
- 1200 ~~[(b)]~~ (c) Following the hearing, the court shall determine by a preponderance of evidence  
1201 whether the inmate is competent to be executed.
- 1202 (5)(a) If the court determines that the inmate is competent to be executed, ~~[it]~~ the court

1203 shall enter findings and shall proceed under ~~[Subsection 77-19-202(2)(e)]~~ Section  
 1204 77-19-204.5.

1205 (b)(i) If the court determines the inmate is still incompetent to be executed~~[,]~~ :

1206 (A) the inmate shall continue to receive appropriate mental health treatment~~[, and]~~ ;  
 1207 and

1208 (B) the court shall hold hearings no less frequently than at 18-month intervals for  
 1209 the purpose of determining the ~~[defendant's]~~ inmate's competency to be  
 1210 executed.

1211 (ii) Continued appropriate mental health treatment under Subsection ~~[(+)(a)(i)]~~ (1)(b)  
 1212 does not include the forcible administration of psychoactive medication for the  
 1213 sole purpose of restoring the inmate's competency to be executed.

1214 (6)(a) ~~[H]~~ The court shall be notified if, at any time, the clinical director of the Utah  
 1215 State Hospital or the primary treating mental health professional determines that the  
 1216 inmate has been restored to competency~~[, he shall notify the court].~~

1217 (b) The court shall conduct a hearing regarding the inmate's competency to be executed  
 1218 within 30 working days of the receipt of the notification under Subsection (6)(a),  
 1219 unless the court extends the time for good cause.

1220 (c) The court may order a hearing or rehearing at any time on ~~[its]~~ the court's own motion.

1221 (7) Notice of a hearing on competency to be executed shall be given to:

1222 (a) counsel for the state and for the inmate~~[, as well as to]~~ ; and

1223 (b) the office of the ~~[prosecutor]~~ prosecuting attorney who prosecuted the inmate on the  
 1224 original capital charge.

1225 Section 21. Section **78A-3-102** is amended to read:

1226 **78A-3-102 . Jurisdiction of Supreme Court.**

1227 (1) The Supreme Court has original jurisdiction to answer questions of state law certified  
 1228 by a court of the United States.

1229 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and  
 1230 authority to issue all writs and process necessary to carry into effect the Supreme Court's  
 1231 orders, judgments, and decrees or in aid of the jurisdiction of the Supreme Court.

1232 (3)(a) The Supreme Court has exclusive and original appellate jurisdiction, including  
 1233 exclusive and original appellate jurisdiction of an interlocutory appeal, over:

1234 (i) a judgment of the Court of Appeals;

1235 (ii) a case certified to the Supreme Court by the Court of Appeals before final  
 1236 judgment by the Court of Appeals;

- 1237 (iii) the discipline of a lawyer;
- 1238 (iv) a final order of the Judicial Conduct Commission;
- 1239 [~~(v) an interlocutory appeal from a court of record involving a capital felony;~~]
- 1240 [~~(vi)~~] (v) except as provided in Subsection (5), an appeal from the district court
- 1241 involving a conviction or charge of a capital felony;
- 1242 [~~(vii)~~] (vi) an appeal from the district court of an order, judgment, or decree ruling on
- 1243 a legislative subpoena;
- 1244 [~~(viii)~~] (vii) an appeal of an injunctive order as described in Section 78B-5-1002;
- 1245 [~~(ix)~~] (viii) a judgment, or an interlocutory appeal of an order, of a district court
- 1246 involving:
- 1247 (A) an election or voting contest; or
- 1248 (B) the establishment of boundaries of political districts for purposes of an
- 1249 election; and
- 1250 [~~(x)~~] (ix) the retention or removal of a public officer.
- 1251 (b) The Supreme Court may not transfer any matter described in Subsection (3)(a) to the
- 1252 Court of Appeals.
- 1253 (c) In a case involving an election or voting contest or the establishment of boundaries
- 1254 of political districts for purposes of an election, a judgment is appealable to the
- 1255 Supreme Court even if:
- 1256 (i) a party files a motion or claim for attorney fees under Rule 73 of the Utah Rules of
- 1257 Civil Procedure in the district court; and
- 1258 (ii) the district court has not entered a dispositive order for that motion or claim.
- 1259 (d) The Supreme Court has exclusive and original appellate jurisdiction to conduct an
- 1260 automatic review of a conviction or sentence for a capital felony where the sentence
- 1261 is death in accordance with Subsection 76-3-207(11).
- 1262 (4)(a) In addition to Subsection (3)(a), the Supreme Court has original appellate
- 1263 jurisdiction, including original appellate jurisdiction of an interlocutory appeal, over:
- 1264 (i) a final agency action, as described in Section 63G-4-403, in a formal adjudicative
- 1265 proceeding originating from:
- 1266 (A) the Public Service Commission;
- 1267 (B) the State Tax Commission;
- 1268 (C) the School and Institutional Trust Lands Board of Trustees;
- 1269 (D) the Board of Oil, Gas, and Mining;
- 1270 (E) the state engineer; or

- 1271 (F) the executive director of the Department of Natural Resources reviewing an  
 1272 action of the Division of Forestry, Fire, and State Lands;
- 1273 (ii) a final order or decree of the district court review of an informal adjudicative  
 1274 proceeding of an agency described in Subsection (4)(a)(i);
- 1275 (iii) a final judgment or decree of a court of record holding a statute of the United  
 1276 States or this state is unconstitutional on its face under the Constitution of the  
 1277 United States or the Utah Constitution;
- 1278 (iv) an interlocutory appeal from a court of record involving a first degree felony;
- 1279 (v) an appeal from a district court involving a conviction or charge of a first degree  
 1280 felony; and
- 1281 (vi) an order, judgment, or decree of a court of record over which the Court of  
 1282 Appeals does not have appellate jurisdiction.

1283 (b) The Supreme Court may transfer any matter described in Subsection (4)(a) to the  
 1284 Court of Appeals.

1285 (5)(a) The Supreme Court may not exercise subject matter jurisdiction over a claim for  
 1286 ineffective assistance of counsel in an appeal from, or upon an automatic review of, a  
 1287 conviction or sentence for a capital felony where the sentence is death.

1288 (b) Notwithstanding Subsection (5)(a), the Supreme Court has subject matter jurisdiction  
 1289 over a claim for ineffective assistance of counsel in an appeal involving a petition for  
 1290 postconviction relief from a conviction or sentence for a capital felony where the  
 1291 sentence is death.

1292 [~~5~~](6)(a) The Supreme Court has sole discretion in granting or denying a petition for  
 1293 writ of certiorari for the review of a Court of Appeals adjudication.

1294 (b) Notwithstanding Subsection [~~5~~](a) (6)(a), the Supreme Court shall review a case  
 1295 certified to the Supreme Court by the Court of Appeals under Subsection (3)(a)(ii).

1296 [~~6~~](7) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,  
 1297 Administrative Procedures Act, in the Supreme Court's review of an agency adjudicative  
 1298 proceeding.

1299 Section 22. Section **78A-5-102** is amended to read:

1300 **78A-5-102 . Jurisdiction of the district court -- Appeals.**

1301 (1) Except as otherwise provided by the Utah Constitution or by statute, the district court  
 1302 has original jurisdiction in all matters civil and criminal.

1303 (2) A district court judge may:

1304 (a) issue all extraordinary writs and other writs necessary to carry into effect the district

- 1305 court judge's orders, judgments, and decrees; and
- 1306 (b) preside over an action for which the Business and Chancery Court has jurisdiction if:
- 1307 (i) the district court judge is designated by the presiding officer of the Judicial
- 1308 Council to preside over an action in the Business and Chancery Court as described
- 1309 in Section 78A-1-103.5; and
- 1310 (ii) a Business and Chancery Court judge is unable to preside over the action due to
- 1311 recusal or disqualification.
- 1312 (3) The district court has jurisdiction:
- 1313 (a) over matters of lawyer discipline consistent with the rules of the Supreme Court;
- 1314 (b) over all matters properly filed in the circuit court prior to July 1, 1996;
- 1315 (c) to enforce foreign protective orders as described in Subsection 78B-7-303(8);
- 1316 (d) to enjoin a violation of Title 58, Chapter 37, Utah Controlled Substances Act;
- 1317 (e) over a petition seeking to terminate parental rights as described in Section 81-13-205;
- 1318 (f) except as provided in Subsection 78A-6-103(2)(a)(xiv) or (xv), over an adoption
- 1319 proceeding; and
- 1320 (g) to issue a declaratory judgment as described in Title 78B, Chapter 6, Part 4,
- 1321 Declaratory Judgments.
- 1322 (4) The district court has appellate jurisdiction over judgments and orders of the justice
- 1323 court as outlined in Section 78A-7-118 and small claims appeals filed in accordance
- 1324 with Section 78A-8-106.
- 1325 (5) The district court has jurisdiction to review:
- 1326 (a) a municipal administrative proceeding as described in Section 10-3-703.7;
- 1327 (b) a decision resulting from a formal adjudicative proceeding by the State Tax
- 1328 Commission as described in Section 59-1-601;
- 1329 (c) except as provided in Section 63G-4-402, a final agency action resulting from an
- 1330 informal adjudicative proceeding as described in Title 63G, Chapter 4,
- 1331 Administrative Procedures Act; and
- 1332 (d) by trial de novo, a final order of the Department of Transportation resulting from
- 1333 formal and informal adjudicative proceedings under Title 72, Chapter 7, Part 2,
- 1334 Junkyard Control Act.
- 1335 (6) The district court has original and exclusive jurisdiction over an action brought under
- 1336 Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- 1337 (7) The district court has exclusive jurisdiction to modify a juvenile court's permanent
- 1338 custody and guardianship order as described in Subsection 78A-6-357(3)(e)(ii).

- 1339 (8) Notwithstanding Section 78A-7-106, the district court has original jurisdiction over a  
 1340 class B misdemeanor, a class C misdemeanor, an infraction, or a violation of an  
 1341 ordinance for which a justice court has original jurisdiction under Section 78A-7-106 if:  
 1342 (a) there is no justice court with territorial jurisdiction;  
 1343 (b) the offense occurred within the boundaries of the municipality in which the district  
 1344 courthouse is located and that municipality has not formed, or has formed and  
 1345 dissolved, a justice court; or  
 1346 (c) the offense is included in an indictment or information covering a single criminal  
 1347 episode alleging the commission of a felony or a class A misdemeanor by an  
 1348 individual who is 18 years old or older.
- 1349 (9) If a district court has jurisdiction in accordance with Subsection (4), (8)(a), or (8)(b), the  
 1350 district court has jurisdiction over an offense listed in Subsection 78A-7-106(2) even if  
 1351 the offense is committed by an individual who is 16 or 17 years old.
- 1352 (10) The district court has subject matter jurisdiction over an action under Title 78B,  
 1353 Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the action to the  
 1354 district court.
- 1355 (11)(a) The district court has subject matter jurisdiction over a criminal action that the  
 1356 justice court transfers to the district court.
- 1357 (b) Notwithstanding Subsection 78A-7-106(1), the district court has original jurisdiction  
 1358 over any refiled case of a criminal action transferred to the district court if the district  
 1359 court dismissed the transferred case without prejudice.
- 1360 (12) The district court has no subject matter jurisdiction over a claim for ineffective  
 1361 assistance of counsel in a criminal case involving a charge of a capital felony.
- 1362 ~~[(12)]~~ (13) If the juvenile court has concurrent jurisdiction under Subsection  
 1363 78A-6-104(1)(a)(i) over a parentage action filed in the district court, the district court  
 1364 may transfer jurisdiction over the parentage action to the juvenile court.
- 1365 ~~[(13)]~~ (14) The Supreme Court and Court of Appeals have jurisdiction over an appeal from  
 1366 a final order, judgment, and decree of the district court as described in Sections  
 1367 78A-3-102 and 78A-4-103.
- 1368 Section 23. Section **78B-9-202** is amended to read:  
 1369 **78B-9-202 . Appointment and payment of counsel in a death penalty case.**
- 1370 ~~[(1) A person who has been sentenced to death and whose conviction and sentence has been~~  
 1371 ~~affirmed on appeal shall be advised in open court, on the record, in a hearing scheduled~~  
 1372 ~~no less than 30 days prior to the signing of the death warrant, of the provisions of this~~

1373 chapter allowing challenges to the conviction and death sentence and the appointment of  
1374 counsel for indigent petitioners.]

1375 [(2)(a) If a petitioner requests the court to appoint counsel, the court shall determine  
1376 whether the petitioner is indigent and make findings on the record regarding the  
1377 petitioner's indigency. If the court finds that the petitioner is indigent, it shall, subject  
1378 to the provisions of Subsection (5), promptly appoint counsel who is qualified to  
1379 represent petitioners in postconviction death penalty cases as required by Rule 8 of  
1380 the Utah Rules of Criminal Procedure. Counsel who represented the petitioner at  
1381 trial or on the direct appeal may not be appointed to represent the petitioner under  
1382 this section.]

1383 [(b) A petitioner who wishes to reject the offer of counsel shall be advised on the record  
1384 by the court of the consequences of the rejection before the court may accept the  
1385 rejection.]

1386 (1)(a) Within 30 days after the day on which the Supreme Court remits a case after  
1387 affirming an individual's conviction and sentence of death, the sentencing court shall:  
1388 (i) advise the individual, in open court and on the record, of the provisions of this  
1389 chapter allowing challenges to the individual's conviction and sentence; and  
1390 (ii) appoint counsel to represent the individual on a petition for postconviction relief  
1391 in accordance with this section and Rule 8 of the Utah Rules of Criminal  
1392 Procedure.

1393 (b) Subject to Subsection (1)(c), Subsection (1)(a)(ii) does not prevent an individual  
1394 from obtaining private counsel or waiving the appointment of counsel.

1395 (c) If an individual wishes to reject the appointment of counsel under Subsection  
1396 (1)(a)(ii), the sentencing court shall make a finding regarding the individual's  
1397 understanding of the legal consequences of proceeding without the appointment of  
1398 postconviction counsel.

1399 (d) The sentencing court may not appoint counsel who represented the individual at trial,  
1400 or on the direct appeal, under Subsection (1)(a)(ii).

1401 (e) For purposes of Subsection (1)(a)(ii), the Supreme Court shall maintain a list of  
1402 postconviction counsel qualified to represent an individual who has been sentenced to  
1403 death on a petition for postconviction relief.

1404 (2) For a second or successive petition for postconviction relief, a court may not appoint  
1405 postconviction counsel for an individual sentenced to death at the expense of the public,  
1406 except for a claim:

- 1407 (a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or  
1408 (b) based on Subsection 78B-9-104(1)(g) that could not have been raised in any  
1409 previously filed post trial motion or postconviction proceeding.
- 1410 (3)(a) Attorney fees and litigation expenses incurred in providing the representation  
1411 provided for in this section and that the court has determined are reasonable shall be  
1412 paid from state funds by the Division of Finance according to rules established  
1413 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1414 ~~[(a)]~~ (b) In determining whether the requested funds are reasonable, the court should  
1415 consider:
- 1416 (i) the extent to which the petitioner requests funds to investigate and develop  
1417 evidence and legal arguments that duplicate the evidence presented and arguments  
1418 raised in the criminal proceeding; and
- 1419 (ii) whether the petitioner has established that the requested funds are necessary to  
1420 develop evidence and legal arguments that are reasonably likely to support  
1421 postconviction relief.
- 1422 ~~[(b)]~~
- 1423 (c)(i) The court may authorize payment of attorney fees at a rate of ~~[\$125]~~ \$250 per  
1424 hour up to a maximum of ~~[\$60,000]~~ \$120,000.
- 1425 (ii) The court may exceed the maximum amount described in Subsection (3)(c)(i)  
1426 only upon a showing of good cause as established in Subsections ~~[(3)(e) and (f)]~~  
1427 (3)(f) and (g).
- 1428 ~~[(e)]~~
- 1429 (d)(i) The court may authorize litigation expenses up to a maximum of ~~[\$20,000]~~  
1430 \$40,000.
- 1431 (ii) Litigation expenses under Subsection (3)(d)(i) may include payment for an  
1432 investigator, a mitigation specialist, a mental health and forensic science expert,  
1433 and support personnel.
- 1434 (iii) The court may exceed the maximum amount described in Subsection (3)(d)(i)  
1435 only upon a showing of good cause as established in Subsections ~~[(3)(e) and (f)]~~  
1436 (3)(f) and (g).
- 1437 ~~[(d)]~~
- 1438 (e)(i) The court may authorize the petitioner to apply ex parte for the funds permitted  
1439 in Subsections ~~[(3)(b) and (e)]~~ (3)(c) and (d) upon a motion to proceed ex parte and  
1440 if the petitioner establishes the need for confidentiality.

1441 (ii) The motion to proceed ex parte must be served on counsel representing the state[;  
1442 and the-] .

1443 (iii) The court may not grant the motion without giving the state an opportunity to  
1444 respond.

1445 [(e)] (f) In determining whether good cause exists to exceed the maximum sums  
1446 established in Subsections [(3)(b) and (e)] (3)(c) and (d), the court shall consider:

1447 (i) the extent to which the work done to date and the further work identified by the  
1448 petitioner duplicates work and investigation performed during the criminal case  
1449 under review; and

1450 (ii) whether the petitioner has established that the work done to date and the further  
1451 work identified is reasonably likely to develop evidence or legal arguments that  
1452 will support postconviction relief.

1453 [(f)] (g) The court may permit payment in excess of the maximum amounts established in  
1454 Subsections [(3)(b) and (e)] (3)(c) and (d) only on the petitioner's motion, provided  
1455 that:

1456 (i) if the court has granted a motion to file ex parte applications under Subsection [  
1457 (3)(d)] (3)(e), the petitioner [~~shall serve~~] serves the motion to exceed the maximum  
1458 amounts on an assistant attorney general employed in a division other than the one  
1459 in which the attorney is employed who represents the state in the postconviction  
1460 case;

1461 (ii) if the court has not granted a motion to file ex parte applications, [~~then the~~  
1462 ~~petitioner must serve~~] the petitioner serves the attorney representing the state in  
1463 the postconviction matter with the motion to exceed the maximum funds;

1464 [(ii)] (iii) if the motion proceeds under Subsection [(3)(f)(i)] (3)(g)(i), the designated  
1465 assistant attorney general [~~may~~] does not disclose to the attorney representing the  
1466 state in the postconviction matter any material the petitioner provides in support of  
1467 the motion except upon a determination by the court that the material is not  
1468 protected by or that the petitioner has waived the attorney client privilege or work  
1469 product doctrine; and

1470 [(iii)] (iv) the court gives the state an opportunity to respond to the request for funds  
1471 in excess of the maximum amounts provided in Subsections [(3)(b) and (e)] (3)(c)  
1472 and (d).

1473 (4)(a) Nothing in this chapter shall be construed as creating the right to the effective  
1474 assistance of postconviction counsel[~~, and relief~~] .

1475 (b) Relief may not be granted on any claim that postconviction counsel was ineffective.  
1476 (5) The appointment of counsel under this section does not constitute an application for  
1477 postconviction or other collateral review and does not toll the statute of limitations under  
1478 Section 78B-9-107.

1479 [~~(5) If within 60 days of the request for counsel the court cannot find counsel willing to~~  
1480 ~~accept the appointment, the court shall notify the petitioner and the state's counsel in~~  
1481 ~~writing. In that event, the petitioner may elect to proceed pro se by serving written~~  
1482 ~~notice of that election on the court and state's counsel within 30 days of the court's~~  
1483 ~~notice that no counsel could be found. If within 30 days of its notice to the petitioner the~~  
1484 ~~court receives no notice that the petitioner elects to proceed pro se, the court shall~~  
1485 ~~dismiss any pending postconviction actions and vacate any execution stays, and the state~~  
1486 ~~may initiate proceedings under Section 77-19-9 to issue an execution warrant.]~~

1487 [(6) ~~Subject to Subsection (2)(a) the court shall appoint counsel to represent the petitioner~~  
1488 ~~for the first petition filed after the direct appeal. For all other petitions, counsel may not~~  
1489 ~~be appointed at public expense for a petitioner, except to raise claims:]~~

1490 [~~(a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or]~~

1491 [~~(b) based on Subsection 78B-9-104(1)(g) that could not have been raised in any~~  
1492 ~~previously filed post trial motion or postconviction proceeding.]~~

1493 Section 24. **Repealer.**

1494 This bill repeals:

1495 Section **77-15a-103, Court may raise issue of intellectual disability at any time.**

1496 Section **77-18a-2, Capital cases.**

1497 Section **77-19-7, Judgment of death -- Statement to Board of Pardons and Parole.**

1498 Section 25. **Effective Date.**

1499 This bill takes effect on May 6, 2026.