

# HB0495S02 compared with HB0495S01

~~{Omitted text}~~ shows text that was in HB0495S01 but was omitted in HB0495S02  
inserted text shows text that was not in HB0495S01 but was inserted into HB0495S02

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**Capital Felony Case Amendments**  
2026 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Candice B. Pierucci**  
Senate Sponsor: Daniel McCay

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**LONG TITLE**

**General Description:**

This bill amends statutes related to capital felony cases.

**Highlighted Provisions:**

This bill:

- ▶ defines and modifies terms related to capital felony cases;
- ▶ clarifies the statutory provisions regarding a sentencing proceeding in a capital felony case;
- ▶ requires the sentencing court to advise a defendant in a capital felony case of the right to a direct appeal and of the statutory provisions for postconviction relief;
- ▶ requires the sentencing court to appoint appellate counsel for a defendant who is sentenced to death;
- ▶ modifies the automatic review process by the Utah Supreme Court in a capital felony case in which the defendant is sentenced to death;
- ▶ addresses the priority of capital felony cases;
- ▶ addresses the extension of a report on a defendant's competency to stand trial;
- ▶

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allows for the appointment of a psychologist to determine if a defendant is intellectually disabled when a prosecutor intends to seek a sentence of death;

21       ▶ modifies statutory provisions regarding the pretrial process for determining whether an 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 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 of execution;

28       ▶ modifies statutory provisions regarding a notification of pregnancy or incompetency of an inmate who is sentenced to death;

30       ▶ addresses a petition for an inquiry on whether a defendant is competent to be executed, including the requirements for a successive petition;

32       ▶ amends the examination process for a petition to determine whether an inmate is competent to be executed;

34       ▶ addresses the procedures when there is a finding of competency or incompetency for an inmate sentenced to death;

36       ▶ amends the subject matter jurisdiction of the Utah Supreme Court and the district court with regard to a capital felony case;

38       ▶ provides that the Utah Supreme Court, after a direct appeal, appoint defense counsel to 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 purposes of appointing defense counsel for an individual sentenced to death on a petition for postconviction relief;

43       ▶ increases the amount of attorney fees and litigation expenses that a court may authorize 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

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

#### 81 REPEALS:

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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

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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 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 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 years of  
age]~~ individual was under 18 years old at the time the offense was committed 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 by the Utah State  
Supreme Court within 60 days after certification by the sentencing court of the entire record unless  
time is extended an additional period not to exceed 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 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, ~~[there shall be  
further proceedings before the court or jury on the issue of sentence]~~ a further proceeding shall  
{[immediately](#)} be conducted on the issue of the defendant's sentence for the capital felony.

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- 111 (b) ~~[In the case of a plea of]~~ When a defendant has pled guilty to a capital felony, the sentencing  
112 ~~[proceedings shall be]~~ proceeding described in Subsection (1)(a) is 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 of the prosecution,  
116 ~~[by the court which]~~ the court that accepted the plea.
- 117 (c)
- 118 (i) When a defendant has been found guilty of a capital felony, the ~~[proceedings shall be]~~ sentencing  
119 proceeding described in Subsection (1)(a) is conducted before~~[the court or jury which found the~~  
120 ~~defendant guilty, provided the defendant may waive hearing before the jury with the approval of the~~  
121 ~~court and the consent of the 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 conducted before a  
124 jury, with approval of the court and the consent of the prosecution.
- 126 (ii) If circumstances make it impossible or impractical to ~~[reconvene]~~ continue with the same jury for  
127 the ~~[sentencing proceedings]~~ sentencing proceeding, the court may dismiss that jury and convene a  
128 new jury for the ~~[proceedings]~~ proceeding.
- 129 (d) If a retrial of the sentencing ~~[proceedings]~~ proceeding is necessary as a consequence of a remand  
130 from an appellate court, the sentencing authority ~~[shall be determined as provided in]~~ is determined  
131 in accordance with Subsection ~~[(6)]~~ (13).
- 132 (2)
- 133 (a) In ~~[capital sentencing proceedings]~~ a sentencing proceeding described in Subsection (1)(a), evidence  
134 may be presented on:
- 135 (i) the nature and circumstances of the crime;
- 136 (ii) the defendant's character, background, history, and mental and physical condition;
- 137 (iii) the victim and the impact of the crime on the victim's family and community without  
138 comparison to other persons or victims; and
- 139 (iv) any other facts in aggravation or mitigation of the penalty that ~~[the court considers]~~ are relevant  
140 to the sentence.
- 141 (b)

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- (i) ~~{[Any evidence the court considers to have probative force may be received]}~~ Relevant and reliable evidence may be received regardless of [its] the evidence's admissibility under the ~~[exclusionary]~~ rules of evidence.
- 143 (ii) The ~~[state's attorney]~~ prosecuting attorney and the defendant shall be permitted to 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 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 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 wrongfulness of  
~~[his]~~ the defendant's conduct or to conform ~~[his]~~ the defendant's conduct to the requirement of law  
was impaired as a result of a mental condition, intoxication, or influence of drugs~~[-except that  
"mental condition" under this Subsection (4)(d) does not mean an abnormality manifested primarily  
by repeated 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 ~~[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]~~ defendant's sentence.  
~~Except as provided in Subsections 76-3-207.5(2) and 76-3-206(2)(b), in all proceedings before a  
jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous  
decision for death and that the penalty of either an indeterminate prison term of not less than 25  
years and which may be for life or life in prison without parole, shall be imposed if a unanimous  
decision for death is not found.]~~
- 170 ~~[(b)]~~

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- 171 (6)
- (a) Except as provided in Subsections 76-3-206(2)(b) and 76-3-207.5(2), the court shall instruct a jury in a sentencing proceeding for a capital felony on the punishment 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 totality of the aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that:
- 177 (i) total aggravation outweighs total mitigation~~[-and is further persuaded, beyond a reasonable doubt, that] ; and~~
- 179 (ii) the imposition of the ~~[death penalty]~~ sentence of death is justified and appropriate in the circumstances.
- 181 (c) If the jury reports a unanimous ~~[agreement]~~ decision to impose the sentence of death, 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, the jury shall ~~[then]~~ determine whether the penalty of life in prison without parole 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 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 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 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 for life.
- 200 ~~[(d)] (7) [If the defendant waives hearing before the jury as to sentencing, with the approval of the court and the consent of the prosecution]~~ If the sentencing proceeding described in Subsection (1)(a) is conducted before the court as described in Subsection (1)(b) or (c), the court shall determine the appropriate penalty according to the standards of [Subsections (5)(b) and (e)] Subsection (6).

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~~[(e)] (8) If the defendant is sentenced to more than one term of life in prison with or without the possibility of parole, or in addition to a sentence of life in prison with or without the possibility of parole the defendant is sentenced for other offenses [~~which~~] that result in terms of imprisonment, the [~~judge~~] court shall determine whether the terms of imprisonment shall be imposed as concurrent or consecutive sentences in accordance with Section 76-3-401.~~

211 ~~[(6) Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court for new sentencing proceedings to the extent necessary to correct the error or errors. An error in the sentencing proceedings may not result in the reversal of the conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing proceedings are admissible in the new 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 defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution, in which case the proceeding shall be held according to 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 sentencing proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and the new proceeding will be before a jury unless the defendant waives the hearing before the jury with the approval of the court and the 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 direct appeal and of the provisions for postconviction relief in Title 78B, Chapter 9, Part 1, General Provisions; and~~

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

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

238 ~~(10)~~

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- 241 (a) If a defendant is convicted and sentenced to death for a capital felony and the defendant waives the  
243 defendant's right to an appeal or fails to file a timely notice of appeal:
- 245 (i) the judgment is subject to automatic review by the Supreme Court as to whether there was  
247 manifest injustice; and
- 249 (ii) the sentencing court shall promptly certify the entire record of the defendant's case to the  
251 Supreme Court.
- 253 (b) The Supreme Court shall conduct the automatic review of a defendant's case within 120 days after  
255 the day on which the sentencing court certifies the entire record of the defendant's case.
- 257 (c) Except as provided in Subsection (10)(d), an automatic review is conducted without briefing from  
259 any party.
- 261 (d) If the Supreme Court determines that the conviction should be modified, or the conviction or  
263 sentence should be vacated, upon an automatic review:
- 265 (i) the Supreme Court shall request that the attorney general submit briefing to address the error for  
267 which the Supreme Court determined that the conviction should be modified or the conviction or  
269 sentence should be vacated; and
- 271 (ii) the Supreme Court may appoint an amicus curae to submit briefing in place of the defendant.
- 273 (e) Upon any briefing described in Subsection (10)(d), the Supreme Court may modify the conviction,  
275 or affirm or vacate the conviction or sentence, of the defendant.
- 277 (11)
- 279 (a) A reversible error in a sentencing proceeding for a capital felony does not result in the reversal of  
281 the conviction for the capital felony.
- 283 (b) If the Supreme Court remands a capital felony case for a new sentencing proceeding, all exhibits  
285 and a transcript of all testimony and other evidence that was properly admitted in the prior trial and  
287 sentencing proceeding are admissible in the new sentencing proceeding.
- 289 (12)
- 291 (a) An automatic review described in Subsection (10) has priority over all other cases before the  
293 Supreme Court.
- 295 (b) An appeal or petition for extraordinary relief in a capital felony case has priority over all noncapital  
297 felony cases before the Supreme Court and should be expedited.
- 299 (c) A petition for post-conviction relief in a capital case has priority over all other cases in the district  
301 court, except for a trial of a capital felony case, and should be expedited.

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- 271 (13) On a remand for a new sentencing proceeding, the new sentencing proceeding is 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 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 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 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 proceeding.  
286 [(7)] (14) If the [penalty] sentence of death is held to be unconstitutional by the Utah Supreme Court or  
the United States Supreme Court, the court having jurisdiction over a [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 death precludes the  
imposition of [the death penalty due to mental retardation or subaverage general intellectual  
functioning under Section 77-15a-101] the sentence of death due to an intellectual disability  
as described in Section 77-15a-101.5, the court having jurisdiction over a defendant previously  
sentenced to death for a capital felony shall:  
297 (i) cause the defendant to be brought before the [sentencing court, and the court shall] 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 under  
Subsection [(8)(a)] (15)(a), but the appellate court finds that sentencing the defendant to life in  
prison without parole is likely to result in a manifest injustice, [it] the appellate court may remand  
the case to the sentencing court for [further sentencing proceedings] a sentencing proceeding

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to determine if the defendant should serve a sentence of life in prison without parole or an indeterminate prison term of 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 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 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 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 condition of the defendant unless the court finds that the allegations in the petition raise a bona fide doubt as to the defendant's competency to stand trial.

323 (3)

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

328 (b) The court shall order the department to have the defendant evaluated by one forensic 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 determines, based on the allegations in the petition, that good cause exists to order two competency evaluations.

334 (c)

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

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- 336 (ii) If a party seeks an additional competency evaluation under this Subsection (3)(c), 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 stand trial alone  
may not take the place of a competency evaluation ordered under this Subsection (3).
- 343 (e) In accordance with state licensing laws, the court may only order the department to provide an initial  
evaluation and progress toward competency evaluation for a defendant who is located within the  
state.
- 346 (4)
- (a) If the petition or other information sufficiently raises concerns that the defendant may have  
an intellectual disability, at least one forensic evaluator who is experienced in assessments of  
intellectual disabilities shall conduct a competency evaluation.
- 349 (b) The petitioner or other party, as directed by the court or requested by the department, shall provide  
to the forensic evaluator nonmedical information and materials relevant to a determination of the  
defendant's competency, including the charging document, arrest or incident reports pertaining to  
the charged offense, known criminal history information, and known prior mental health evaluations  
and treatments.
- 354 (c) For purposes of a competency evaluation, a custodian of mental health records pertaining to the  
defendant, including the defendant's prior mental health evaluations or records relating to the  
defendant's substance use disorder, may provide the records to:
- 358 (i) with the defendant's consent, a forensic evaluator or the department on the 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 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)

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- (i) Except as otherwise provided by law and in Subsections (4)(e)(ii) and (4)(f), the court shall order the forensic evaluator to destroy all records subject to the 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 protective order if  
destroying the records is a violation of ethical standards to 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 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 other individual will  
seek civil commitment of the defendant under Section 77-15-6; and
- 379 (iii) the court orders the records be maintained and used only for the purposes of examining the  
defendant in connection with the petition for civil commitment.
- 381 (g) An order for a competency evaluation may not contain an order for any other inquiry into the mental  
state of the defendant that is not described in this Subsection (4).
- 383 (5) Pending a competency evaluation, unless the court or the department directs otherwise, the  
defendant shall be retained in the same custody or status that the defendant was in at the time the  
examination was ordered.
- 386 (6) In the conduct of a competency evaluation and in a report to the court, a forensic evaluator shall  
consider and address, in addition to any other factors determined to be relevant by the forensic  
evaluator:
- 389 (a) the impact of the defendant's mental illness or intellectual disability on the defendant's present  
ability to:
- 391 (i) rationally and factually understand the criminal proceedings against the defendant; and
- 393 (ii) consult with the defendant's legal counsel with a reasonable degree of rational understanding in  
order to assist in the defense;
- 395 (b) in making the determinations described in Subsection (6)(a), the forensic evaluator 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

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- (iii) understand the range of possible penalties associated with the charges or 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 symptoms relevant to the defendant's capacity to stand trial.
- 407 (7) Upon a determination that the defendant is incompetent to proceed, the forensic evaluator shall indicate in the report to the court:
- 409 (a) the factors that contribute to the defendant's incompetency, including the nature of the defendant's mental illness or intellectual disability, if any, and its relationship to 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 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), an explanation of the reason for the determination and a summary of the treatment provided to the defendant in the past.
- 420 (8)
- (a)
- (i) A forensic evaluator shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order.
- 423 (ii) The report shall inform the court of the examiner's opinion concerning the 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 Subsection (8)(a), the forensic evaluator shall give written notice to the court.

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- (ii) A forensic evaluator who provides the notice described in Subsection (8)(b)(i) shall receive a 15-day extension, giving the forensic evaluator a total of 45 days after the day on which the forensic evaluator received the court's order to conduct a competency evaluation and file a report.
- 431 (iii) [The] Except as provided in Subsection (8)(b)(iv), the court may further extend the deadline for  
completion of the evaluation and report if the court determines that there is good cause for the  
extension.
- 434 (iv) If an extension is sought because the forensic evaluator has been appointed to examine an inmate  
for competency to be executed or has been called to testify at a competency hearing described  
in Section 77-19-204, the court shall further extend 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 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 purpose or  
purposes for each, the time spent by the forensic evaluator with the defendant for purposes of the  
examination, and the compensation to be paid to the evaluator for the report;
- 446 (c) state the forensic evaluator's clinical observations, findings, and opinions on each factor described in  
Subsection (6); and
- 448 (d) identify the sources of information used by the forensic evaluator and present the 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 examination, whether the  
examination is with or without the consent of the defendant, any testimony by a forensic evaluator  
based upon the statement, and any other fruits of the statement may not be admitted in evidence  
against the defendant in any criminal proceeding except on an issue respecting mental condition on  
which the defendant has introduced evidence, unless the evidence is relevant to a determination of  
the defendant's competency.
- 457 (b) Before examining the defendant, the forensic evaluator shall specifically advise the defendant of the  
limits of confidentiality as provided under Subsection (10)(a).
- 459 (11)

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- (a) Upon receipt of the forensic evaluators' reports, the court shall set a date for a competency hearing. The hearing shall be held not less than five and not more than 15 days after the day on which the court received the forensic evaluators' reports, unless for good cause the court sets a later date.
- 463 (b) Any person directed by the department to conduct the competency evaluation may be subpoenaed to testify at the hearing.
- 465 (c) The court may call any forensic evaluator to testify at the hearing who is not called by the parties. If the court calls a forensic evaluator, counsel for the parties may cross-examine the forensic evaluator.
- 468 (d)
- (i) If the forensic evaluators are in conflict as to the competency of the defendant, all forensic evaluators should be called to testify at the hearing if reasonably available.
- 471 (ii) A conflict in the opinions of the forensic evaluators does not require the appointment of an additional forensic evaluator unless the court finds good cause for the appointment.
- 474 (iii) If a party seeks an additional competency evaluation under this Subsection (11), 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 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 incompetency to give informed consent for medical treatment or for any other 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 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 in a criminal action unrelated to the charged offense for which the petition is filed;
- 491 (e) the testimony of lay witnesses, if any;

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- 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 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, psychological, or social work  
reports submitted to the court relative to the mental condition of the defendant, and any other  
documents made available to the court by either the defense or the prosecution, pertaining to the  
defendant's current or past mental condition; and
- 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 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 having  
ordered the release of the defendant under Section 77-15-3.5 or Section 77-15-6 in an unrelated  
criminal action if the court in the unrelated criminal action ordered the release more than one year  
before the day on which the petition described in Subsection (13)(a) is filed.
- 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** is renumbered and amended to read:
- 520 **~~[77-15a-102]~~ 77-15a-101.1. Definitions for chapter.**
- 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 ~~[results in and]~~exists  
concurrently with significant deficiencies in adaptive functioning~~[that exist primarily in the areas of  
reasoning or impulse control, or in both of these areas]~~; and
- 527

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[~~(2)~~] (b) the subaverage general intellectual functioning and the significant deficiencies in adaptive functioning [~~under Subsection (1)~~] described in Subsection (1)(a) are both 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 as intellectually disabled.

534 Section 5. Section **77-15a-101.5** is renumbered and amended to read:

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

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

542 [(a) the defendant has significantly subaverage general intellectual functioning that 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 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 -- Scope of examination -- Report -- Procedures.**

550 [(1)

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

558

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

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

566 (2)

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

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

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

575 (3)

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

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

579 (4)

(a)

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

581 (i){(A)} the defendant shall present any evidence of { ~~a lower intelligence quotient~~ } significant subaverage general intellectual functioning or significant deficiencies in adaptive functioning within 30 days after the day on which the prescreening psychologist submits the report described in Subsection (3); and

584

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

590 (ii) The court may grant the defendant an extension under Subsection (4)(a)(i)(A) upon a showing of good cause.

587 (b) If a prescreening psychologist determines that the defendant's intelligence quotient is higher than 75 and the defendant presents no contrary evidence under Subsection {(4)(a)(i)} (4)(a)(i)(A):

590 (i) no further examination of the defendant may be ordered under this section; and

591 (ii) the court shall enter an order stating that a sentence of death is a sentencing option in the case before the court.

598 (c) The court shall release the prescreening psychologist's report on the motion of any party if:

600 (i) the court orders an examination as described in Subsection (6); or

593 (c){(ii)} {The court shall release the prescreening psychologist's report on the motion of any party if -}  
the defendant introduces the report in the case before or after conviction or in any related collateral proceeding.

596 (d) A determination by a prescreening psychologist that the defendant's intelligence quotient is higher than 75 does not preclude the defendant from introducing evidence of the defendant's mental capacity at the sentencing proceeding described in Section 76-3-207.

600 (5) If the prescreening psychologist determines that the defendant's intelligence quotient is 75 or less, or the defendant presents evidence of {a lower intelligence quotient} an intellectual disability as described in Subsection {(4)(a)(i)} (4)(a)(i)(A):

603 (a) the court may stay all proceedings in order to address the issue of whether the defendant is intellectually disabled; and

605 (b) the court shall order an examination of the defendant as described in Subsection (6).

606 [~~3~~] (6)

(a) The court shall order the Department of Health and Human Services to appoint at least two mental health experts to examine the defendant and report to the court.

609 (b) [~~The experts~~] An examiner described in Subsection (6)(a):

610 (i) may not be involved in the current treatment of the defendant; and

611 (ii) shall have expertise in intellectual disability assessment.

612

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~~[(b)]~~ (c) Upon appointment of ~~[the experts]~~ the examiners, the defendant, or other party as directed by the court, shall provide information and materials to the examiners relevant to a determination ~~[of the defendant's intellectual disability]~~ of whether the defendant is intellectually disabled, including:

616 (i) copies of the charging document~~[-]~~ ;

617 (ii) arrest or incident reports pertaining to the charged offense~~[-]~~ ;

618 (iii) known criminal history information~~[-and-]~~ ; and

619 (iv) known prior mental health evaluations and treatments.

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

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

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

629 ~~[(4)]~~ (7) During any examinations under Subsection ~~[(3)]~~ (6), and unless the court directs otherwise, the defendant shall be retained in the same custody or status ~~[he]~~ the defendant was in at the time the examination was ordered.

632 ~~[(5)]~~ (8) ~~[The experts]~~ An examiner described in Subsection (6)(a) shall, in the conduct of ~~[their examinations and in their reports]~~ the examiner's examinations and reports to the court, consider and address:

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

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

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

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

641 ~~[(6)]~~ (9)

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

646

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- (b) The ~~[reports]~~ written report shall provide, to the court and to prosecution and defense counsel, the ~~[examiners']~~ examiner's written opinions concerning ~~[the intellectual disability of the defendant]~~ whether the defendant is intellectually disabled.
- 649 (c) If an examiner requests of the court additional time, the examiner shall provide the report to the court and counsel within 90 days ~~[from the receipt of the court's order unless, for good cause shown,]~~ after the day on which the examiner receives the court's order, unless the court authorizes, for good cause shown, an additional period of time to complete the examination and provide the report.
- 654 ~~[(7)]~~ (10) Any written report submitted by an ~~[expert]~~ examiner under Subsection (9) shall:
- 655 (a) identify the specific matters referred for evaluation;
- 656 (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;
- 658 (c) state the ~~[expert's]~~ examiner's clinical observations, findings, and opinions; and
- 659 (d) identify the sources of information used by the ~~[expert]~~ examiner and present the basis for the ~~[expert's]~~ examiner's clinical findings and opinions.
- 661 ~~[(8)]~~ (11) Within 30 days after ~~[receipt of]~~ receiving the report from the Department of Health and Human Services, but not later than five days before hearing, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of witnesses the prosecuting attorney proposes to call in rebuttal.
- 665 ~~[(9)]~~ (12)
- (a) Except pursuant to Section 77-15a-105, this chapter does not prevent any party from producing any other testimony as to the ~~[mental condition]~~ intellectual or adaptive functioning of the defendant.
- 668 (b) Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection ~~[(10)]~~ (13).
- 670 ~~[(10)]~~ (13)
- (a) ~~[Expenses]~~ The Department of Health and Human Services shall pay the expenses of examinations of the defendant ordered by the court under this section ~~[shall be paid by the Department of Health and Human Services]~~.
- 673 (b) ~~[Travel]~~ The Department of Health and Human Services shall charge travel expenses associated with any court-ordered examination that are incurred by the defendant ~~[shall be charged by the Department of Health and Human Services]~~ to the county where prosecution is commenced.

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- 677 ~~[(11)]~~ (14)
- (a)
- (i) When the report is received, the court shall set a date for a hearing that is within a reasonable time before jury selection to determine if the exemption under Section ~~[77-15a-101]~~ 77-15a-101.5 applies. ~~[-The hearing shall be held and the judge shall make the determination within a reasonable time prior to jury selection.]~~
- 682 (ii) The court shall make a determination described in Subsection (14)(a)(i) within a reasonable time before jury selection.
- 684 (b) Prosecution and defense counsel may subpoena to testify at the hearing any person or organization appointed by the Department of Health and Human Services to conduct the examination and any independent examiner.
- 687 (c)
- (i) The court may call any examiner to testify at the hearing who is not called by the parties.
- 689 (ii) If the court calls an examiner, counsel for the parties may cross-examine that examiner.
- 691 ~~[(12)]~~ (15)
- (a) A defendant is presumed not to be intellectually disabled unless the court, by a preponderance of the evidence, finds the defendant to be intellectually disabled.
- 693 (b) The burden of proof is upon the proponent of intellectual disability at the hearing.
- 694 ~~[(b)]~~ (c) A finding of intellectual disability does not operate as an adjudication of intellectual disability for any purpose other than exempting the ~~[person]~~ defendant from a sentence of death in the case before the court.
- 697 ~~[(13)]~~
- ~~(a) The defendant is presumed not to possess the mental deficiencies listed in Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22. The burden of proof is upon the proponent of that proposition.]~~
- 703 ~~[(b) If the court finds by a preponderance of the evidence that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22, then the burden is upon the~~

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state to establish that any confession by the defendant which the state intends to introduce into evidence is supported by substantial evidence independent of the confession.]

709 [~~(14)~~] (16)

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

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

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

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

719 [(i) ~~introduce the confession into evidence, and the death penalty will not be a sentencing option in the case; or~~]

721 [(ii) ~~not introduce into evidence any confession or the fruits of a confession that the court has found is not supported by substantial evidence independent of the confession, and the death penalty will be a sentencing option in the case.~~]

724 [~~(e)~~] (b)

(i) A finding by the court regarding whether the defendant qualifies for an exemption under Section [~~77-15a-101~~] 77-15a-101.5 is a final determination of that issue for purposes of this chapter.

727 (ii) [~~The following questions~~] Whether the defendant is intellectually disabled for purposes of this chapter may not be submitted to the jury by instruction, special verdict, argument, or other means.[:]

730 [(A) ~~whether the defendant is intellectually disabled for purposes of this chapter; and~~]

732 [(B) ~~whether the defendant possesses the mental deficiencies specified in Subsection 77-15a-101(2).~~]

734 (iii) This chapter does not prevent the defendant from submitting evidence of intellectual disability or other mental deficiency to establish a mental condition as a mitigating circumstance under Section 76-3-207.

737 [(15) ~~A ruling by the court that the defendant is exempt from the death penalty may be appealed by the state pursuant to Section 77-18a-1.~~]

739 [(16)] (17) Failure to comply with this section does not result in the dismissal of criminal charges.

748 Section 7. Section **77-15a-105** is amended to read:

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749           **77-15a-105. Defendant's wilful failure to cooperate -- Expert testimony regarding**  
intellectual disability is barred.

744 (1) [~~If the defendant files notice, raises the issue, or intends to present evidence or make an argument~~  
~~that the defendant is exempt from the death penalty]~~ If the defendant presents evidence or makes an  
argument that the defendant is exempt from a sentence of death under this chapter, the defendant  
shall make himself or herself available and fully cooperate in any examination by mental health  
experts appointed by the Department of Health and Human Services and any other independent  
examiners for the defense or the prosecution.

751 (2) If the defendant wilfully fails to make himself or herself available and fully cooperate in the  
examination, and that failure is established to the satisfaction of the court, the defendant is barred  
from presenting expert testimony relating to any exemption from [~~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.**

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

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

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

760 (c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; ~~{f or}~~

762 (d) an order denying bail under Chapter 20, Bail ~~{f, } ; or~~

763 ~~{(e) an order finding the defendant is not intellectually disabled after an examination and hearing as~~  
~~described in Section 77-15a-104.}~~

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

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

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

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

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

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

774

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

776 (f) an order granting a new trial;

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

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

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

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

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

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

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

788 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy 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 execution time.**

794 [~~(1)~~]

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

797 (1)

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

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

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

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

806 (2)

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

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

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

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

815 (3) The Department of Corrections shall determine the hour, within the appointed day, at 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.**

819 [(1) Except as stated in Subsection (2), a judge, tribunal, or officer, other than the governor or the Board of Pardons and Parole, may not stay or suspend the execution of a {f} judgment{ } sentence } of death.]

822 [(2)

(a) A court {f} of competent jurisdiction { } shall issue a temporary stay of {f} judgment { } a sentence } of death when:

824 {(i) a timely motion for a new trial is filed; }

825 {(i){ } {(ii)} } the judgment is appealed;

826 {(ii){ } {(iii)} } the judgment is automatically reviewed{ ~~in accordance with Subsection 76-3-207(10)~~};

828 {(iii){ } {(iv)} } the {f} person { } individual } sentenced to death files { :

829 {(A) a first petition for postconviction relief {f} after the direct appeal { } under Title 78B, Chapter 9, Postconviction Remedies Act;

833 {(iv) { -or }

831 {(B) { a timely notice of appeal from a final order of a first petition for postconviction relief; }

833 {(iv)} (v) the {f} person sentenced to death requests { } individual sentenced to death is appointed } counsel under Subsection {f} 78B-9-202(2)(a) { } 78B-8-202(1) } to represent the {f} person { } individual } in a first action for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act; or

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- 837 ~~[(v)]~~ ~~{(vi)}~~ counsel enters an appearance to represent the ~~{f}~~ person ~~{}~~ individual ~~}~~ sentenced  
to death in a first action for postconviction relief under Title 78B, Chapter 9, Postconviction  
Remedies Act.]
- 840 ~~{(b) A court may grant a temporary stay to determine competency to be executed in accordance with  
Part 2, Competency for Execution. }~~
- 842 ~~[(b)]~~ ~~{(e)}~~ A court may not issue a temporary stay of ~~{f}~~ judgment ~~{}~~ a sentence ~~}~~ of death when the  
~~{f}~~ person ~~{}~~ individual ~~}~~ sentenced to death files a petition for postconviction relief under Title 78B,  
Chapter 9, Postconviction Remedies Act, ~~{ or a timely notice of appeal from a final order on the  
petition; }~~ after a first petition ~~{ of postconviction relief }~~ has been denied or dismissed, unless the  
court first finds all of the following: ]
- 847 [(i) the claims would not be barred under Section 78B-9-106;]
- 848 [(ii) the claims are potentially meritorious; and]
- 849 [(iii) the petition { or appeal } may not be reasonably disposed of before the execution date.]
- 851 ~~[(e)]~~ ~~{(d)}~~
- 847 (1) Except as provided in this section, a court, tribunal, or officer, other than the governor or the Board  
of Pardons and Parole, may not stay or suspend the execution of a sentence of death.
- 850 (2) A court may only stay the execution of a sentence of death as described in Utah Rules of Criminal  
Procedure, Rule 27.
- [(i)] (3)
- (a) The executive director of the Department of Corrections ~~[ or a designee under Section 77-19-202 ]~~ ,  
or the executive director's designee, may temporarily suspend the execution of a sentence of death  
under Section 77-19-202 if the ~~[person]~~ individual sentenced to death appears to be incompetent or  
pregnant.
- 855 [(ii)] (b) A temporary suspension under Subsection ~~[(2)(e)(i)]~~ ~~{(2)(d)(i)}~~ (3)(a) shall end if the  
~~[person]~~ individual is determined to be:
- 857 [(A)] (i) competent;
- 858 [(B)] (ii) not pregnant; or
- 859 [(C)] (iii) no longer incompetent or pregnant.
- 860 ~~{(3) {If a court issued a temporary stay under Subsection (2)(a)(iii), the court shall vacate the stay when  
the automatic review of the defendant's sentence is concluded.} }~~
- 862

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- {(4) ~~{If a court issued a temporary stay under Subsection (2)(a)(v) or (vi), the court shall vacate the stay if a petition for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act, is not filed before the statute of limitations passes under Section 78B-9-107.}~~}
- 866 {(5) ~~{Except as provided in Subsection (3) or (4), a stay issued by a court under Subsection (2) automatically expires upon the entry of a final order disposing of the action that triggered the stay.}~~}
- 869 (6)(4) If a stay is vacated or expires before the day on which the sentence is to be executed and the sentence remains in force, the issuance of a new order of execution and warrant is not required to execute the sentence.
- 872 [(3)
- (a) ~~The court must vacate a stay issued pursuant to Subsection (2)(a) when the appeal, automatic review, or action under Title 78B, Chapter 9, Postconviction Remedies Act is concluded.]~~
- 875 [(b){~~(7)~~} {f} A request for{ } The appointment of} counsel under Section 78B-9-202 does not constitute an application for postconviction or other collateral review and does not toll the statute of 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.**
- 880 [(1) ~~If for any reason a judgment of death has not been executed and remains in force, the court where the conviction was had, on application of the prosecuting attorney, shall order the defendant to be brought before it or, if the defendant is at large, issue a warrant for the defendant's apprehension.~~]
- 884 [(2) ~~When the defendant is brought before the court, it shall inquire into the facts and, if no legal reason exists against the execution of judgment, the court shall make an order requiring the executive director of the Department of Corrections or the executive director's designee to ensure that the judgment is executed on a specified day, which may not be fewer than 30 nor more than 60 days after the court's order, and may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301. The court shall also draw and have delivered another warrant under Section 77-19-6.~~]
- 891 (1) If for any reason a sentence of death has not been executed and remains in force, the attorney general, or the county or district attorney in the county or district in which the conviction occurred, may apply for an order of execution from the court in which the conviction occurred.
- 895 (2)
- (a) Within 21 days after the application is filed, the court shall:

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- 896 (i) subject to Subsections (2)(b) and (c), enter an order requiring the executive director of the  
Department of Corrections, or the executive director's designee, to ensure that the sentence  
is executed on a specified day if no legal reason exists against the execution of a sentence for  
death; and
- 900 (ii) draw and deliver another warrant for the execution of the sentence for death in accordance with  
Section 77-19-6.
- 902 (b) Except as provided in Subsection (2)(c), the specified day described in Subsection (2)(a)(i) may not  
be:
- 904 (i) sooner than 30 days after, or later than 60 days after, the day on which the court enters the order for  
execution; or
- 906 (ii) a Sunday, Monday, or legal holiday under Section 63G-1-301.
- 907 (c) If the defendant seeks review of a finding of competency by the Supreme Court and the Supreme  
Court does not set the finding of competency aside, the specified day described in Subsection (2)(a)  
(i) may not be:
- 910 (i) sooner than 15 days after, or later than 30 days after, the day on which the court enters the order for  
execution; and
- 912 (ii) a Sunday, Monday, or legal holiday under Section 63G-1-301.
- 913 (d) No legal reason exists under Subsection (2)(a)(i) if:
- 914 (i) there is no stay in effect for the sentence; and
- 915 (ii) there is no procedural defect in the warrant application process.
- 916 (3) The Department of Corrections shall determine the hour, within the [~~appointed~~] specified 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.**
- 920 (1) The executive director of the Department of Corrections, or [~~a~~] the executive director's designee,  
shall ensure that the method of [~~judgment~~] a sentence of death specified in the warrant or as required  
under Section 77-18-113 is carried out at a secure correctional facility operated by the department  
and at an hour determined by the department on the date specified in the warrant.
- 925 (2) When the [~~judgment~~] sentence of death is to be carried out by lethal intravenous injection, the  
executive director of the department or a designee shall select two or more persons trained in  
accordance with accepted medical practices to administer intravenous injections, who shall each

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administer a continuous intravenous injection, consisting of one or more substances of a type and amount that is sufficiently effective to cause death without a substantial risk of severe pain.

- 931 (3) If the [judgment] sentence of death is to be carried out by firing squad under Subsection  
77-18-113(2), (3), or (4) the executive director of the department or a designee shall select a five-  
person firing squad of peace officers.
- 934 (4) Compensation for persons administering intravenous injections and for members of a firing squad  
under Subsection 77-18-113(2), (3), or (4) shall be in an amount determined by the director of the  
Division of Finance.
- 937 (5) Death under this section shall be certified by a physician.
- 938 (6) The department shall adopt and enforce rules governing procedures for the execution of  
[judgments] sentences of death.

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

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

2. Issues of Pregnancy and Competency for Execution

As used in this part:

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

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

953 {~~2~~} }

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

956 (i){~~a~~} the inmate has been sentenced to death;

957 (ii){~~b~~} all state and federal appeals or review attacking the sentence have been exhausted;

958 (iii){~~c~~} an active warrant for execution has been signed and an execution date has been set as  
described in Sections 77-19-6 and 77-19-9; and

960 (iv){~~d~~} the executive director has good reason to believe that:

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- 961 (A){(i)} the inmate is pregnant; or
- 962 (B){(ii)} the inmate's competency to be executed under this chapter should be addressed by the  
sentencing court.
- 964 {~~(b) {If the sentencing court receives a notice under Subsection (2)(a), the execution of the sentence of~~  
~~death shall be stayed pending further order of the court.}~~}
- 966 (3) If the sentencing court receives a notice under Subsection ~~{(2)(a)}~~ (2) that there is good reason  
for the sentencing court to address an inmate's competency to be executed, the sentencing court  
shall order that the mental condition of the inmate be examined under the provisions of Section  
77-19-204, including holding a hearing at which the state and the inmate may appear as parties.
- 960 Section 15. Section **15** is enacted to read:
- 961 **77-19-202.5. Procedures for pregnant inmate sentenced to death.**
- 973 {~~(1) {If the sentencing court finds that an inmate sentenced to death is pregnant, the sentencing court~~  
~~shall:}~~}
- 975 (a){(1)} If the sentencing court finds that an inmate sentenced to death is pregnant, the sentencing court  
shall immediately transmit a certificate of the finding to the Department of Corrections and the  
Board of Pardons and Parole ~~{;and}~~.
- 977 {~~(b) {issue an order staying the execution of the sentence of death during the pregnancy.}~~}
- 978 (2) When the sentencing court finds that an inmate sentenced to death is no longer pregnant, the  
sentencing court shall:
- 980 (a) immediately transmit a certificate of the finding to the Board of Pardons and Parole; and
- 982 (b) except as provided in Subsection ~~{77-19-8(6)}~~ 77-18-8(4), draw and deliver another warrant in  
accordance with Section 77-19-6, with a copy of the certificate of the finding.
- 984 (3)
- (a) Subject to Subsection (3)(b), the warrant shall state the day on which the sentence is to be executed.
- 986 (b) The day on which the sentence is executed may not be:
- 987 (i) sooner than 30 days after, or later than 60 days after, the day on which the sentencing court issues  
the warrant; or
- 989 (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 -- Contents.**
- 993

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- (1) If an inmate who has been sentenced to death is or becomes incompetent to be executed, a petition under Subsection (2) may be filed in the district court of the county where the inmate is confined.
- 996 (2) The petition shall:
- 997 (a) contain a certificate stating that it is filed in good faith and on reasonable grounds to believe the inmate is incompetent to be executed; and
- 999 (b) contain a specific recital of the facts, observations, and conversations with the inmate ~~[that form the basis for the petition]~~ that give rise to the belief that the inmate may not be competent to be executed.
- 1002 (3) The petition may be:
- 1003 (a) based upon knowledge or information and belief~~[- and may be -]~~ ; and
- 1004 (b) filed by the inmate alleged to be incompetent, legal counsel for the inmate, or by an attorney representing the state.
- 1006 (4)
- (a) A {motion} petition for an examination of the inmate that is filed fewer than 21 days before the day on which the inmate is scheduled to be executed is untimely.
- 1008 (b) A court may not consider a {motion} petition that is untimely under Subsection (4)(a) unless the {motion} petition is accompanied by:
- 1010 (i) at least one affidavit from a licensed physician or licensed psychologist who has examined the inmate and determined that, in the physician's or psychologist's opinion, the inmate is not competent to proceed; and
- 1013 (ii) a statement that establishes good cause for the failure to file a {motion} petition for examination in a timely manner.
- 1015 ~~[(4)]~~ (5) Before ruling on a petition filed by an inmate or ~~[his]~~ the inmate's counsel alleging that the inmate is incompetent to be executed, the court shall give the state and the Department of Corrections an opportunity to respond to the allegations of incompetency.
- 1018 (6) The court shall prioritize any proceeding regarding the examination of the inmate for competency to be executed so that the proceeding is completed before the scheduled execution date.
- 1008 ~~[(5)]~~
- 1021 ~~{(7)} {When a petition is filed under this section, a stay of a scheduled execution may only be granted if there are circumstances beyond the court's control that prevent the court from ruling on the petition before the scheduled execution date.}~~

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If a petition is filed after an inmate has previously been found competent under either this chapter or under Chapter 15, Defendant's Competency to Proceed, no further hearing on competency may be granted unless the successive petition:]

1027 [(a) alleges with specificity a substantial change of circumstances subsequent to the previous  
determination of competency; and]

1029 [(b) is sufficient to raise a significant question about the inmate's competency to be executed.]

1015 Section 17. Section **17** is enacted to read:

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

1033 (1) If a petition described in Section 77-19-203 is filed after an inmate has previously been found  
competent to be executed under this part, the court may not grant a hearing on the competency to be  
executed unless the successive petition:

1036 (a) alleges with specificity a substantial change of circumstances after the previous finding of  
competency by the court;

1038 (b) is sufficient to raise a significant question about the inmate's competency to be executed; and

1040 (c) is accompanied by at least one affidavit from a licensed physician or licensed psychologist who has:

1042 (i) examined the inmate after the previous finding of competency by the court; and

1043 (ii) determined, in the physician's or psychologist's opinion, that the inmate is not competent to be  
executed due to a substantial change in circumstances.

1045 (2) An affidavit described in Subsection (1)(c):

1046 (a) shall contain new and specific facts that support the opinion of the licensed physician or licensed  
psychologist; and

1048 (b) does not meet the requirements of Subsection (1)(c) if any of the new facts described in Subsection  
(2)(a) were known to the defense before the previous finding of the court that the inmate was  
competent to be executed.

1051 (3) In determining whether a successive petition involves a substantial change of circumstances under  
Subsection (1)(a) and raises a significant question under Subsection (1)(b), the court may consider  
evidence given by the state in opposition to the petition.

1054 ~~{(4) {When a successive petition is filed, a stay of a scheduled execution may only be granted if there  
are circumstances beyond the court's control that prevent the court from ruling on the petition before  
the scheduled execution date.}}~~

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

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- 1039           **77-19-204. Order for hearing -- Examinations of inmate -- Scope of examination and report.**
- 1060           ~~[(1) When a court has good reason to believe an inmate sentenced to death is incompetent to be~~  
                  ~~executed, it shall stay the execution and shall order the Department of Health and Human Services~~  
                  ~~to examine the inmate and report to the court concerning the inmate's mental condition.]~~
- 1064           (1) A court shall order the Department of Health and Human Services to immediately examine an  
                  inmate sentenced to death and report to the court concerning the inmate's mental condition if:
- 1067           (a) the court receives notice of a good reason to address the inmate's incompetency to be executed under  
                  Section 77-19-202;
- 1069           (b) a petition is filed with the court that complies with Section 77-19-203 and the court has good reason  
                  to believe the inmate may be incompetent to be executed; or
- 1071           (c) a successive petition is filed with the court that complies with Section 77-19-203.5 and the court has  
                  a significant question about the inmate's competency to be executed.
- 1073           (2)
- (a) The inmate subject to examination under Subsection (1) shall be examined by at least two mental  
                  health experts who are not involved in the inmate's current treatment.
- 1075           (b) The Department of Corrections shall provide information and materials to the examiners relevant to  
                  a determination of the inmate's competency to be executed.
- 1077           (c) The court may provide, in the court's order appointing examiners, that a custodian of mental or  
                  physical health records pertaining to the inmate shall provide the mental or physical health records  
                  to the examiners without the need for consent of the defendant or any further order of the court.
- 1081           (3) The inmate shall make himself or herself available and fully cooperate in the examination by the  
                  Department of Health and Human Services and any other independent examiners for the defense or  
                  the state.
- 1084           (4) ~~[The examiners]~~ An examiner shall in the conduct of ~~[their]~~ the examiner's examinations and in  
                  ~~[their]~~ the examiner's reports to the court consider and address, in addition to any other factors  
                  determined to be relevant by the ~~[examiners]~~ examiner:
- 1087           (a) the inmate's awareness of the fact of the inmate's impending execution;
- 1088           (b) the inmate's understanding that the inmate is to be executed for the crime of murder;
- 1089           (c) the nature of the inmate's mental disorder, if any, and its relationship to the factors relevant to the  
                  inmate's competency; and
- 1091           (d) whether psychoactive medication is necessary to maintain or restore the inmate's competency.

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- 1093 (5)
- (a) ~~[The examiners who are]~~ An examiner who is examining the inmate shall ~~[each provide an initial]~~ provide a report to the court and the attorneys for the state and the inmate within ~~[60 days of the receipt of the court's order]~~ 30 days after the day on which the examiner received the court's order for an examination of the inmate.
- 1097 (b) The report described in Subsection (5)(a) shall inform the court of the examiner's opinion concerning the competency of the inmate to be executed~~[, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report].~~
- 1105 (6)
- (a) All interviews with the inmate conducted by the examiners shall be videotaped, unless otherwise ordered by the court for good cause shown.
- 1107 (b) The Department of Corrections shall provide the videotaping equipment and facilitate the videotaping of the interviews.
- 1109 ~~[(b)]~~ (c) Immediately following the videotaping, the videotape shall be provided to the attorney for the state, who shall deliver ~~[it]~~ the videotape as soon as practicable to the ~~[judge]~~ court in whose court the competency determination is pending.
- 1112 ~~[(e)]~~ (d) The court shall grant counsel for the state and for the inmate, and ~~[examiners who are]~~ an examiner who is examining the inmate under this part access to view the videotape at the court building where the court is located that is conducting the competency determination under this part.
- 1116 (7) Any written report submitted by an examiner shall:
- 1117 (a) identify the specific matters referred for evaluation;
- 1118 (b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;
- 1120 (c) state the examiner's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion; and

1123

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

1125 (8)

(a)

(i) When ~~[the reports]~~ all reports from examiners are received, the court shall set a date for a competency hearing~~[- which shall be held within not less than five and not more than 15 days, unless the court extends the time for good cause.]~~ .

1128 (ii) The competency hearing shall be held no sooner than five days after, or later than 15 days after, the day on which the reports are received by the court.

1130 (b)

(i) Any examiner directed by the Department of Health and Human Services to conduct the examination may be subpoenaed to provide testimony at the hearing.

1132 (ii) If the examiners are in conflict as to the competency of the inmate, all of them should be called to testify at the hearing if they are reasonably available.

1134 (c)

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

1136 (ii) An examiner called by the court may be cross-examined by counsel for the parties.

1138 (9)

(a)

(i) An inmate shall be presumed competent to be executed unless the court, by a preponderance of the evidence, finds the inmate incompetent to be executed.

1140 (ii) The burden of proof is upon the proponent of incompetency at the hearing.

1141 (b) An adjudication of incompetency to be executed does not operate as an adjudication of the inmate's incompetency to give informed consent for medical treatment or for any other purpose~~[- unless specifically set forth in the court order].~~

1144 (10)

(a) If the court finds the inmate incompetent to be executed, ~~[its]~~ the court's order shall contain findings addressing each of the factors in Subsections (4)(a) through (d).

1146 (b) The order finding the inmate incompetent to be executed shall be:

1147 (i) delivered to the Department of Health and Human Services~~[- and shall be-]~~ ; and

1148 (ii) accompanied by:

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- 1149 [(i)] (A) copies of the reports of the examiners filed with the court pursuant to the order of examination,  
if not provided previously;
- 1151 [(ii)] (B) copies of any of the psychiatric, psychological, or social work reports submitted to the court  
relative to the mental condition of the inmate; and
- 1153 [(iii)] (C) any other documents made available to the court by either the defense or the state, pertaining  
to the inmate's current or past mental condition.
- 1155 (c) A copy of the order finding the inmate incompetent to be executed shall be delivered to the  
Department of Corrections.

1138 Section 19. Section 19 is enacted to read:

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

- 1159 (1) If an inmate is found competent to be executed at any time during a proceeding under this chapter,  
the court shall immediately transmit a certificate of the findings to the Board of Pardons and Parole  
and the Department of Corrections.
- 1162 (2) Upon a finding that the inmate is competent to be executed:
- 1163 (a) any stay imposed by the court is automatically lifted{;} [as described in Utah Rules of Criminal  
Procedure, Rule 27; and](#)
- 1164 (b) except as provided in Subsection {77-19-8(6)} [77-19-8\(4\)](#), the court shall draw and deliver another  
warrant of execution, with a copy of the certificate of findings, in accordance with Section 77-19-6{;  
[and](#)};.
- 1167 ~~{(c) {notwithstanding the expedited review described in Subsection 76-3-207(12)(b), the Supreme  
Court may only stay the execution if a stay is necessary to rule on an appeal or a petition for  
extraordinary relief before the scheduled execution date.}}~~

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

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

- 1173 (1)  
[(a)]

{[(i)] If after the hearing under Section 77-19-204 the inmate is found to be incompetent to  
be executed{ } ~~If an inmate is found incompetent to be executed after the hearing described  
in Section 77-19-204 and the stay of the execution has not been issued~~, the court shall

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~~{f}~~ continue the stay of execution and the inmate shall receive appropriate mental health treatment~~{ } issue a stay of the execution~~;:]

1178 (b){(a)}

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

1179 (A) the court shall immediately transmit a certificate of the findings to the Board of Pardons and Parole and the Department of Corrections; {and}

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

1181 (B){(C)} the inmate shall receive appropriate mental health treatment.

1182 (ii) Appropriate mental health treatment under Subsection [(+)(a)(i)] (1)(b)(i)(B) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.

1185 ~~{(b){ } {e)+}~~ The court shall order the executive director of the Department of Health and Human Services to provide periodic assessments to the court regarding the inmate's competency to be executed.

1188 ~~{(c){ } {d)+}~~ The inmate shall be held in secure confinement, either at the prison or the State Hospital, as agreed upon by the executive director of the Department of Corrections and the executive director of the Department of Health and Human Services.

1191 (e){(d)} If the inmate remains at the prison, the Department of Health and Human Services shall consult with the Department of Corrections regarding the inmate's mental health treatment.

1194 (2)

(a) ~~[The examiner or examiners]~~ An examiner designated by the executive director of the Department of Health and Human Services to assess the inmate's progress toward competency may not be involved in the routine treatment of the inmate.

1197 (b) ~~[The examiner or examiners-]~~ An examiner shall each provide a full report to the court and counsel for the state and the inmate within 90 days ~~[of receipt of the court's order]~~ after the day on which the examiner receives the court's order.

1200 (c) If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court~~[-and]~~ , the counsel for the state, and the inmate a summary progress report ~~[which]~~ that informs the court that additional time is necessary to complete the assessment, in

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which case the examiner has up to an additional 90 days to provide the full report, unless the court [~~enlarges~~] extends the time for good cause.

- 1205 (d) The full report shall assess:
- 1206 (i) the facility's or program's capacity to provide appropriate treatment for the inmate;
- 1207 (ii) the nature of treatments provided to the inmate;
- 1208 (iii) what progress toward restoration of competency has been made;
- 1209 (iv) the inmate's current level of mental disorder and need for treatment, if any; and
- 1210 (v) the likelihood of restoration of competency and the amount of time estimated to achieve it.
- 1212 (3) [~~The court on its~~] Upon the court's own motion or upon motion by either party, the court may order the Department of Health and Human Services to appoint additional mental health examiners to examine the inmate and advise the court on the inmate's current mental status and progress toward competency restoration.
- 1216 (4)
- (a) Upon receipt of the full report, the court shall hold a hearing to determine the inmate's current status.
- 1218 (b) At the hearing, the burden of proving that the inmate is competent is on the proponent of competency.
- 1220 [~~(b)~~] (c) Following the hearing, the court shall determine by a preponderance of evidence whether the inmate is competent to be executed.
- 1222 (5)
- (a) If the court determines that the inmate is competent to be executed, [~~it~~] the court shall enter findings and shall proceed under [~~Subsection 77-19-202(2)(e)~~] Section 77-19-204.5.
- 1225 (b)
- (i) If the court determines the inmate is still incompetent to be executed[~~;~~] :
- 1226 (A) the inmate shall continue to receive appropriate mental health treatment[~~, and~~] ; and
- 1228 (B) the court shall hold hearings no less frequently than at 18-month intervals for the purpose of determining the [~~defendant's~~] inmate's competency to be executed.
- 1231 (ii) Continued appropriate mental health treatment under Subsection [~~(1)(a)(i)~~] (1)(b) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.
- 1234 (6)

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

1237 (b) The court shall conduct a hearing regarding the inmate's competency to be executed within 30 working days of the receipt of the notification under Subsection (6)(a), unless the court extends the time for good cause.

1240 (c) The court may order a hearing or rehearing at any time on [its] the court's own motion.

1241 (7) Notice of a hearing on competency to be executed shall be given to:

1242 (a) counsel for the state and for the inmate~~[, as well as to-]~~ ; and

1243 (b) the office of the [prosecutor] prosecuting attorney who prosecuted the inmate on the original capital charge.

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

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

1247 (1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

1249 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect the Supreme Court's orders, judgments, and decrees or in aid of the jurisdiction of the Supreme Court.

1252 (3)

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

1254 (i) a judgment of the Court of Appeals;

1255 (ii) a case certified to the Supreme Court by the Court of Appeals before final judgment by the Court of Appeals;

1257 (iii) the discipline of a lawyer;

1258 (iv) a final order of the Judicial Conduct Commission;

1259 ~~[(v) an interlocutory appeal from a court of record involving a capital felony;]~~

1260 ~~[(vi)]~~ (v) except as provided in Subsection (5), an appeal from the district court involving a conviction or charge of a capital felony;

1262 ~~[(vii)]~~ (vi) an appeal from the district court of an order, judgment, or decree ruling on a legislative subpoena;

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- 1264 [~~(viii)~~] (vii) an appeal of an injunctive order as described in Section 78B-5-1002;
- 1265 [~~(ix)~~] (viii) a judgment, or an interlocutory appeal of an order, of a district court involving:
- 1267 (A) an election or voting contest; or
- 1268 (B) the establishment of boundaries of political districts for purposes of an election; and
- 1270 [~~(x)~~] (ix) the retention or removal of a public officer.
- 1271 (b) The Supreme Court may not transfer any matter described in Subsection (3)(a) to the Court of Appeals.
- 1273 (c) In a case involving an election or voting contest or the establishment of boundaries of political districts for purposes of an election, a judgment is appealable to the Supreme Court even if:
- 1276 (i) a party files a motion or claim for attorney fees under Rule 73 of the Utah Rules of Civil Procedure in the district court; and
- 1278 (ii) the district court has not entered a dispositive order for that motion or claim.
- 1279 (d) The Supreme Court has exclusive and original appellate jurisdiction to conduct an automatic review of a conviction or sentence for a capital felony where the sentence is death in accordance with Subsection 76-3-207(11).
- 1282 (4)
- (a) In addition to Subsection (3)(a), the Supreme Court has original appellate jurisdiction, including original appellate jurisdiction of an interlocutory appeal, over:
- 1284 (i) a final agency action, as described in Section 63G-4-403, in a formal adjudicative proceeding originating from:
- 1286 (A) the Public Service Commission;
- 1287 (B) the State Tax Commission;
- 1288 (C) the School and Institutional Trust Lands Board of Trustees;
- 1289 (D) the Board of Oil, Gas, and Mining;
- 1290 (E) the state engineer; or
- 1291 (F) the executive director of the Department of Natural Resources reviewing an action of the Division of Forestry, Fire, and State Lands;
- 1293 (ii) a final order or decree of the district court review of an informal adjudicative proceeding of an agency described in Subsection (4)(a)(i);
- 1295

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- (iii) a final judgment or decree of a court of record holding a statute of the United States or this state is unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
- 1298 (iv) an interlocutory appeal from a court of record involving a first degree felony;
- 1299 (v) an appeal from a district court involving a conviction or charge of a first degree felony; and
- 1301 (vi) an order, judgment, or decree of a court of record over which the Court of Appeals does not have appellate jurisdiction.
- 1303 (b) The Supreme Court may transfer any matter described in Subsection (4)(a) to the Court of Appeals.
- 1305 (5)
- (a) The Supreme Court may not exercise subject matter jurisdiction over a claim for ineffective assistance of counsel in an appeal from, or upon an automatic review of, a conviction or sentence for a capital felony where the sentence is death.
- 1308 (b) Notwithstanding Subsection (5)(a), the Supreme Court has subject matter jurisdiction over a claim for ineffective assistance of counsel in an appeal involving a petition for postconviction relief from a conviction or sentence for a capital felony where the sentence is death.
- 1312 [~~5~~] (6)
- (a) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication.
- 1314 (b) Notwithstanding Subsection [~~5~~](a) (6)(a), the Supreme Court shall review a case certified to the Supreme Court by the Court of Appeals under Subsection (3)(a)(ii).
- 1316 [~~6~~] (7) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in the Supreme Court's review of an agency adjudicative proceeding.
- 1299 Section 22. Section **78A-5-102** is amended to read:
- 1300 **78A-5-102. Jurisdiction of the district court -- Appeals.**
- 1321 (1) Except as otherwise provided by the Utah Constitution or by statute, the district court has original jurisdiction in all matters civil and criminal.
- 1323 (2) A district court judge may:
- 1324 (a) issue all extraordinary writs and other writs necessary to carry into effect the district court judge's orders, judgments, and decrees; and
- 1326 (b) preside over an action for which the Business and Chancery Court has jurisdiction if:

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- 1327 (i) the district court judge is designated by the presiding officer of the Judicial Council to preside over  
an action in the Business and Chancery Court as described in Section 78A-1-103.5; and
- 1330 (ii) a Business and Chancery Court judge is unable to preside over the action due to recusal or  
disqualification.
- 1332 (3) The district court has jurisdiction:
- 1333 (a) over matters of lawyer discipline consistent with the rules of the Supreme Court;
- 1334 (b) over all matters properly filed in the circuit court prior to July 1, 1996;
- 1335 (c) to enforce foreign protective orders as described in Subsection 78B-7-303(8);
- 1336 (d) to enjoin a violation of Title 58, Chapter 37, Utah Controlled Substances Act;
- 1337 (e) over a petition seeking to terminate parental rights as described in Section 81-13-205;
- 1338 (f) except as provided in Subsection 78A-6-103(2)(a)(xiv) or (xv), over an adoption proceeding; and
- 1340 (g) to issue a declaratory judgment as described in Title 78B, Chapter 6, Part 4, Declaratory Judgments.
- 1342 (4) The district court has appellate jurisdiction over judgments and orders of the justice court  
as outlined in Section 78A-7-118 and small claims appeals filed in accordance with Section  
78A-8-106.
- 1345 (5) The district court has jurisdiction to review:
- 1346 (a) a municipal administrative proceeding as described in Section 10-3-703.7;
- 1347 (b) a decision resulting from a formal adjudicative proceeding by the State Tax Commission as  
described in Section 59-1-601;
- 1349 (c) except as provided in Section 63G-4-402, a final agency action resulting from an informal  
adjudicative proceeding as described in Title 63G, Chapter 4, Administrative Procedures Act; and
- 1352 (d) by trial de novo, a final order of the Department of Transportation resulting from formal and  
informal adjudicative proceedings under Title 72, Chapter 7, Part 2, Junkyard Control Act.
- 1355 (6) The district court has original and exclusive jurisdiction over an action brought under Title 63G,  
Chapter 7, Governmental Immunity Act of Utah.
- 1357 (7) The district court has exclusive jurisdiction to modify a juvenile court's permanent custody and  
guardianship order as described in Subsection 78A-6-357(3)(e)(ii).
- 1359 (8) Notwithstanding Section 78A-7-106, the district court has original jurisdiction over a class B  
misdemeanor, a class C misdemeanor, an infraction, or a violation of an ordinance for which a  
justice court has original jurisdiction under Section 78A-7-106 if:
- 1362 (a) there is no justice court with territorial jurisdiction;

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- 1363 (b) the offense occurred within the boundaries of the municipality in which the district courthouse is  
located and that municipality has not formed, or has formed and dissolved, a justice court; or
- 1366 (c) the offense is included in an indictment or information covering a single criminal episode alleging  
the commission of a felony or a class A misdemeanor by an individual who is 18 years old or older.
- 1369 (9) If a district court has jurisdiction in accordance with Subsection (4), (8)(a), or (8)(b), the district  
court has jurisdiction over an offense listed in Subsection 78A-7-106(2) even if the offense is  
committed by an individual who is 16 or 17 years old.
- 1372 (10) The district court has subject matter jurisdiction over an action under Title 78B, Chapter 7, Part 2,  
Child Protective Orders, if the juvenile court transfers the action to the district court.
- 1375 (11)
- (a) The district court has subject matter jurisdiction over a criminal action that the justice court transfers  
to the district court.
- 1377 (b) Notwithstanding Subsection 78A-7-106(1), the district court has original jurisdiction over any  
refiled case of a criminal action transferred to the district court if the district court dismissed the  
transferred case without prejudice.
- 1380 (12) The district court has no subject matter jurisdiction over a claim for ineffective assistance for  
counsel in a criminal case involving a charge of a capital felony.
- 1382 [~~(12)~~] (13) If the juvenile court has concurrent jurisdiction under Subsection 78A-6-104(1)(a)(i) over  
a parentage action filed in the district court, the district court may transfer jurisdiction over the  
parentage action to the juvenile court.
- 1385 [~~(13)~~] (14) The Supreme Court and Court of Appeals have jurisdiction over an appeal from a final  
order, judgment, and decree of the district court as described in Sections 78A-3-102 and 78A-4-103.  
Section 23. Section **78B-9-202** is amended to read:
- 1368 **78B-9-202. Appointment and payment of counsel in a death penalty case.**
- 1369
- 1390 [~~(1)~~] A person who has been sentenced to death and whose conviction and sentence has been affirmed  
on appeal shall be advised in open court, on the record, in a hearing scheduled no less than 30 days  
prior to the signing of the death warrant, of the provisions of this chapter allowing challenges to the  
conviction and death sentence and the appointment of counsel for indigent petitioners.]
- 1395 [~~(2)~~]
- (a) If a petitioner requests the court to appoint counsel, the court shall determine whether the petitioner  
is indigent and make findings on the record regarding the petitioner's indigency. If the court finds

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that the petitioner is indigent, it shall, subject to the provisions of Subsection (5), promptly appoint counsel who is qualified to represent petitioners in postconviction death penalty cases as required by Rule 8 of the Utah Rules of Criminal Procedure. Counsel who represented the petitioner at trial or on the direct appeal may not be appointed to represent the petitioner under this section.]

1403 [(b) A petitioner who wishes to reject the offer of counsel shall be advised on the record by the court of the consequences of the rejection before the court may accept the rejection.]

1406 (1)

(a) Within 30 days after the day on which the Supreme Court remits a case after affirming an individual's conviction and sentence of death, the sentencing court shall:

1408 (i) advise the individual, in open court and on the record, of the provisions of this chapter allowing challenges to the individual's conviction and sentence; and

1410 (ii) appoint counsel to represent the individual on a petition for postconviction relief in accordance with this section and Rule 8 of the Utah Rules of Criminal Procedure.

1413 (b) Subject to Subsection (1)(c), Subsection (1)(a)(ii) does not prevent an individual from obtaining private counsel or waiving the appointment of counsel.

1415 (c) If an individual wishes to reject the appointment of counsel under Subsection (1)(a)(ii), the sentencing court shall make a finding regarding the individual's understanding of the legal consequences of proceeding without the appointment of postconviction counsel.

1419 (d) The sentencing court may not appoint counsel who represented the individual at trial, or on the direct appeal, under Subsection (1)(a)(ii).

1421 (e) For purposes of Subsection (1)(a)(ii), the Supreme Court shall maintain a list of postconviction counsel qualified to represent an individual who has been sentenced to death on a petition for postconviction relief.

1424 (2) For a second or successive petition for postconviction relief, a court may not appoint postconviction counsel for an individual sentenced to death at the expense of the public, except for a claim:

1427 (a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or

1428 (b) based on Subsection 78B-9-104(1)(g) that could not have been raised in any previously filed post trial motion or postconviction proceeding.

1430 (3)

(a) Attorney fees and litigation expenses incurred in providing the representation provided for in this section and that the court has determined are reasonable shall be paid from state funds by

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the Division of Finance according to rules established pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- 1434 [(a)] (b) In determining whether the requested funds are reasonable, the court should consider:
- 1436 (i) the extent to which the petitioner requests funds to investigate and develop evidence and legal arguments that duplicate the evidence presented and arguments raised in the criminal proceeding; and
- 1439 (ii) whether the petitioner has established that the requested funds are necessary to develop evidence and legal arguments that are reasonably likely to support postconviction relief.
- 1442 [(b)]
- 1443 (c)
- (i) The court may authorize payment of attorney fees at a rate of [~~\$125~~] \$250 per hour up to a maximum of [~~\$60,000~~] \$120,000.
- 1445 (ii) The court may exceed the maximum amount described in Subsection (3)(c)(i) only upon a showing of good cause as established in Subsections [~~(3)(e) and (f)~~] (3)(f) and (g).
- 1448 [(e)]
- 1449 (d)
- (i) The court may authorize litigation expenses up to a maximum of [~~\$20,000~~] \$40,000.
- 1451 (ii) Litigation expenses under Subsection (3)(d)(i) may include payment for an investigator, a mitigation specialist, a mental health and forensic science expert, and support personnel.
- 1454 (iii) The court may exceed the maximum amount described in Subsection (3)(d)(i) only upon a showing of good cause as established in Subsections [~~(3)(e) and (f)~~] (3)(f) and (g).
- 1457 [(d)]
- 1458 (e)
- (i) The court may authorize the petitioner to apply ex parte for the funds permitted in Subsections [~~(3)(b) and (e)~~] (3)(c) and (d) upon a motion to proceed ex parte and if the petitioner establishes the need for confidentiality.
- 1461 (ii) The motion to proceed ex parte must be served on counsel representing the state~~[- and the-]~~ .
- 1463 (iii) The court may not grant the motion without giving the state an opportunity to respond.
- 1465 [(e)] (f) In determining whether good cause exists to exceed the maximum sums established in Subsections [~~(3)(b) and (e)~~] (3)(c) and (d), the court shall consider:

1467

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- (i) the extent to which the work done to date and the further work identified by the petitioner duplicates work and investigation performed during the criminal case under review; and
- 1470 (ii) whether the petitioner has established that the work done to date and the further work identified is reasonably likely to develop evidence or legal arguments that will support postconviction relief.
- 1473 ~~[(f)]~~ (g) The court may permit payment in excess of the maximum amounts established in Subsections ~~[(3)(b) and (e)]~~ (3)(c) and (d) only on the petitioner's motion, provided that:
- 1476 (i) if the court has granted a motion to file ex parte applications under Subsection ~~[(3)(d)]~~ (3)(e), the petitioner ~~[shall serve]~~ serves the motion to exceed the maximum amounts on an assistant attorney general employed in a division other than the one in which the attorney is employed who represents the state in the postconviction case;
- 1481 (ii) if the court has not granted a motion to file ex parte applications, ~~[then the petitioner must serve ]~~ the petitioner serves the attorney representing the state in the postconviction matter with the motion to exceed the maximum funds;
- 1484 ~~[(ii)]~~ (iii) if the motion proceeds under Subsection ~~[(3)(f)(i)]~~ (3)(g)(i), the designated assistant attorney general ~~[may]~~ does not disclose to the attorney representing the state in the postconviction matter any material the petitioner provides in support of the motion except upon a determination by the court that the material is not protected by or that the petitioner has waived the attorney client privilege or work product doctrine; and
- 1490 ~~[(iii)]~~ (iv) the court gives the state an opportunity to respond to the request for funds in excess of the maximum amounts provided in Subsections ~~[(3)(b) and (e)]~~ (3)(c) and (d).
- 1493 (4)
- (a) Nothing in this chapter shall be construed as creating the right to the effective assistance of postconviction counsel~~[, and relief]~~ .
- 1495 (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 postconviction or other collateral review and does not toll the statute of limitations under Section 78B-9-107.
- 1496 ~~[(5) If within 60 days of the request for counsel the court cannot find counsel willing to accept the appointment, the court shall notify the petitioner and the state's counsel in writing. In that event, the petitioner may elect to proceed pro se by serving written notice of that election on the court and state's counsel within 30 days of the court's notice that no counsel could be found. If within 30 days of its notice to the petitioner the court receives no notice that the petitioner elects to proceed pro se,~~

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~~the court shall dismiss any pending postconviction actions and vacate any execution stays, and the state may initiate proceedings under Section 77-19-9 to issue an execution warrant.]~~

1504 [~~(6) Subject to Subsection (2)(a) the court shall appoint counsel to represent the petitioner for the first~~  
petition filed after the direct appeal. For all other petitions, counsel may not be appointed at public  
expense for a petitioner, except to raise claims:]

1507 [~~(a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or]~~

1508 [~~(b) based on Subsection 78B-9-104(1)(g) that could not have been raised in any previously filed post~~  
trial motion or postconviction proceeding.]

1493 Section 24. **Repealer.**

This Bill Repeals:

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.**

Effective Date.

This bill takes effect on May 6, 2026.

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