

Effective 5/3/2023

Part 3
Utah State Hospital and Other Mental Health Facilities

26B-5-301 Definitions.

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

- (1) "Adult" means an individual 18 years old or older.
- (2) "Approved treatment facility or program" means a mental health or substance use treatment provider that meets the goals and measurements described in Subsection 26B-5-102(2)(j).
- (3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under Section 26B-5-351.
- (4) "Attending physician" means a physician licensed to practice medicine in this state who has primary responsibility for the care and treatment of the declarant.
- (5) "Attorney-in-fact" means an adult properly appointed under this part to make mental health treatment decisions for a declarant under a declaration for mental health treatment.
- (6) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area where the adult resides or is found.
- (7) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.
- (8) "Designated examiner" means:
 - (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness; or
 - (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.
- (9) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.
- (10) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.
- (11) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in Subsections 76-5-406(2)(a) through (l):
 - (a) sexual intercourse;
 - (b) penetration, however slight, of the genital or anal opening of the individual;
 - (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or
 - (d) any sexual act causing substantial emotional injury or bodily pain.
- (12) "Informed waiver" means the patient was informed of a right and, after being informed of that right and the patient's right to waive the right, expressly communicated his or her intention to waive that right.

- (13) "Incapable" means that, in the opinion of the court in a guardianship proceeding under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.
- (14) "Institution" means a hospital or a health facility licensed under Section 26B-2-206.
- (15) "Local substance abuse authority" means the same as that term is defined in Section 26B-5-101 and described in Section 17-43-201.
- (16) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, a person that contracts with a local mental health authority, or a person that provides acute inpatient psychiatric services to a patient.
- (17) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to:
 - (a) apply for and provide certification for a temporary commitment; or
 - (b) assist in the arrangement of transportation to a designated mental health facility.
- (18) "Mental illness" means:
 - (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or
 - (b) the same as that term is defined in:
 - (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or
 - (ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.
- (19) "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, or admission to and retention in a facility for a period not to exceed 17 days.
- (20) "Patient" means an individual who is:
 - (a) under commitment to the custody or to the treatment services of a local mental health authority; or
 - (b) undergoing essential treatment and intervention.
- (21) "Physician" means an individual who is:
 - (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
 - (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- (22) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (23) "State hospital" means the Utah State Hospital established in Section 26B-5-302.
- (24) "Substantial danger" means that due to mental illness, an individual is at serious risk of:
 - (a) suicide;
 - (b) serious bodily self-injury;
 - (c) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter;
 - (d) causing or attempting to cause serious bodily injury to another individual;
 - (e) engaging in harmful sexual conduct; or
 - (f) if not treated, suffering severe and abnormal mental, emotional, or physical distress that:
 - (i) is associated with significant impairment of judgment, reason, or behavior; and
 - (ii) causes a substantial deterioration of the individual's previous ability to function independently.

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

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-302 Utah State Hospital.

The Utah State Hospital is established and located in Provo, in Utah county.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-302.5 Study concerning civil commitment and the Utah State Hospital.

- (1)
 - (a) The Utah Substance Use and Mental Health Advisory Committee shall study and make recommendations concerning the need for expanded civil commitment capacity in the state, including an analysis of the anticipated impact that any changes to civil commitment standards made during the 2024 General Session will have on the number of individuals subject to civil commitment.
 - (b) The study and recommendations described in Subsection (1)(a) shall also address the role of the Utah State Hospital in serving patients who are subject to court-ordered treatment, including civil commitment.
 - (c) The study and recommendations described in Subsection (1)(a) shall also address any additional resources or services needed to decrease the likelihood that individuals who are subject to court-ordered treatment, including civil commitment, will enter or reenter the Utah State Hospital or another inpatient facility.
- (2) The Utah Substance Use and Mental Health Advisory Committee shall provide a report on the study and recommendations described in Subsection (1) to the Judiciary Interim Committee at or before the committee's October 2024 interim meeting.

Enacted by Chapter 299, 2024 General Session

26B-5-303 Administration of state hospital -- Division -- Authority.

- (1) The division shall administer the state hospital as part of the state's comprehensive mental health program and, to the fullest extent possible, shall, as the state hospital's administrator, coordinate with local mental health authority programs.
- (2) The division has the same powers, duties, rights, and responsibilities as, and shall perform the same functions that by law are conferred or required to be discharged or performed by, the state hospital.
- (3) Supervision and administration of security responsibilities for the state hospital is vested in the division. The executive director shall designate, as special function officers, individuals with peace officer authority to perform special security functions for the state hospital.
- (4) A director of a mental health facility that houses an involuntary patient or a patient committed by judicial order may establish secure areas, as provided in Section 76-8-311.1, within the mental health facility for the patient.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-304 Appointment of superintendent -- Qualifications -- Powers and responsibilities.

- (1) The director, with the consent of the executive director, shall appoint a superintendent of the state hospital, who shall hold office at the will of the director.
- (2) The superintendent shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning mental health.
- (3) The superintendent has general responsibility for the buildings, grounds, and property of the state hospital.
- (4) The superintendent shall appoint, with the approval of the director, as many employees as necessary for the efficient and economical care and management of the state hospital, and shall fix the employees' compensation and administer personnel functions according to the standards of the Division of Human Resource Management.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-305 Clinical director -- Appointment -- Conditions and procedure -- Duties.

- (1) Whenever the superintendent is not qualified to be the clinical director of the state hospital under this section, the superintendent shall, with the approval of the director of the division, appoint a clinical director who is licensed to practice medicine and surgery in this state, and who has had at least three years' training in a psychiatric residency program approved by the American Board of Psychiatry and Neurology, Inc., and who is eligible for certification by that board.
- (2) The salary of the clinical director of the state hospital shall be fixed by the standards of the Division of Finance, to be paid in the same manner as the salaries of other employees.
- (3) The clinical director shall perform such duties as directed by the superintendent and prescribed by the rules of the board, and shall prescribe and direct the treatment of patients and adopt sanitary measures for their welfare.
- (4) If the superintendent is qualified to be the clinical director, the superintendent may assume the duties of the clinical director.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-306 Objectives of state hospital and other facilities -- Persons who may be admitted to state hospital.

- (1) The objectives of the state hospital and other mental health facilities shall be to care for all persons within this state who are subject to the provisions of this chapter; and to furnish them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement, occupation, and support that is conducive to their physical and mental well-being.
- (2) Only the following persons may be admitted to the state hospital:
 - (a) persons 18 years old and older who meet the criteria necessary for commitment under this part and who have severe mental disorders for whom no appropriate, less restrictive treatment alternative is available;
 - (b) persons under 18 years old who meet the criteria necessary for commitment under Part 4, Commitment of Persons under Age 18, and for whom no less restrictive alternative is available;
 - (c) persons adjudicated and found to be guilty with a mental condition under Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition;

- (d) persons adjudicated and found to be not guilty by reason of insanity who are under a subsequent commitment order because they have a mental illness and are a danger to themselves or others, under Section 77-16a-302;
- (e) persons found incompetent to proceed under Section 77-15-6;
- (f) persons who require an examination under Title 77, Utah Code of Criminal Procedure; and
- (g) persons in the custody of the Department of Corrections, admitted in accordance with Section 26B-5-372, giving priority to those persons with severe mental disorders.

Amended by Chapter 184, 2023 General Session
Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-307 Additional powers of director -- Reports and records of division.

- (1) In addition to specific authority granted by other provisions of this part, the director has authority to prescribe the form of applications, records, reports, and medical certificates provided for under this part, and the information required to be contained therein, and to adopt rules that are not inconsistent with the provisions of this part that the director finds to be reasonably necessary for the proper and efficient commitment of persons with a mental illness.
- (2) The division shall require reports relating to the admission, examination, diagnosis, release, or discharge of any patient and investigate complaints made by any patient or by any person on behalf of a patient.
- (3) A local mental health authority shall keep a record of the names and current status of all persons involuntarily committed to it under this chapter.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-308 Standards for care and treatment.

Every patient is entitled to humane care and treatment and to medical care and treatment in accordance with the prevailing standards accepted in medical practice, psychiatric nursing practice, social work practice, and the practice of clinical psychology.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-309 Mechanical restraints and medication -- Clinical record.

- (1) Mechanical restraints may not be applied to a patient unless it is determined by the director or his designee to be required by the needs of the patient. Every use of a mechanical restraint and the reasons therefor shall be made a part of the patient's clinical record, under the signature of the director or his designee, and shall be reviewed regularly.
- (2) In no event shall medication be prescribed for a patient unless it is determined by a physician to be required by the patient's medical needs. Every use of a medication and the reasons therefor shall be made a part of the patient's clinical record.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-310 Restrictions and limitations -- Civil rights and privileges.

- (1) Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to:

- (a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside the facility;
 - (b) receive visitors; and
 - (c) exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity.
- (2) When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division, the appropriate local mental health authority, the appropriate local substance abuse authority, or an approved treatment facility or program, whichever is most applicable to the patient.
- (3) Notwithstanding any limitations authorized under this section on the right of communication, each patient is entitled to communicate by sealed mail with the appropriate local mental health authority, the appropriate local substance abuse authority, an approved treatment facility or program, the division, the patient's attorney, and the court, if any, that ordered the patient's commitment or essential treatment. In no case may the patient be denied a visit with the legal counsel or clergy of the patient's choice.
- (4) Local mental health authorities, local substance abuse authorities, and approved treatment facilities or programs shall provide reasonable means and arrangements for informing involuntary patients of their right to release as provided in this chapter, and for assisting them in making and presenting requests for release.
- (5) Mental health facilities, local substance abuse authorities, and approved treatment facilities or programs shall post a statement, created by the division, describing a patient's rights under Utah law.
- (6) Notwithstanding Section 53B-17-303, an individual committed under this chapter has the right to determine the final disposition of that individual's body after death.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-311 Habeas corpus.

Any individual detained pursuant to this part is entitled to the writ of habeas corpus upon proper petition by themselves or a friend, to the court in the county in which the individual is detained.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-312 Confidentiality of information and records -- Exceptions -- Penalty.

- (1) All certificates, applications, records, and reports made for the purpose of this part, including those made on judicial proceedings for involuntary commitment, that directly or indirectly identify a patient or former patient or an individual whose commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person except insofar as:
- (a) the individual identified or his legal guardian, if any, or, if a minor, his parent or legal guardian shall consent;
 - (b) disclosure may be necessary to carry out the provisions of:
 - (i) this part; or
 - (ii) Section 53-10-208.1; or

- (c) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it, and that failure to make the disclosure would be contrary to the public interest.
- (2) A person who knowingly or intentionally discloses any information not authorized by this section is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-313 Declaration for mental health treatment.

- (1) An adult who is not incapable may make a declaration of preferences or instructions regarding the adult's mental health treatment. The declaration may include, but is not limited to, consent to or refusal of specified mental health treatment.
- (2) A declaration for mental health treatment shall designate a capable adult to act as attorney-in-fact to make decisions about mental health treatment for the declarant. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the declarant only when the declarant is incapable. The decisions shall be consistent with any instructions or desires the declarant has expressed in the declaration.
- (3) A declaration is effective only if it is signed by the declarant and two capable adult witnesses. The witnesses shall attest that the declarant is known to them, signed the declaration in their presence, appears to be of sound mind and is not under duress, fraud, or undue influence. Persons specified in Subsection 26B-5-314(6) may not act as witnesses.
- (4) A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment provider and remains valid until it expires or is revoked by the declarant. The physician or provider is authorized to act in accordance with an operative declaration when the declarant has been found to be incapable. The physician or provider shall continue to obtain the declarant's informed consent to all mental health treatment decisions if the declarant is capable of providing informed consent or refusal.
- (5)
 - (a) An attorney-in-fact does not have authority to make mental health treatment decisions unless the declarant is incapable.
 - (b) An attorney-in-fact is not, solely as a result of acting in that capacity, personally liable for the cost of treatment provided to the declarant.
 - (c) Except to the extent that a right is limited by a declaration or by any federal law, an attorney-in-fact has the same right as the declarant to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.
 - (d) In exercising authority under the declaration, the attorney-in-fact shall act consistently with the instructions and desires of the declarant, as expressed in the declaration. If the declarant's desires are unknown, the attorney-in-fact shall act in what the attorney-in-fact, in good faith, believes to be the best interest of the declarant.
 - (e) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health treatment.
- (6)
 - (a) A declaration for mental health treatment remains effective for a period of three years or until revoked by the declarant. If a declaration for mental health treatment has been invoked and

is in effect at the expiration of three years after its execution, the declaration remains effective until the declarant is no longer incapable.

- (b) The authority of a named attorney-in-fact and any alternative attorney-in-fact continues in effect as long as the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.
- (7) A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a facility.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-314 Physician and provider responsibilities -- Provision of services contrary to declaration -- Revocation.

- (1) Upon being presented with a declaration, a physician shall make the declaration a part of the declarant's medical record. When acting under authority of a declaration, a physician shall comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider shall promptly notify the declarant and the attorney-in-fact, and document the notification in the declarant's medical record.
- (2) A physician or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's wishes, as expressed in a declaration for mental health treatment if:
 - (a) the declarant has been committed to the custody of a local mental health authority in accordance with this part; or
 - (b) in cases of emergency endangering life or health.
- (3) A declaration does not limit any authority provided in this part, to take a person into custody, or admit or retain a person in the custody of a local mental health authority.
- (4) A declaration may be revoked in whole or in part by the declarant at any time so long as the declarant is not incapable. That revocation is effective when the declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.
- (5) A physician who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding that a declaration is invalid.
- (6) None of the following persons may serve as an attorney-in-fact or as witnesses to the signing of a declaration:
 - (a) the declarant's attending physician or mental health treatment provider, or an employee of that physician or provider;
 - (b) an employee of the division; or
 - (c) an employee of a local mental health authority or any organization that contracts with a local mental health authority.
- (7) An attorney-in-fact may withdraw by giving notice to the declarant. If a declarant is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician shall note the withdrawal as part of the declarant's medical record.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-315 Declaration for mental health treatment -- Form.

A declaration for mental health treatment shall be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment, to be followed if it is determined by a court or by two physicians that my ability to receive and evaluate information effectively or to communicate my decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, and admission to and retention in a mental health facility for a period up to 17 days.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

_____ I consent to the administration of the following medications:

_____ in the dosages:

_____ considered appropriate by my attending physician.

_____ approved by _____

_____ as I hereby direct: _____

_____ I do not consent to the administration of the following medications:

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

_____ I consent to the administration of convulsive treatment of the following type:

_____, the number of treatments to be:

_____ determined by my attending physician.

_____ approved by _____

_____ as follows: _____

_____ I do not consent to the administration of convulsive treatment.

My reasons for consenting to or refusing convulsive treatment are as follows;

ADMISSION TO AND RETENTION IN A MENTAL HEALTH FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility are as follows:

_____ I consent to being admitted to the following mental health facilities:

_____ I may be retained in the facility for a period of time:

_____ determined by my attending physician.

_____ approved by _____
_____ no longer than _____

This directive cannot, by law, provide consent to retain me in a facility for more than 17 days.

ADDITIONAL REFERENCES OR INSTRUCTIONS

ATTORNEY-IN-FACT

I hereby appoint:

NAME _____

ADDRESS _____

TELEPHONE # _____

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my alternative attorney-in-fact:

NAME _____

ADDRESS _____

TELEPHONE # _____

My attorney-in-fact is authorized to make decisions which are consistent with the wishes I have expressed in this declaration. If my wishes are not expressed, my attorney-in-fact is to act in good faith according to what he or she believes to be in my best interest.

(Signature of Declarant/Date)

AFFIRMATION OF WITNESSES

We affirm that the declarant is personally known to us, that the declarant signed or acknowledged the declarant's signature on this declaration for mental health treatment in our presence, that the declarant appears to be of sound mind and does not appear to be under duress, fraud, or undue influence. Neither of us is the person appointed as attorney-in-fact by this document, the attending physician, an employee of the attending physician, an employee of the Office of Substance Abuse and Mental Health within the Department of Health and Human Services, an employee of a local mental health authority, or an employee of any organization that contracts with a local mental health authority.

Witnessed By:

(Signature of Witness/Date)

(Printed Name of Witness)

(Signature of Witness/Date)

(Printed Name of Witness)

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the declarant. I understand that I have a duty to act consistently with the desires of the declarant as expressed in the declaration. I understand that this document gives me authority to make decisions about mental health treatment only while the declarant is incapable as determined by a court or two physicians. I understand that the declarant may revoke this appointment, or the declaration, in whole or in part, at any time and in any manner, when the declarant is not incapable.

(Signature of Attorney-in-fact/Date)

(Printed name)

(Signature of Alternate Attorney-in-fact/Date)

(Printed name)

NOTICE TO PERSON MAKING A
DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It is a declaration that allows, or disallows, mental health treatment. Before signing this document, you should know that:

- (1) this document allows you to make decisions in advance about three types of mental health treatment: psychoactive medication, convulsive therapy, and short-term (up to 17 days) admission to a mental health facility;
- (2) the instructions that you include in this declaration will be followed only if a court or two physicians believe that you are incapable of otherwise making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for treatment;
- (3) you may also appoint a person as your attorney-in-fact to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, to make decisions in accordance with what that person believes, in good faith, to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your attorney-in-fact at any time;
- (4) this document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable;
- (5) you have the right to revoke this document in whole or in part, or the appointment of an attorney-in-fact, at any time you have not been determined to be incapable. **YOU MAY NOT REVOKE THE DECLARATION OR APPOINTMENT WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT OR TWO PHYSICIANS.** A revocation is effective when it is communicated to your attending physician or other provider; and
- (6) if there is anything in this document that you do not understand, you should ask an attorney to explain it to you. This declaration is not valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

Renumbered and Amended by Chapter 308, 2023 General Session

Effective until 9/1/2024

26B-5-316 Responsibility for cost of care.

- (1) The division shall estimate and determine, as nearly as possible, the actual expense per annum of caring for and maintaining a patient in the state hospital, and that amount or portion of that amount shall be assessed to and paid by the applicant, patient, spouse, parents, child or children who are of sufficient financial ability to do so, or by the guardian of the patient who has funds of the patient that may be used for that purpose.
- (2) In addition to the expenses described in Subsection (1), parents are responsible for the support of their child while the child is in the care of the state hospital pursuant to Title 78B, Chapter 12, Utah Child Support Act, and Title 26B, Chapter 9, Recovery Services and Administration of Child Support.

Renumbered and Amended by Chapter 308, 2023 General Session

Effective 9/1/2024

26B-5-316 Responsibility for cost of care.

- (1) The division shall estimate and determine, as nearly as possible, the actual expense per annum of caring for and maintaining a patient in the state hospital, and that amount or portion of that amount shall be assessed to and paid by the applicant, patient, spouse, parents, child or children who are of sufficient financial ability to do so, or by the guardian of the patient who has funds of the patient that may be used for that purpose.
- (2) In addition to the expenses described in Subsection (1), parents are responsible for the support of their child while the child is in the care of the state hospital in accordance with Title 26B, Chapter 9, Recovery Services and Administration of Child Support, and Title 81, Chapter 6, Child Support.

Amended by Chapter 366, 2024 General Session

26B-5-317 Expenses of voluntary patients.

The expense for the care and treatment of voluntary patients shall be assessed to and paid in the same manner and to the same extent as is provided for involuntary patients under the provisions of Section 26B-5-316.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-318 Liability of estate of person with a mental illness.

The provisions made in this part for the support of persons with a mental illness at public expense do not release the estates of those persons from liability for their care and treatment, and the division is authorized and empowered to collect from the estates of those persons any sums paid by the state in their behalf.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-319 Receipt of gift and personal property related to the transfer of persons from other institutions.

- (1) The division may take and hold by gift, devise, or bequest real and personal property required for the use of the state hospital. With the approval of the governor the division may convert that property that is not suitable for the state hospital's use into money or property that is suitable for the state hospital's use.
- (2) The state hospital is authorized to receive from any other institution within the department an individual committed to that institution, when a careful evaluation of the treatment needs of the individual and of the treatment programs available at the state hospital indicates that the transfer would be in the interest of that individual.
- (3)
 - (a) For the purposes of this Subsection (3), "contributions" means gifts, grants, devises, and donations.
 - (b) Notwithstanding the provisions of Subsection 26B-1-202(10), the state hospital is authorized to receive contributions and deposit the contributions into an interest-bearing restricted special revenue fund. The state treasurer may invest the fund, and all interest will remain in the fund.
 - (c)

- (i) Single expenditures from the fund in amounts of \$5,000 or less shall be approved by the superintendent.
- (ii) Single expenditures exceeding \$5,000 must be preapproved by the superintendent and the division director.
- (iii) Expenditures described in this Subsection (3) shall be used for the benefit of patients at the state hospital.
- (d) Money and interest in the fund may not be used for items normally paid for by operating revenues or for items related to personnel costs without specific legislative authorization.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-320 Trespass -- Disturbance -- Penalty.

Any person who, without permission, enters any of the buildings or enclosures appropriated to the use of patients, or makes any attempt to do so, or enters anywhere upon the premises belonging to or used by the division, a local mental health authority, or the state hospital and commits, or attempts to commit, any trespass or depredation thereon, or any person who, either from within or without the enclosures, willfully annoys or disturbs the peace or quiet of the premises or of any patient therein, is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-321 Abduction of patient -- Penalty.

Any person who abducts a patient who is in the custody of a local mental health authority, or induces any patient to elope or escape from that custody, or attempts to do so, or aids or assists therein, is guilty of a class B misdemeanor, in addition to liability for damages, or subject to other criminal charges.

Renumbered and Amended by Chapter 308, 2023 General Session

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

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

Amended by Chapter 184, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-323 Violations of this part -- Penalty.

Any person who willfully and knowingly violates any provision of this part, except where another penalty is provided by law, is guilty of a class C misdemeanor.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-324 Local mental health authority -- Supervision and treatment of persons with a mental illness.

- (1) Each local mental health authority has responsibility for supervision and treatment of persons with a mental illness who have been committed to its custody under the provisions of this part, whether residing in the state hospital or elsewhere.
- (2) The division, in administering and supervising the security responsibilities of the state hospital under its authority provided by Section 26B-5-303, shall enforce Sections 26B-5-320 through 26B-5-323 and Section 26B-5-342 to the extent they pertain to the state hospital.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-325 Responsibility for education of school-aged children at the hospital -- Responsibility for noninstructional services.

- (1) The State Board of Education is responsible for the education of school-aged children committed to the division.
- (2) In order to fulfill its responsibility under Subsection (1), the board may contract with local school districts or other appropriate agencies to provide educational and related administrative services.
- (3) Medical, residential, and other noninstructional services at the state hospital are the responsibility of the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-326 Allocation of state hospital beds -- Formula.

- (1) As used in this section:
 - (a) "Adult beds" means the total number of patient beds located in the adult general psychiatric unit and the geriatric unit at the state hospital, as determined by the superintendent of the state hospital.
 - (b) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.
- (2)
 - (a) The division shall establish by rule a formula to separately allocate to local mental health authorities adult beds for persons who meet the requirements of Subsection 26B-5-306(2)
 - (a). Beginning on May 10, 2011, and ending on June 30, 2011, 152 beds shall be allocated to local mental health authorities under this section.
 - (b) The number of beds shall be reviewed and adjusted as necessary:
 - (i) on July 1, 2011, to restore the number of beds allocated to 212 beds as funding permits; and
 - (ii) on July 1, 2011, and every three years after July 1, 2011, according to the state's population.
 - (c) All population figures utilized shall reflect the most recent available population estimates from the Utah Population Committee.
- (3) The formula established under Subsection (2) shall provide for allocation of beds based on:
 - (a) the percentage of the state's adult population located within a mental health catchment area; and
 - (b) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located in urban areas.
- (4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.
- (5) The division shall allocate adult beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental

health authority is unable to access a bed allocated to it under the formula established under Subsection (2), the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.

- (6) The board shall periodically review and make changes in the formula established under Subsection (2) as necessary to accurately reflect changes in population.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-327 Allocation of pediatric state hospital beds -- Formula.

- (1) As used in this section:
 - (a) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.
 - (b) "Pediatric beds" means the total number of patient beds located in the children's unit and the youth units at the state hospital, as determined by the superintendent of the state hospital.
- (2) On July 1, 1996, 72 pediatric beds shall be allocated to local mental health authorities under this section. The division shall review and adjust the number of pediatric beds as necessary every three years according to the state's population of persons under 18 years old. All population figures utilized shall reflect the most recent available population estimates from the Governor's Office of Planning and Budget.
- (3) The allocation of beds shall be based on the percentage of the state's population of persons under 18 years old located within a mental health catchment area. Each community mental health center shall be allocated at least one bed.
- (4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.
- (5) The division shall allocate 72 pediatric beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under that formula, the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-330 Involuntary commitment -- Procedures.

- (1) An adult may not be involuntarily committed to the custody of a local mental health authority except under the following provisions:
 - (a) emergency procedures for temporary commitment upon medical or designated examiner certification, as provided in Subsection 26B-5-331(1)(a);
 - (b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection 26B-5-331(1)(b); or
 - (c) commitment on court order, as provided in Section 26B-5-332.
- (2) A person under 18 years old may be committed to the physical custody of a local mental health authority only in accordance with the provisions of Part 4, Commitment of Persons Under Age 18.

Renumbered and Amended by Chapter 308, 2023 General Session

Effective until 7/1/2024

26B-5-331 Temporary commitment -- Requirements and procedures -- Rights.

- (1) An adult shall be temporarily, involuntarily committed to a local mental health authority upon:
 - (a) a written application that:
 - (i) is completed by a responsible individual who has reason to know, stating a belief that the adult, due to mental illness, is likely to pose substantial danger to self or others if not restrained and stating the personal knowledge of the adult's condition or circumstances that lead to the individual's belief; and
 - (ii) includes a certification by a licensed physician, licensed physician assistant, licensed nurse practitioner, or designated examiner stating that the physician, physician assistant, nurse practitioner, or designated examiner has examined the adult within a three-day period immediately preceding the certification, and that the physician, physician assistant, nurse practitioner, or designated examiner is of the opinion that, due to mental illness, the adult poses a substantial danger to self or others; or
 - (b) a peace officer or a mental health officer:
 - (i) observing an adult's conduct that gives the peace officer or mental health officer probable cause to believe that:
 - (A) the adult has a mental illness; and
 - (B) because of the adult's mental illness and conduct, the adult poses a substantial danger to self or others; and
 - (ii) completing a temporary commitment application that:
 - (A) is on a form prescribed by the division;
 - (B) states the peace officer's or mental health officer's belief that the adult poses a substantial danger to self or others;
 - (C) states the specific nature of the danger;
 - (D) provides a summary of the observations upon which the statement of danger is based; and
 - (E) provides a statement of the facts that called the adult to the peace officer's or mental health officer's attention.
- (2) If at any time a patient committed under this section no longer meets the commitment criteria described in Subsection (1), the local mental health authority or the local mental health authority's designee shall:
 - (a) document the change and release the patient; and
 - (b) if the patient was admitted under Subsection (1)(b), notify the peace officer or mental health officer of the patient's release.
- (3) A patient committed under this section may be held for a maximum of 72 hours after commitment, excluding Saturdays, Sundays, and legal holidays, unless:
 - (a) as described in Section 26B-5-332, an application for involuntary commitment is commenced, which may be accompanied by an order of detention described in Subsection 26B-5-332(4); or
 - (b) the patient makes a voluntary application for admission.
- (4) Upon a written application described in Subsection (1)(a) or the observation and belief described in Subsection (1)(b)(i), the adult shall be:
 - (a) taken into a peace officer's protective custody, by reasonable means, if necessary for public safety; and
 - (b) transported for temporary commitment to a facility designated by the local mental health authority, by means of:
 - (i) an ambulance, if the adult meets any of the criteria described in Section 26B-4-119;

- (ii) an ambulance, if a peace officer is not necessary for public safety, and transportation arrangements are made by a physician, physician assistant, nurse practitioner, designated examiner, or mental health officer;
 - (iii) the city, town, or municipal law enforcement authority with jurisdiction over the location where the adult is present, if the adult is not transported by ambulance;
 - (iv) the county sheriff, if the designated facility is outside of the jurisdiction of the law enforcement authority described in Subsection (4)(b)(iii) and the adult is not transported by ambulance; or
 - (v) nonemergency secured behavioral health transport as that term is defined in Section 26B-4-101.
- (5) Notwithstanding Subsection (4):
- (a) an individual shall be transported by ambulance to an appropriate medical facility for treatment if the individual requires physical medical attention;
 - (b) if an officer has probable cause to believe, based on the officer's experience and de-escalation training that taking an individual into protective custody or transporting an individual for temporary commitment would increase the risk of substantial danger to the individual or others, a peace officer may exercise discretion to not take the individual into custody or transport the individual, as permitted by policies and procedures established by the officer's law enforcement agency and any applicable federal or state statute, or case law; and
 - (c) if an officer exercises discretion under Subsection (4)(b) to not take an individual into protective custody or transport an individual, the officer shall document in the officer's report the details and circumstances that led to the officer's decision.
- (6)
- (a) The local mental health authority shall inform an adult patient committed under this section of the reason for commitment.
 - (b) An adult patient committed under this section has the right to:
 - (i) within three hours after arrival at the local mental health authority, make a telephone call, at the expense of the local mental health authority, to an individual of the patient's choice; and
 - (ii) see and communicate with an attorney.
- (7)
- (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this section.
 - (b) This section does not create a special duty of care.
- (8)
- (a) A local mental health authority shall provide discharge instructions to each individual committed under this section at or before the time the individual is discharged from the local mental health authority's custody, regardless of whether the individual is discharged by being released, taken into a peace officer's protective custody, transported to a medical facility or other facility, or other circumstances.
 - (b) Discharge instructions provided under Subsection (8)(a) shall include:
 - (i) a summary of why the individual was committed to the local mental health authority;
 - (ii) detailed information about why the individual is being discharged from the local mental health authority's custody;
 - (iii) a safety plan for the individual based on the individual's mental illness or mental or emotional state;
 - (iv) notification to the individual's primary care provider, if applicable;
 - (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual's community;

- (vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;
 - (vii) a copy of any psychiatric advance directive presented to the local mental health authority, if applicable;
 - (viii) information about how to establish a psychiatric advance directive if one was not presented to the local mental health authority;
 - (ix) as applicable, information about medications that were changed or discontinued during the commitment;
 - (x) a list of any screening or diagnostic tests conducted during the commitment;
 - (xi) a summary of therapeutic treatments provided during the commitment;
 - (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
 - (xiii) information about how to contact the local mental health authority if needed.
- (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection (8)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.
- (d) If an individual refuses to accept discharge instructions, the local mental health authority shall document the refusal in the individual's medical record.
- (e) If an individual's discharge instructions include referrals to services under Subsection (8)(b) (v), the local mental health authority shall document those referrals in the individual's medical record.
- (f) The local mental health authority shall attempt to follow up with a discharged individual at least 48 hours after discharge, and may use peer support professionals when performing follow-up care or developing a continuing care plan.

Amended by Chapter 299, 2024 General Session

Effective 7/1/2024

26B-5-331 Temporary commitment -- Requirements and procedures -- Rights.

- (1) An adult shall be temporarily, involuntarily committed to a local mental health authority upon:
- (a) a written application that:
 - (i) is completed by a responsible individual who has reason to know, stating a belief that the adult, due to mental illness, is likely to pose substantial danger to self or others if not restrained and stating the personal knowledge of the adult's condition or circumstances that lead to the individual's belief; and
 - (ii) includes a certification by a licensed physician, licensed physician assistant, licensed nurse practitioner, or designated examiner stating that the physician, physician assistant, nurse practitioner, or designated examiner has examined the adult within a three-day period immediately preceding the certification, and that the physician, physician assistant, nurse practitioner, or designated examiner is of the opinion that, due to mental illness, the adult poses a substantial danger to self or others; or
 - (b) a peace officer or a mental health officer:
 - (i) observing an adult's conduct that gives the peace officer or mental health officer probable cause to believe that:
 - (A) the adult has a mental illness; and

- (B) because of the adult's mental illness and conduct, the adult poses a substantial danger to self or others; and
- (ii) completing a temporary commitment application that:
 - (A) is on a form prescribed by the division;
 - (B) states the peace officer's or mental health officer's belief that the adult poses a substantial danger to self or others;
 - (C) states the specific nature of the danger;
 - (D) provides a summary of the observations upon which the statement of danger is based; and
 - (E) provides a statement of the facts that called the adult to the peace officer's or mental health officer's attention.
- (2) If at any time a patient committed under this section no longer meets the commitment criteria described in Subsection (1), the local mental health authority or the local mental health authority's designee shall:
 - (a) document the change and release the patient; and
 - (b) if the patient was admitted under Subsection (1)(b), notify the peace officer or mental health officer of the patient's release.
- (3) A patient committed under this section may be held for a maximum of 72 hours after commitment, excluding Saturdays, Sundays, and legal holidays, unless:
 - (a) as described in Section 26B-5-332, an application for involuntary commitment is commenced, which may be accompanied by an order of detention described in Subsection 26B-5-332(4); or
 - (b) the patient makes a voluntary application for admission.
- (4) Upon a written application described in Subsection (1)(a) or the observation and belief described in Subsection (1)(b)(i), the adult shall be:
 - (a) taken into a peace officer's protective custody, by reasonable means, if necessary for public safety; and
 - (b) transported for temporary commitment to a facility designated by the local mental health authority, by means of:
 - (i) an ambulance, if the adult meets any of the criteria described in Section 26B-4-119;
 - (ii) an ambulance, if a peace officer is not necessary for public safety, and transportation arrangements are made by a physician, physician assistant, nurse practitioner, designated examiner, or mental health officer;
 - (iii) the city, town, or municipal law enforcement authority with jurisdiction over the location where the adult is present, if the adult is not transported by ambulance;
 - (iv) the county sheriff, if the designated facility is outside of the jurisdiction of the law enforcement authority described in Subsection (4)(b)(iii) and the adult is not transported by ambulance; or
 - (v) nonemergency secured behavioral health transport as that term is defined in Section 53-2d-101.
- (5) Notwithstanding Subsection (4):
 - (a) an individual shall be transported by ambulance to an appropriate medical facility for treatment if the individual requires physical medical attention;
 - (b) if an officer has probable cause to believe, based on the officer's experience and de-escalation training that taking an individual into protective custody or transporting an individual for temporary commitment would increase the risk of substantial danger to the individual or others, a peace officer may exercise discretion to not take the individual into

- custody or transport the individual, as permitted by policies and procedures established by the officer's law enforcement agency and any applicable federal or state statute, or case law; and
- (c) if an officer exercises discretion under Subsection (4)(b) to not take an individual into protective custody or transport an individual, the officer shall document in the officer's report the details and circumstances that led to the officer's decision.
- (6)
- (a) The local mental health authority shall inform an adult patient committed under this section of the reason for commitment.
- (b) An adult patient committed under this section has the right to:
- (i) within three hours after arrival at the local mental health authority, make a telephone call, at the expense of the local mental health authority, to an individual of the patient's choice; and
- (ii) see and communicate with an attorney.
- (7)
- (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this section.
- (b) This section does not create a special duty of care.
- (8)
- (a) A local mental health authority shall provide discharge instructions to each individual committed under this section at or before the time the individual is discharged from the local mental health authority's custody, regardless of whether the individual is discharged by being released, taken into a peace officer's protective custody, transported to a medical facility or other facility, or other circumstances.
- (b) Discharge instructions provided under Subsection (8)(a) shall include:
- (i) a summary of why the individual was committed to the local mental health authority;
- (ii) detailed information about why the individual is being discharged from the local mental health authority's custody;
- (iii) a safety plan for the individual based on the individual's mental illness or mental or emotional state;
- (iv) notification to the individual's primary care provider, if applicable;
- (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual's community;
- (vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;
- (vii) a copy of any psychiatric advance directive presented to the local mental health authority, if applicable;
- (viii) information about how to establish a psychiatric advance directive if one was not presented to the local mental health authority;
- (ix) as applicable, information about medications that were changed or discontinued during the commitment;
- (x) a list of any screening or diagnostic tests conducted during the commitment;
- (xi) a summary of therapeutic treatments provided during the commitment;
- (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
- (xiii) information about how to contact the local mental health authority if needed.
- (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection (8)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.

- (d) If an individual refuses to accept discharge instructions, the local mental health authority shall document the refusal in the individual's medical record.
- (e) If an individual's discharge instructions include referrals to services under Subsection (8)(b)(v), the local mental health authority shall document those referrals in the individual's medical record.
- (f) The local mental health authority shall attempt to follow up with a discharged individual at least 48 hours after discharge, and may use peer support professionals when performing follow-up care or developing a continuing care plan.

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

- (1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need to be involuntarily committed may initiate an involuntary commitment court proceeding by filing, in the court in the county where the proposed patient resides or is found, a written application that includes:
 - (a) unless the court finds that the information is not reasonably available, the proposed patient's:
 - (i) name;
 - (ii) date of birth; and
 - (iii) social security number;
 - (b)
 - (i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or
 - (ii) a written statement by the applicant that:
 - (A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;
 - (B) is sworn to under oath; and
 - (C) states the facts upon which the application is based; and
 - (c) a statement whether the proposed patient has previously been under an assisted outpatient treatment order, if known by the applicant.
- (2) Before issuing a judicial order, the court:
 - (a) shall require the applicant to consult with the appropriate local mental health authority at or before the hearing; and
 - (b) may direct a mental health professional from the local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report the existing facts to the court.
- (3) The court may issue an order, directed to a mental health officer or peace officer, to immediately place a proposed patient in the custody of a local mental health authority or in a temporary emergency facility, as described in Section 26B-5-334, to be detained for the purpose of examination if:
 - (a) the court finds from the application, any other statements under oath, or any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness that poses a danger to self or others and requires involuntary commitment pending examination and hearing; or
 - (b) the proposed patient refuses to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily.

- (4)
 - (a) The court shall provide notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, to a proposed patient before, or upon, placement of the proposed patient in the custody of a local mental health authority or, with respect to any proposed patient presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court.
 - (b) The place of detention shall maintain a copy of the order of detention.
- (5)
 - (a) The court shall provide notice of commencement of proceedings for involuntary commitment as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or the local mental health authority's designee, and any other persons whom the proposed patient or the court designates.
 - (b) Except as provided in Subsection (5)(c), the notice under Subsection (5)(a) shall advise the persons that a hearing may be held within the time provided by law.
 - (c) If the proposed patient refuses to permit release of information necessary for provisions of notice under this subsection, the court shall determine the extent of notice.
- (6) Proceedings for commitment of an individual under 18 years old to a local mental health authority may be commenced in accordance with Part 4, Commitment of Persons Under Age 18.
- (7)
 - (a) The court may, in the court's discretion, transfer the case to any other district court within this state, if the transfer will not be adverse to the interest of the proposed patient.
 - (b) If a case is transferred under Subsection (7)(a), the parties to the case may be transferred and the local mental health authority may be substituted in accordance with Utah Rules of Civil Procedure, Rule 25.
- (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or the local mental health authority's designee under court order for detention or examination, the court shall appoint two designated examiners:
 - (a) who did not sign the civil commitment application nor the civil commitment certification under Subsection (1);
 - (b) one of whom is:
 - (i) a licensed physician; or
 - (ii) a psychiatric mental health nurse practitioner or a psychiatric mental health clinical nurse specialist who:
 - (A) is nationally certified;
 - (B) is doctorally trained; and
 - (C) has at least two years of inpatient mental health experience, regardless of the license the individual held at the time of that experience; and
 - (c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.
- (9) The court shall schedule a hearing to be held within 10 calendar days after the day on which the designated examiners are appointed.
- (10)
 - (a) The designated examiners shall:

- (i) conduct the examinations separately;
 - (ii) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place, including through telehealth, that is not likely to have a harmful effect on the proposed patient's health;
 - (iii) inform the proposed patient, if not represented by an attorney:
 - (A) that the proposed patient does not have to say anything;
 - (B) of the nature and reasons for the examination;
 - (C) that the examination was ordered by the court;
 - (D) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment;
 - (E) that findings resulting from the examination will be made available to the court; and
 - (F) that the designated examiner may, under court order, obtain the proposed patient's mental health records; and
 - (iv) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as described in Section 26B-5-360, or has acceptable programs available to the proposed patient without court proceedings.
- (b) If a designated examiner reports orally under Subsection (10)(a), the designated examiner shall immediately send a written report to the clerk of the court.
- (11) If a designated examiner is unable to complete an examination on the first attempt because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.
- (12) If the local mental health authority, the local mental health authority's designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to a commitment hearing no longer exist, the local mental health authority, the local mental health authority's designee, or the medical examiner shall immediately report the determination to the court.
- (13) The court may terminate the proceedings and dismiss the application at any time, including before the hearing, if the designated examiners or the local mental health authority or the local mental health authority's designee informs the court that the proposed patient:
- (a) does not meet the criteria in Subsection (16);
 - (b) has agreed to voluntary commitment, as described in Section 26B-5-360;
 - (c) has acceptable options for treatment programs that are available without court proceedings;
- or
- (d) meets the criteria for assisted outpatient treatment described in Section 26B-5-351.
- (14)
- (a) Before the hearing, the court shall provide the proposed patient an opportunity to be represented by counsel, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing.
 - (b) In the case of an indigent proposed patient, the county in which the proposed patient resides or is found shall make payment of reasonable attorney fees for counsel, as determined by the court.
- (15)
- (a)
 - (i) The court shall afford the proposed patient, the applicant, and any other person to whom notice is required to be given an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.

- (ii) The court may, in the court's discretion, receive the testimony of any other person.
 - (iii) The court may allow a waiver of the proposed patient's right to appear for good cause, which cause shall be set forth in the record, or an informed waiver by the patient, which shall be included in the record.
 - (b) The court is authorized to exclude any person not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each designated examiner to be given out of the presence of any other designated examiners.
 - (c) The court shall conduct the hearing in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient, while preserving the due process rights of the proposed patient.
 - (d) The court shall consider any relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Utah Rules of Evidence, Rule 1102.
 - (e)
 - (i) A local mental health authority or the local mental health authority's designee or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:
 - (A) the detention order;
 - (B) admission notes;
 - (C) the diagnosis;
 - (D) any doctors' orders;
 - (E) progress notes;
 - (F) nursing notes;
 - (G) medication records pertaining to the current commitment; and
 - (H) whether the proposed patient has previously been civilly committed or under an order for assisted outpatient treatment.
 - (ii) The information described in Subsection (15)(e)(i) shall also be supplied to the proposed patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.
- (16)
- (a) The court shall order commitment of an adult proposed patient to a local mental health authority if, upon completion of the hearing and consideration of the information presented, the court finds by clear and convincing evidence that:
 - (i)
 - (A) the proposed patient has a mental illness;
 - (B) because of the proposed patient's mental illness the proposed patient poses a substantial danger to self or others;
 - (C) the proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;
 - (D) there is no appropriate less-restrictive alternative to a court order of commitment; and
 - (E) the local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs; or
 - (ii)
 - (A) the proposed patient has been charged with a criminal offense;
 - (B) with respect to the charged offense, the proposed patient is found incompetent to proceed as a result of a mental illness;

- (C) the proposed patient has a mental illness;
- (D) the proposed patient has a persistent unawareness of their mental illness and the negative consequences of that illness, or within the preceding six months has been requested or ordered to undergo mental health treatment but has unreasonably refused to undergo that treatment;
- (E) there is no appropriate less-restrictive alternative to a court order of commitment; and
- (F) the local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs.

(b)

- (i) If, at the hearing, the court determines that the proposed patient has a mental illness but does not meet the other criteria described in Subsection (16)(a), the court may consider whether the proposed patient meets the criteria for assisted outpatient treatment under Section 26B-5-351.
- (ii) The court may order the proposed patient to receive assisted outpatient treatment in accordance with Section 26B-5-351 if, at the hearing, the court finds the proposed patient meets the criteria for assisted outpatient treatment under Section 26B-5-351.
- (iii) If the court determines that neither the criteria for commitment under Subsection (16)(a) nor the criteria for assisted outpatient treatment under Section 26B-5-351 are met, the court shall dismiss the proceedings after the hearing.

(17)

(a)

- (i) The order of commitment shall designate the period for which the patient shall be treated.
- (ii) If the patient is not under an order of commitment at the time of the hearing, the patient's treatment period may not exceed six months without a review hearing.
- (iii) Upon a review hearing, to be commenced before the expiration of the previous order of commitment, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the criteria described in Subsection (16) will last for an indeterminate period.

(b)

- (i) The court shall maintain a current list of all patients under the court's order of commitment and review the list to determine those patients who have been under an order of commitment for the court designated period.
- (ii) At least two weeks before the expiration of the designated period of any order of commitment still in effect, the court that entered the original order of commitment shall inform the appropriate local mental health authority or the local mental health authority's designee of the expiration.
- (iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local mental health authority or the local mental health authority's designee shall immediately reexamine the reasons upon which the order of commitment was based.
- (iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment no longer exist, the local mental health authority or the local mental health authority's designee shall discharge the patient from involuntary commitment and immediately report the discharge to the court.
- (v) If, after reexamination under Subsection (17)(b)(iii), the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment continue to exist, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14).

(c)

- (i) The local mental health authority or the local mental health authority's designee responsible for the care of a patient under an order of commitment for an indeterminate period shall, at six-month intervals, reexamine the reasons upon which the order of indeterminate commitment was based.
- (ii) If the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment no longer exist, the local mental health authority or the local mental health authority's designee shall discharge the patient from the local mental health authority's or the local mental health authority designee's custody and immediately report the discharge to the court.
- (iii) If the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment continue to exist, the local mental health authority or the local mental health authority's designee shall send a written report of the findings to the court.
- (iv) A patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued under Subsection (17)(c)(iii), the reasons for the decision to continue, and that the patient has the right to a review hearing by making a request to the court.
- (v) Upon receiving a request under Subsection (17)(c)(iv), the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14).

(18)

- (a) Any patient committed as a result of an original hearing or a patient's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days after the day on which the court order is entered.
- (b) The petition shall allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient.
- (c) Except as provided in Subsection (18)(b), the court shall, in all other respects, conduct the new hearing in the manner otherwise permitted.

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

(20)

- (a) A local mental health authority shall provide discharge instructions to each individual committed under this section at or before the time the individual is discharged from the local mental health authority's custody, regardless of the circumstances under which the individual is discharged.
- (b) Discharge instructions provided under Subsection (20)(a) shall include:
 - (i) a summary of why the individual was committed to the local mental health authority;
 - (ii) detailed information about why the individual is being discharged from the local mental health authority's custody;
 - (iii) a safety plan for the individual based on the individual's mental illness or mental or emotional state;
 - (iv) notification to the individual's primary care provider, if applicable;
 - (v) if the individual is discharged without food, housing, or economic security, a referral to appropriate services, if such services exist in the individual's community;
 - (vi) the phone number to call or text for a crisis services hotline, and information about the availability of peer support services;

- (vii) a copy of any psychiatric advance directive presented to the local mental health authority, if applicable;
 - (viii) information about how to establish a psychiatric advance directive if one was not presented to the local mental health authority;
 - (ix) as applicable, information about medications that were changed or discontinued during the commitment;
 - (x) a list of any screening or diagnostic tests conducted during the commitment;
 - (xi) a summary of therapeutic treatments provided during the commitment;
 - (xii) any laboratory work, including blood samples or imaging, that was completed or attempted during the commitment; and
 - (xiii) information about how to contact the local mental health authority if needed.
- (c) If an individual's medications were changed, or if an individual was prescribed new medications while committed under this section, discharge instructions provided under Subsection (20)(a) shall include a clinically appropriate supply of medications, as determined by a licensed health care provider, to allow the individual time to access another health care provider or follow-up appointment.
- (d) If an individual refuses to accept discharge instructions, the local mental health authority shall document the refusal in the individual's medical record.
- (e) If an individual's discharge instructions include referrals to services under Subsection (20)(b)(v), the local mental health authority shall document those referrals in the individual's medical record.
- (f) The local mental health authority shall attempt to follow up with a discharged individual at least 48 hours after discharge, and may use peer support professionals when performing follow-up care or developing a continuing care plan.
- (21) If any provision of Subsection (16)(a)(ii) or the application of any provision of Subsection (16)(a)(ii) to any person or circumstance is held invalid by a court with jurisdiction, the remainder of Subsection (16)(a)(ii) shall be given effect without the invalid provision or application. The provisions of Subsection (16)(a)(ii) are severable.

Amended by Chapter 287, 2024 General Session

Amended by Chapter 299, 2024 General Session

Amended by Chapter 314, 2024 General Session

26B-5-333 Circumstances under which conditions justifying initial involuntary commitment shall be considered to continue to exist.

- (1) When an individual is involuntarily committed to the custody of a local mental health authority under Subsection 26B-5-332(16), the conditions justifying commitment under that Subsection shall be considered to continue to exist for purposes of continued treatment under Subsection 26B-5-332(17) or conditional release under Section 26B-5-337 if the court finds that:
- (a) the patient is still mentally ill;
 - (b) there is no appropriate less restrictive alternative to a court order of involuntary commitment; and
 - (c) absent an order of involuntary commitment, the patient will likely pose a substantial danger to self or others.
- (2) When an individual has been ordered to assisted outpatient treatment under Subsection 26B-5-351(14), the individual may be involuntarily committed to the custody of a local mental health authority under Subsection 26B-5-332(16) for purposes of continued treatment under

Subsection 26B-5-332(17) or conditional release under Section 26B-5-337, if the court finds that:

- (a) the patient is still mentally ill;
 - (b) there is no appropriate less-restrictive alternative to a court order of involuntary commitment; and
 - (c) based upon the patient's conduct and statements during the preceding six months, or the patient's failure to comply with treatment recommendations during the preceding six months, the court finds that absent an order of involuntary commitment, the patient is likely to pose a substantial danger to self or others.
- (3) A patient whose treatment is continued or who is conditionally released under the terms of this section shall be maintained in the least restrictive environment available that can provide the patient with treatment that is adequate and appropriate.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-334 Detention pending placement in custody.

Pending commitment to a local mental health authority, a patient taken into custody or ordered to be committed pursuant to this part may be detained in the patient's home, a licensed foster home, or any other suitable facility under reasonable conditions prescribed by the local mental health authority. Except in an extreme emergency, the patient may not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of criminal offenses. The local mental health authority shall take reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-335 Notice of commitment.

Whenever a patient has been temporarily, involuntarily committed to a local mental health authority under Section 26B-5-331 on the application of an individual other than the patient's legal guardian, spouse, or next of kin, the local mental health authority or a designee of the local mental health authority shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-336 Periodic review -- Discharge.

Each local mental health authority or its designee shall, as frequently as practicable, examine or cause to be examined every person who has been committed to it. Whenever the local mental health authority or its designee determines that the conditions justifying involuntary commitment no longer exist, it shall discharge the patient. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-337 Release of patient to receive other treatment -- Placement in more restrictive environment -- Procedures.

- (1) A local mental health authority or a designee of a local mental health authority may conditionally release an improved patient to less restrictive treatment when:
 - (a) the authority specifies the less restrictive treatment; and
 - (b) the patient agrees in writing to the less restrictive treatment.
- (2)
 - (a) Whenever a local mental health authority or a designee of a local mental health authority determines that the conditions justifying commitment no longer exist, the local mental health authority or the designee shall discharge the patient.
 - (b) If the discharged patient has been committed through judicial proceedings, the local mental health authority or the designee shall prepare a report describing the determination and shall send the report to the clerk of the court where the proceedings were held.
- (3)
 - (a) A local mental health authority or a designee of a local mental health authority is authorized to issue an order for the immediate placement of a current patient into a more restrictive environment, if:
 - (i) the local mental health authority or a designee of a local mental health authority has reason to believe that the patient's current environment is aggravating the patient's mental illness; or
 - (ii) the patient has failed to comply with the specified treatment plan to which the patient agreed in writing.
 - (b) An order for a more restrictive environment shall:
 - (i) state the reasons for the order;
 - (ii) authorize any peace officer to take the patient into physical custody and transport the patient to a facility designated by the local mental health authority;
 - (iii) inform the patient of the right to a hearing, the right to appointed counsel, and the other procedures described in Subsection 26B-5-332(14); and
 - (iv) prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued conditional release from inpatient care, copies of the order shall be delivered to:
 - (A) the patient;
 - (B) the person in whose care the patient is placed;
 - (C) the patient's counsel of record; and
 - (D) the court that entered the original order of commitment.
 - (c) If the patient was in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or the patient's representative may request a hearing within 30 days of the change. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed pursuant to Section 26B-5-332, with the exception of Subsection 26B-5-332(16), unless, by the time set for the hearing, the patient is returned to the less restrictive environment or the patient withdraws the request for a hearing, in writing.
 - (d) The court shall:
 - (i) make findings regarding whether the conditions described in Subsections (3)(a) and (b) were met and whether the patient is in the least restrictive environment that is appropriate for the patient's needs; and
 - (ii) designate, by order, the environment for the patient's care and the period for which the patient shall be treated, which may not extend beyond expiration of the original order of commitment.

- (4) Nothing contained in this section prevents a local mental health authority or its designee, pursuant to Section 26B-5-336, from discharging a patient from commitment or from placing a patient in an environment that is less restrictive than that ordered by the court.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-338 Reexamination of court order for commitment -- Procedures -- Costs.

- (1) Any patient committed pursuant to Section 26B-5-332 is entitled to a reexamination of the order for commitment on the patient's own petition, or on that of the legal guardian, parent, spouse, relative, or friend, to the court of the county in which the patient resides or is detained.
- (2) Upon receipt of the petition, the court shall conduct or cause to be conducted by a mental health commissioner proceedings in accordance with Section 26B-5-332, except that those proceedings shall not be required to be conducted if the petition is filed sooner than six months after the issuance of the order of commitment or the filing of a previous petition under this section, provided that the court may hold a hearing within a shorter period of time if good cause appears. The costs of proceedings for such judicial determination shall be paid by the county in which the patient resided or was found prior to commitment, upon certification, by the clerk of the court in the county where the proceedings are held, to the county legislative body that those proceedings were held and the costs incurred.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-339 Designated examiners.

- (1) A designated examiner shall consider a proposed patient's mental health history when evaluating a proposed patient.
- (2) A designated examiner may request a court order to obtain a proposed patient's mental health records if a proposed patient refuses to share this information with the designated examiner.
- (3) A designated examiner, when evaluating a proposed patient for civil commitment, shall consider whether:
 - (a) a proposed patient has been under a court order for assisted outpatient treatment;
 - (b) the proposed patient complied with the terms of the assisted outpatient treatment order, if any; and
 - (c) whether assisted outpatient treatment is sufficient to meet the proposed patient's needs.
- (4) A designated examiner shall be allowed a reasonable fee by the county legislative body of the county in which the proposed patient resides or is found, unless the designated examiner is otherwise paid.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-340 Mental health commissioners.

The court may appoint a mental health commissioner to assist in conducting commitment proceedings in accordance with Section 78A-5-107.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-341 Release from commitment.

- (1)

- (a) Subject to Subsection (1)(b), a local mental health authority or the mental health authority's designee shall release from commitment any individual who, in the opinion of the local mental health authority or the mental health authority's designee, has recovered or no longer meets the criteria specified in Section 26B-5-332.
- (b) A local mental health authority's inability to locate a committed individual may not be the basis for the individual's release, unless the court orders the release of the individual after a hearing.
- (2) A local mental health authority or the mental health authority's designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by Section 26B-5-405, but an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be provided.
- (3) When a patient has been committed to a local mental health authority by judicial process, the local mental health authority shall follow the procedures described in Sections 26B-5-336 and 26B-5-337.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-342 Attempt to commit person contrary to requirements -- Penalty.

Any person who attempts to place another person in the custody of a local mental health authority contrary to the provisions of this part is guilty of a class B misdemeanor, in addition to liability in an action for damages, or subject to other criminal charges.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-351 Assisted outpatient treatment proceedings.

- (1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need for assisted outpatient treatment may file, in the court in the county where the proposed patient resides or is found, a written application that includes:
 - (a) unless the court finds that the information is not reasonably available, the proposed patient's:
 - (i) name;
 - (ii) date of birth; and
 - (iii) social security number; and
 - (b)
 - (i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or
 - (ii) a written statement by the applicant that:
 - (A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;
 - (B) is sworn to under oath; and
 - (C) states the facts upon which the application is based.
- (2)
 - (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and the court may direct a mental health professional from that local mental health authority to interview the

applicant and the proposed patient to determine the existing facts and report them to the court.

- (b) The consultation described in Subsection (2)(a):
 - (i) may take place at or before the hearing; and
 - (ii) is required if the local mental health authority appears at the hearing.
- (3) If the proposed patient refuses to submit to an interview described in Subsection (2)(a) or an examination described in Subsection (8), the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient into the custody of a local mental health authority or in a temporary emergency facility, as provided in Section 26B-5-334, to be detained for the purpose of examination.
- (4) Notice of commencement of proceedings for assisted outpatient treatment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall:
 - (a) be provided by the court to a proposed patient before, or upon, placement into the custody of a local mental health authority or, with respect to any proposed patient presently in the custody of a local mental health authority;
 - (b) be maintained at the proposed patient's place of detention, if any;
 - (c) be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other person whom the proposed patient or the court shall designate; and
 - (d) advise that a hearing may be held within the time provided by law.
- (5) The court may, in its discretion, transfer the case to any other court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.
- (6) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or its designee under court order for detention in order to complete an examination, the court shall appoint two designated examiners:
 - (a) who did not sign the assisted outpatient treatment application nor the certification described in Subsection (1);
 - (b) one of whom is a licensed physician; and
 - (c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.
- (7) The court shall schedule a hearing to be held within 10 calendar days of the day on which the designated examiners are appointed.
- (8) The designated examiners shall:
 - (a) conduct their examinations separately;
 - (b) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the proposed patient's health;
 - (c) inform the proposed patient, if not represented by an attorney:
 - (i) that the proposed patient does not have to say anything;
 - (ii) of the nature and reasons for the examination;
 - (iii) that the examination was ordered by the court;
 - (iv) that any information volunteered could form part of the basis for the proposed patient to be ordered to receive assisted outpatient treatment; and
 - (v) that findings resulting from the examination will be made available to the court; and

- (d) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill. If the designated examiner reports orally, the designated examiner shall immediately send a written report to the clerk of the court.
- (9) If a designated examiner is unable to complete an examination on the first attempt because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.
- (10) If the local mental health authority, its designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to an assisted outpatient treatment hearing no longer exist, the local mental health authority, its designee, or the medical examiner shall immediately report that determination to the court.
- (11) The court may terminate the proceedings and dismiss the application at any time, including prior to the hearing, if the designated examiners or the local mental health authority or its designee informs the court that the proposed patient does not meet the criteria in Subsection (14).
- (12) Before the hearing, an opportunity to be represented by counsel shall be afforded to the proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing. In the case of an indigent proposed patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the proposed patient resides or is found.
- (13)
 - (a) All persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other individual. The court may allow a waiver of the proposed patient's right to appear for good cause, which cause shall be set forth in the record, or an informed waiver by the patient, which shall be included in the record.
 - (b) The court is authorized to exclude all individuals not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.
 - (c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.
 - (d) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.
 - (e)
 - (i) A local mental health authority or its designee, or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:
 - (A) the detention order, if any;
 - (B) admission notes, if any;
 - (C) the diagnosis, if any;
 - (D) doctor's orders, if any;
 - (E) progress notes, if any;
 - (F) nursing notes, if any; and
 - (G) medication records, if any.
 - (ii) The information described in Subsection (13)(e)(i) shall also be provided to the proposed patient's counsel:
 - (A) at the time of the hearing; and

- (B) at any time prior to the hearing, upon request.
- (14) The court shall order a proposed patient to assisted outpatient treatment if, upon completion of the hearing and consideration of the information presented, the court finds by clear and convincing evidence that:
- (a) the proposed patient has a mental illness;
 - (b) there is no appropriate less-restrictive alternative to a court order for assisted outpatient treatment; and
 - (c)
 - (i) the proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental health treatment, as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment; or
 - (ii) the proposed patient needs assisted outpatient treatment in order to prevent relapse or deterioration that is likely to result in the proposed patient posing a substantial danger to self or others.
- (15) The court may order the applicant or a close relative of the patient to be the patient's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the patient's mental health treatment.
- (16) In the absence of the findings described in Subsection (14), the court, after the hearing, shall dismiss the proceedings.
- (17)
- (a) The assisted outpatient treatment order shall designate the period for which the patient shall be treated, which may not exceed 12 months without a review hearing.
 - (b) At a review hearing, the court may extend the duration of an assisted outpatient treatment order by up to 12 months, if:
 - (i) the court finds by clear and convincing evidence that the patient meets the conditions described in Subsection (14); or
 - (ii)
 - (A) the patient does not appear at the review hearing;
 - (B) notice of the review hearing was provided to the patient's last known address by the applicant described in Subsection (1) or by a local mental health authority; and
 - (C) the patient has appeared in court or signed an informed waiver within the previous 18 months.
 - (c) The court shall maintain a current list of all patients under its order of assisted outpatient treatment.
 - (d) At least two weeks prior to the expiration of the designated period of any assisted outpatient treatment order still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee.
- (18) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.
- (19) A court may not hold an individual in contempt for failure to comply with an assisted outpatient treatment order.
- (20) As provided in Section 31A-22-651, a health insurance provider may not deny an insured the benefits of the insured's policy solely because the health care that the insured receives is provided under a court order for assisted outpatient treatment.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-360 Voluntary admission of adults.

- (1) A local mental health authority, a designee of a local mental health authority, or another mental health facility may admit for observation, diagnosis, care, and treatment an adult who applies for voluntary admission and who has a mental illness or exhibits the symptoms of a mental illness.
- (2) No adult may be committed to a local mental health authority against that adult's will except as provided in this chapter.
- (3) An adult may be voluntarily admitted to a local mental health authority for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of Section 77-18-106 have been met.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-361 Release of voluntary adult -- Exceptions.

- (1) Except as provided in Subsection (2), a mental health facility shall immediately release an adult patient:
 - (a) who is voluntarily admitted, as described in Section 26B-5-360, and who requests release, verbally or in writing; or
 - (b) whose release is requested in writing by the patient's legal guardian, parent, spouse, or adult next of kin.
- (2)
 - (a) An adult patient's release under Subsection (1) may be conditioned upon the agreement of the patient, if:
 - (i) the request for release is made by an individual other than the patient; or
 - (ii) the admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility has cause to believe that release of the patient would be unsafe for the patient or others.
 - (b)
 - (i) An adult patient's release may be postponed for up to 48 hours, excluding weekends and holidays, if the admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility causes involuntary commitment proceedings to be commenced with the court within the specified time period.
 - (ii) The admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility shall provide written notice of the postponement and the reasons for the postponement to the patient without undue delay.
- (3) A judicial proceeding for involuntary commitment may not be commenced with respect to a voluntary patient unless the patient requests release.

Renumbered and Amended by Chapter 308, 2023 General Session

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

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

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-363 Persons entering state mentally ill.

- (1) A person who enters this state while mentally ill may be returned by a local mental health authority to the home of relatives or friends of that person with a mental illness, if known, or to a hospital in the state where that person with a mental illness is domiciled, in accordance with the Interstate Compact on Mental Health in Section 26B-5-365.
- (2) This section does not prevent commitment of persons who are traveling through or temporarily residing in this state.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-364 Persons eligible for care or treatment by federal agency -- Continuing jurisdiction of state courts.

- (1) If an individual committed pursuant to Section 26B-5-332 is eligible for care or treatment by any agency of the United States, the court, upon receipt of a certificate from a United States agency, showing that facilities are available and that the individual is eligible for care or treatment therein, may order the individual to be placed in the custody of that agency for care.
- (2) When admitted to any facility or institution operated by a United States agency, within or without this state, the individual shall be subject to the rules and regulations of that agency.
- (3) The chief officer of any facility or institution operated by a United States agency and in which the individual is hospitalized, shall, with respect to that individual, be vested with the same powers as the superintendent or director of a mental health facility, regarding detention, custody, transfer, conditional release, or discharge of patients. Jurisdiction is retained in appropriate courts of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-365 Interstate Compact on Mental Health -- Compact provisions.

The Interstate Compact on Mental Health is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

Article I

The proper and expeditious treatment of the mentally ill can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability of furnishing that care and treatment bears no primary relation to the residence or citizenship of the patient but that the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal and constitutional basis for commitment or other appropriate care and treatment of the mentally ill under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states.

The appropriate authority in this state for making determinations under this compact is the director of the division or his designee.

Article II

As used in this compact:

- (1) "After-care" means care, treatment, and services provided to a patient on convalescent status or conditional release.

- (2) "Institution" means any hospital, program, or facility maintained by a party state or political subdivision for the care and treatment of persons with a mental illness.
- (3) "Mental illness" means a psychiatric disorder as defined by the current Diagnostic and Statistical Manual of Mental Disorders, that substantially impairs a person's mental, emotional, behavioral, or related functioning to such an extent that he requires care and treatment for his own welfare, the welfare of others, or the community.
- (4) "Patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact and constitutional due process requirements.
- (5) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be sent.
- (6) "Sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be sent.
- (7) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

- (1) Whenever a person physically present in any party state is in need of institutionalization because of mental illness, he shall be eligible for care and treatment in an institution in that state, regardless of his residence, settlement, or citizenship qualifications.
- (2) Notwithstanding the provisions of Subsection (1) of this article, any patient may be transferred to an institution in another state whenever there are factors, based upon clinical determinations, indicating that the care and treatment of that patient would be facilitated or improved by that action. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors to be considered include the patient's full record with due regard for the location of the patient's family, the character of his illness and its probable duration, and other factors considered appropriate by authorities in the party state and the director of the division, or his designee.
- (3) No state is obliged to receive any patient pursuant to the provisions of Subsection (2) of this article unless the sending state has:
 - (a) given advance notice of its intent to send the patient;
 - (b) furnished all available medical and other pertinent records concerning the patient;
 - (c) given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient; and
 - (d) determined that the receiving state agrees to accept the patient.
- (4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.
- (5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and further transfer of the patient may be made as is deemed to be in the best interest of the patient, as determined by appropriate authorities in the receiving and sending states.

Article IV

- (1) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive after-care or supervision, that care or supervision may be provided in the receiving state. If the medical or other appropriate clinical authorities who have responsibility for the care and treatment of the patient in the sending state believe that after-care in another state would be in the best interest of the patient and

would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of providing the patient with after-care in the receiving state. That request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge the patient would be placed, the complete medical history of the patient, and other pertinent documents.

(2) If the medical or other appropriate clinical authorities who have responsibility for the care and treatment of the patient in the sending state, and the appropriate authorities in the receiving state find that the best interest of the patient would be served, and if the public safety would not be jeopardized, the patient may receive after-care or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment as for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities both within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of that patient, he shall be detained in the state where found, pending disposition in accordance with the laws of that state.

Article VI

Accredited officers of any party state, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII

- (1) No person may be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state has the effect of making the person a patient of the institution in the receiving state.
- (2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs among themselves.
- (3) No provision of this compact may be construed to alter or affect any internal relationships among the departments, agencies, and officers of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities.
- (4) Nothing in this compact may be construed to prevent any party state or any of its subdivisions from asserting any right against any person, agency, or other entity with regard to costs for which that party state or its subdivision may be responsible under this compact.
- (5) Nothing in this compact may be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill, or any statutory authority under which those agreements are made.

Article VIII

- (1) Nothing in this compact may be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or with respect to any patient for whom he serves, except that when the transfer of a patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, a court of competent jurisdiction in the receiving state may make supplemental or substitute appointments. In that case, the court that appointed the previous guardian

shall, upon being advised of the new appointment and upon the satisfactory completion of accounting and other acts as the court may require, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances.

However, in the case of any patient having settlement in the sending state, a court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or to continue his power and responsibility, as it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

- (2) The term "guardian" as used in Subsection (1) of this article includes any guardian, trustee, legal committee, conservator, or other person or agency however denominated, who is charged by law with power to act for the person or property of a patient.

Article IX

(1) No provision of this compact except Article V applies to any person institutionalized while under sentence in a penal or correctional institution, while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness, he would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible, it shall be the policy of party states that no patient be placed or detained in any prison, jail, or lockup, but shall, with all expedition, be taken to a suitable institutional facility for mental illness.

Article X

(1) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state, either in the capacity of sending or receiving state. The compact administrator, or his designee, shall deal with all matters relating to the compact and patients processed under the compact. In this state the director of the division, or his designee shall act as the "compact administrator."

(2) The compact administrators of the respective party states have power to promulgate reasonable rules and regulations as are necessary to carry out the terms and provisions of this compact. In this state, the division has authority to establish those rules in accordance with the Utah Administrative Rulemaking Act.

- (3) The compact administrator shall cooperate with all governmental departments, agencies, and officers in this state and its subdivisions in facilitating the proper administration of the compact and any supplementary agreement or agreements entered into by this state under the compact.
- (4) The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of this compact. In the event that supplementary agreements require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, that agreement shall have no force unless approved by the director of the department or agency under whose jurisdiction the institution or facility is operated, or whose department or agency will be charged with the rendering of services.
- (5) The compact administrator may make or arrange for any payments necessary to discharge financial obligations imposed upon this state by the compact or by any supplementary agreement entered into under the compact.

Article XI

Administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility, or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that those agreements will improve services, facilities, or institutional care and treatment of persons who are mentally ill. A supplementary agreement may not be construed to relieve a party state of any obligation that it otherwise would have under other provisions of this compact.

Article XII

This compact has full force and effect in any state when it is enacted into law in that state. Thereafter, that state is a party to the compact with any and all states that have legally joined.

Article XIII

A party state may withdraw from the compact by enacting a statute repealing the compact. Withdrawal takes effect one year after notice has been communicated officially and in writing to the compact administrators of all other party states. However, the withdrawal of a state does not change the status of any patient who has been sent to that state or sent out of that state pursuant to the compact.

Article XIV

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence or provision is declared to be contrary to the constitution of the United States or the applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected thereby. If this compact is held to be contrary to the constitution of any party state the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-366 Interstate compact on mental health -- Requirement of conformity with this chapter.

All actions and proceedings taken under authority of this compact shall be in accordance with the procedures and constitutional requirements described in this part.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-367 Severability.

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this part, or the application thereof to any person or circumstance, is found to be unconstitutional the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding that unconstitutionality. The Legislature hereby declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-370 Establishment of the Utah Forensic Mental Health Facility.

The Utah Forensic Mental Health Facility is hereby established and shall be located on state land on the campus of the Utah State Hospital in Provo, Utah County.

Renumbered and Amended by Chapter 308, 2023 General Session

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

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

- (2)
- (a) The forensic mental health facility accommodates the following populations:
 - (i) prison inmates displaying mental illness necessitating treatment in a secure mental health facility;
 - (ii) criminally adjudicated persons found guilty with a mental illness or guilty with a mental condition at the time of the offense undergoing evaluation for a mental condition under Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition;
 - (iii) criminally adjudicated persons undergoing evaluation for competency or found guilty with a mental condition or guilty with a mental condition at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, who also have an intellectual disability;
 - (iv) persons undergoing evaluation for competency or found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;
 - (v) persons who are civilly committed to the custody of a local mental health authority in accordance with this part, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or the superintendent's designee; and
 - (vi) persons ordered to commit themselves to the custody of the division for treatment at the Utah State Hospital as a condition of probation or stay of sentence pursuant to Title 77, Chapter 18, The Judgment.
 - (b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's status as established by the court at the time of adjudication.
 - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for the allocation of beds to the categories described in Subsection (2)(a).
- (3) The department shall:
- (a) own and operate the forensic mental health facility;
 - (b) provide and supervise administrative and clinical staff; and
 - (c) provide security staff who are trained as psychiatric technicians.
- (4) Pursuant to Subsection 26B-5-303(3) the executive director shall designate individuals to perform security functions for the state hospital.

Amended by Chapter 184, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-372 Admission of person in custody of Department of Corrections to state hospital -- Retransfer of person to Department of Corrections.

- (1) The executive director of the Department of Corrections may request the director to admit a person who is in the custody of the Department of Corrections to the state hospital, if the clinical director within the Department of Corrections finds that the inmate has mentally deteriorated to the point that admission to the state hospital is necessary to ensure adequate mental health treatment. In determining whether that inmate should be placed in the state hospital, the director of the division shall consider:
 - (a) the mental health treatment needs of the inmate;
 - (b) the treatment programs available at the state hospital; and
 - (c) whether the inmate meets the requirements of Subsection 26B-5-306(2).
- (2) If the director denies the admission of an inmate as requested by the clinical director within the Department of Corrections, the Board of Pardons and Parole shall determine whether the inmate will be admitted to the state hospital. The Board of Pardons and Parole shall consider:
 - (a) the mental health treatment needs of the inmate;
 - (b) the treatment programs available at the state hospital; and
 - (c) whether the inmate meets the requirements of Subsection 26B-5-306(2).
- (3) The state hospital shall receive any person in the custody of the Department of Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to Subsection (1) or (2). Any person so transferred to the state hospital shall remain in the custody of the Department of Corrections, and the state hospital shall act solely as the agent of the Department of Corrections.
- (4) Inmates transferred to the state hospital pursuant to this section shall be transferred back to the Department of Corrections through negotiations between the director and the director of the Department of Corrections. If agreement between the director and the director of the Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final authority in determining whether a person will be transferred back to the Department of Corrections. In making that determination, that board shall consider:
 - (a) the mental health treatment needs of the inmate;
 - (b) the treatment programs available at the state hospital;
 - (c) whether the person continues to meet the requirements of Subsection 26B-5-306(2);
 - (d) the ability of the state hospital to provide adequate treatment to the person, as well as safety and security to the public; and
 - (e) whether, in the opinion of the director, in consultation with the clinical director of the state hospital, the person's treatment needs have been met.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-380 Mental illness and intellectual disability examinations -- Responsibilities of the department.

- (1) In accomplishing the department's duties to conduct a competency evaluation under Title 77, Utah Code of Criminal Procedure, and a juvenile competency evaluation under Section 80-6-402, the department shall proceed as outlined in this section and within appropriations authorized by the Legislature.
- (2) When the department is ordered by a court to conduct a competency evaluation, the department shall designate a forensic evaluator, selected under Subsection (4), to evaluate the defendant in the defendant's current custody or status.
- (3) When the department is ordered by the juvenile court to conduct a juvenile competency evaluation under Section 80-6-402, the department shall:
 - (a) designate an examiner selected pursuant to Subsection (4) to evaluate the minor; and

- (b) upon a finding of good cause and order of the court, designate a second examiner to evaluate the minor.
- (4) The department shall establish criteria, in consultation with the Commission on Criminal and Juvenile Justice, and shall contract with persons to conduct competency evaluations and juvenile competency evaluations under Subsections (2) and (3)(b). In making this selection, the department shall follow the provisions of Title 63G, Chapter 6a, Utah Procurement Code.
- (5) Nothing in this section prohibits the department, at the request of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of Criminal Procedure, and for good cause shown, from proposing a person who has not been previously selected under Subsection (4) to contract with the department to conduct the evaluation. In selecting that person, the criteria of the department established under Subsection (4) and the provisions of Title 63G, Chapter 6a, Utah Procurement Code, shall be met.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-381 Contracted state hospital services.

- (1) In accordance with the authority, responsibilities, and duties granted to the division and state hospital under this part, the state hospital may contract with any willing provider to:
 - (a) supervise and treat a patient with a mental illness who has been committed to the state hospital's custody; or
 - (b) facilitate the reentry of a discharged patient into the community.
- (2) A provider who enters into a contract with the state hospital under Subsection (1) shall provide a level of supervision and security that is equal to or greater than the level of supervision and security that:
 - (a) is necessary to treat the patient with a mental illness; and
 - (b) would be offered at or recommended by the state hospital.
- (3) In collaboration with the Division of Integrated Healthcare, the superintendent and clinical director shall provide a report to the Health and Human Services Interim Committee at or before the committee's 2024 November interim meeting that includes information and recommendations on:
 - (a) the number of patients with a mental illness served through a state hospital contract in accordance with Subsection (1), and the nature of the services rendered;
 - (b) addressing the needs of patients with complex legal and mental health statuses who are expected to have significantly long stays at the state hospital and who are not able to be discharged into the community;
 - (c) the creation of a low-acuity step-down facility to assist patients described in Subsection (3)(b); and
 - (d) opportunities for collaboration with local mental health authorities and other willing providers to provide low-acuity step-down services to assist patients described in Subsection (3)(b).

Enacted by Chapter 204, 2024 General Session

26B-5-382 HOME Court Pilot Program -- Requirements -- Funding -- Reporting.

- (1) As used in this section, "pilot program" means the HOME Court Pilot Program established in Subsection (2).
- (2) Subject to appropriations from the Legislature and the assignment of a judge to preside over the proceedings, the Third Judicial District Court of Salt Lake County shall establish and administer a HOME Court Pilot Program beginning October 1, 2024, and ending June 30, 2029,

that provides for comprehensive and individualized, court-supervised treatment and services to individuals with mental illness.

- (3) The pilot program shall:
- (a) allow a person to petition the court for an order requiring an individual's participation in the pilot program;
 - (b) require the court to substitute the local mental health authority as the petitioner if the initial petitioner is not the local mental health authority;
 - (c) provide an opportunity for the parties to enter into an agreement regarding an individual's participation in the pilot program, including a treatment plan, prior to a court order under Subsection (3)(e);
 - (d) provide for a hearing at which information is presented to determine whether an individual qualifies for court-ordered participation in the pilot program as provided in Subsection (3)(e);
 - (e) require the court to order an individual to participate in the pilot program if, upon completion of the hearing described in Subsection (3)(d), the court finds by clear and convincing evidence that:
 - (i) the individual resides or may be presently found within Salt Lake County;
 - (ii) the individual has a mental illness;
 - (iii) because of the individual's mental illness, the individual:
 - (A) is unlikely to survive or remain safe without supervision, assistance, or services; or
 - (B) meets the criteria described in Subsection 26B-5-351(14)(c)(i) or (ii);
 - (iv) there is no appropriate less-restrictive alternative to a court order for participation in the pilot program;
 - (v) the individual is likely to benefit from participation in the pilot program; and
 - (vi) there is adequate capacity within the pilot program to meet the individual's need for services described in Subsection (3)(f);
 - (f) upon the court's order for an individual to participate in the pilot program, require the local mental health authority to prepare a comprehensive and individualized treatment plan, for approval by the court, that includes the following components for the individual to successfully achieve the purposes of the pilot program:
 - (i) mental health services;
 - (ii) housing resources;
 - (iii) social services;
 - (iv) case management;
 - (v) peer support;
 - (vi) exit or transition services; and
 - (vii) individualized goals for the successful completion of the pilot program;
 - (g) upon the court's approval of a treatment plan prepared by the local mental health authority:
 - (i) require the local mental health authority to coordinate services required for participation in the pilot program; and
 - (ii) require the court to conduct regular review hearings as deemed necessary to evaluate the individual's progress in completing the treatment plan; and
 - (h) operate in a manner that is consistent with the procedures for ordering assisted outpatient treatment under Section 26B-5-351.
- (4)
- (a)
 - (i) If a individual participating in the pilot program has an outstanding warrant or pending criminal matter in another Utah court, the Third Judicial District Court of Salt Lake County

may notify the other court in which the individual has an outstanding warrant or pending criminal matter regarding the individual's participation in the pilot program.

- (ii) Upon receiving notice of an individual's participation in the pilot program under Subsection (4)(a)(i), the other court may, if deemed appropriate, recall the warrant or stay the case in which the individual is involved unless the warrant or case involves a felony charge.
 - (iii) In determining whether to recall a warrant or stay a case under Subsection (4)(a)(ii), the other court shall consider the likelihood of the individual's successful completion of the pilot program, the severity of the pending charges, the impact on victims' rights, and the impact on the government's ability and right to prosecute the case.
- (b)
- (i) If an individual described in Subsection (4)(a)(i) successfully completes the pilot program, the Third Judicial District Court of Salt Lake County may notify the other court in which the individual has an outstanding warrant or pending criminal matter regarding the individual's successful completion of the pilot program.
 - (ii) Upon receiving notice of an individual's successful completion of the pilot program under Subsection (4)(b)(i), the other court shall consider the effect of the individual's completion of the pilot program on the case pending before that court, including the dismissal of criminal charges if deemed appropriate.
- (5)
- (a) Costs of all services provided under the pilot program, including the costs incurred by the multidisciplinary team described in Subsection (5)(b)(ii)(B), shall be paid by Salt Lake County.
 - (b) If the Legislature appropriates money to the division for implementation of the pilot program, the division shall:
 - (i) require the local mental health authority, as part of the plan required under Subsection 17-43-301(6)(a)(ii), to submit to the division a proposal for implementation of the pilot program on or before May 15 of each year;
 - (ii) review the proposal described in Subsection (5)(b)(i) to ensure that the proposal:
 - (A) meets the requirements of this section; and
 - (B) establishes a multidisciplinary team, with a sufficient number of stakeholders, to adequately address the provision of treatment and services under the pilot program;
 - (iii) upon approval of the proposal described in Subsection (5)(b)(i), contract funds appropriated for the pilot program with the local mental health authority; and
 - (iv) conduct an annual audit and review of the local mental health authority, and any contracted provider, regarding the use of funds appropriated for the pilot program.
 - (c) The matching requirement in Subsection 17-41-301(6)(a)(x) does not apply to funds appropriated by the Legislature for the pilot program.
 - (d) Subject to appropriation by the Legislature, Salt Lake County may:
 - (i) apply to the division to receive funds to cover the county's costs under the pilot program; and
 - (ii) pay county contributions to the nonfederal share of Medicaid expenditures with funds appropriated for the pilot program.
- (6) The department shall:
- (a) establish and evaluate metrics for the success of the pilot program with input from the local mental health authority, the Utah Homelessness Council created in Section 35A-16-204, and the Judicial Council; and
 - (b) in collaboration with the local mental health authority, submit to the Health and Human Services Interim Committee a report on or before June 30 of each year, beginning in calendar year 2025, regarding the outcomes of the pilot program.

Enacted by Chapter 204, 2024 General Session