

MENTAL HEALTH AND CORRECTIONS LAW AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Robert F. Montgomery

AN ACT RELATING TO THE HUMAN SERVICES CODE AND THE CODE OF CRIMINAL PROCEDURE; AMENDING PROVISIONS RELATING TO THE MEMBERSHIP OF THE MENTAL HEALTH AND CORRECTIONS ADVISORY COUNCIL; AND CHANGING THE CRITERIA, PROCESS, AND AUTHORITY FOR TRANSFER OF MENTALLY ILL PRISONERS TO AND FROM THE STATE HOSPITAL AND THE STATE PRISON.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-12-204.5, as last amended by Chapter 243, Laws of Utah 1996

77-15-1, as enacted by Chapter 15, Laws of Utah 1980

77-16a-202, as enacted by Chapter 171, Laws of Utah 1992

77-16a-203, as enacted by Chapter 171, Laws of Utah 1992

77-16a-204, as enacted by Chapter 171, Laws of Utah 1992

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

Section 1. Section **62A-12-204.5** is amended to read:

62A-12-204.5. Mental Health and Corrections Advisory Council -- Establishment and purpose -- Admission of person in custody of Department of Corrections to state hospital -- Retransfer of person to Department of Corrections.

(1) There is established the Mental Health and Corrections Advisory Council composed of the following members:

- (a) the director or his [~~designee~~] appointee;
- (b) the superintendent or his [~~designee~~] appointee;
- (c) the executive director of the Department of Corrections, or his [~~designee~~] appointee;
- (d) a member of the Board of Pardons and Parole or its appointee; [~~and~~]
- (e) the attorney general, or his appointee;
- (f) the director of the Division of Services for People with Disabilities, or his appointee;

(g) a representative from a local mental health authority or an organization, excluding the state hospital that provides mental health services under contract with the Division of Mental Health or a local mental health authority, as appointed by the director of the division; and

~~(e)~~ (h) other ~~[members]~~ persons as ~~[designated]~~ appointed by the members described in Subsections (1)(a) through ~~(d)~~ (h).

(2) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(3) The purpose of the Mental Health and Corrections Advisory Council is to:

(a) advise the director regarding admissions to the state hospital of persons in the custody of the Department of Corrections;

(b) develop policies for coordination between the division and the Department of Corrections; and

(c) advise the executive director of the Department of Corrections regarding issues of care for persons in the custody of the Department of Corrections who are mentally ill.

(4) 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 of mental health 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 ~~[person]~~ inmate should be placed in the state

hospital, the director of the division shall consider:

- (a) the mental health treatment needs of the [person] inmate;
- (b) the treatment programs available at the state hospital; and
- (c) whether the [person to be admitted] inmate meets the requirements of Subsection

62A-12-209(2)[~~; and~~].

~~[(d) the availability of treatment space at the state hospital.]~~

(5) If the director denies the admission of an inmate as requested by the clinical director of mental health 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 62A-12-209(2).

~~[(5)]~~ (6) 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 (5). 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.

(7) 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 62A-12-209(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 of the division, in consultation with the clinical director of the state hospital, the person's treatment needs have been met.

~~[(6) Beginning in fiscal year 1990, all funds necessary to treat persons at the state hospital who are in the custody of the Department of Corrections shall be appropriated to the Department of Corrections for use in accordance with Section 64-13-7.5.]~~

Section 2. Section **77-15-1** is amended to read:

77-15-1. Incompetent person not to be tried for public offense.

No person who is incompetent to proceed shall be tried ~~[or punished]~~ for a public offense.

Section 3. Section **77-16a-202** is amended to read:

77-16a-202. Person found guilty and mentally ill -- Commitment to department -- Admission to Utah State Hospital.

(1) In sentencing and committing a mentally ill offender to the department under Subsection 77-16a-104(3)(a), the court shall:

(a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

(b) sentence the offender to a term of imprisonment and order that he be committed to the department for care and treatment for no more than 18 months, or until ~~[he has reached maximum benefit,]~~ the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of a mentally ill offender who has been convicted of a capital offense. In capital cases, the court shall

make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 12 or Title 62A, Chapter 5.

Section 4. Section **77-16a-203** is amended to read:

77-16a-203. Review of guilty and mentally ill persons committed to department -- Recommendations for transfer to Department of Corrections.

(1) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each mentally ill offender committed to it in accordance with Section 77-16a-202, at least once every six months. If the offender is mentally retarded, the review team shall include at least one individual who is a designated mental retardation professional, as defined in Section 62A-5-301.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director regarding the offender's current mental condition, his progress since commitment, prognosis, and a recommendation regarding whether the mentally ill offender should be transferred to UDC or remain in the custody of the department.

(3) (a) The executive director shall notify the UDC medical administrator, and the board's mental health adviser that a mentally ill offender is eligible for transfer to UDC if the review team finds that the offender:

(i) is no longer mentally ill; or

(ii) is still mentally ill and ~~[continues]~~ may continue to be a danger to himself or others, but can be controlled if adequate care, medication, and treatment are provided~~[, and that he has reached maximum benefit from the programs within the Department.]~~ by UDC; and

(iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

- (i) all available clinical facts;
- (ii) the diagnosis;
- (iii) the course of treatment received at the mental health facility;
- (iv) the prognosis for remission of symptoms;
- (v) the potential for recidivism;
- (vi) an estimation of the offender's dangerousness, either to himself or others; and
- (vii) recommendations for future treatment.

Section 5. Section **77-16a-204** is amended to read:

**77-16a-204. UDC acceptance of transfer of guilty and mentally ill persons --
Re-transfer from UDC to department for admission to the Utah State Hospital.**

(1) The UDC medical administrator shall designate a transfer team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the recommendation made by the department's review team pursuant to Section 77-16a-203. If the offender is mentally retarded, the transfer team shall include at least one person who has expertise in testing and diagnosis of mentally retarded individuals.

(2) The transfer team shall concur in the recommendation if it determines that UDC can provide the mentally ill offender with ~~[the level of care necessary to maintain his mental condition]~~ adequate mental health treatment.

(3) The UDC transfer team and medical administrator shall recommend the facility in which the offender should be placed and the treatment to be provided in order for his mental condition to

remain stabilized to the director of the Division of Institutional Operations, within the Department of Corrections.

(4) In the event that the department and UDC do not agree on the transfer of a mentally ill offender, the administrator of the mental health facility where the offender is located shall notify the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall be provided with copies of all reports and recommendations. The board's mental health adviser shall make a recommendation to the board on the transfer and the board shall issue its decision within 30 days.

(5) UDC shall notify the board whenever a mentally ill offender is transferred from the department to UDC.

(6) When a mentally ill offender sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings and procedures described in Subsections 62A-12-204.5(4) through (6).

(7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.

(8) A mentally ill offender who has been readmitted to the Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section 77-16a-203.