

**FORENSIC MENTAL HEALTH COORDINATING
COUNCIL**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Karen Hale

This act amends the Human Services Code. The act changes the name of the Mental Health and Corrections Advisory Coordinating Council. The act modifies the composition of the council and expands the purposes of the council. The act moves certain existing provisions into a new section. The act makes technical changes.

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

AMENDS:

62A-12-204.5, as last amended by Chapter 256, Laws of Utah 2000

62A-12-209, as last amended by Chapter 234, Laws of Utah 1996

77-16a-204, as last amended by Chapter 256, Laws of Utah 2000

ENACTS:

62A-12-204.6, Utah Code Annotated 1953

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. Forensic Mental Health Coordinating Council -- Establishment and purpose.

(1) There is established the Forensic Mental Health [~~and Corrections Advisory~~]
Coordinating Council composed of the following members:

- (a) the director or [~~his~~] the director's appointee;
- (b) the superintendent of the state hospital or [~~his~~] the superintendent's appointee;
- (c) the executive director of the Department of Corrections[;] or [~~his~~] the executive director's appointee;
- (d) a member of the Board of Pardons and Parole or its appointee;



- 28 (e) the attorney general[;] or [his] the attorney general's appointee;
- 29 (f) the director of the Division of Services for People with Disabilities[;] or [his] the
- 30 director's appointee;
- 31 (g) the director of the Division of Youth Corrections or the director's appointee;
- 32 (h) the director of the Commission on Criminal and Juvenile Justice or the director's
- 33 appointee;
- 34 (i) the state court administrator or the administrator's appointee;
- 35 (j) the state juvenile court administrator or the administrator's appointee;
- 36 [(g)] (k) a representative from a local mental health authority or an organization, excluding
- 37 the state hospital that provides mental health services under contract with the Division of Mental
- 38 Health or a local mental health authority, as appointed by the director of the division; [and]
- 39 (l) the executive director of the Governor's Council for People with Disabilities or the
- 40 director's appointee; h [f] and [j]
- 40a ~~[(m) THE DIRECTOR OF THE DISABILITY LAW CENTER OR THE DIRECTOR'S APPOINTEE;~~
- 40b ~~AND] h~~
- 41 [(h)] h [f] (m) [j] [(n)] h other persons as appointed by the members described in
- 41a Subsections (1)(a)
- 42 through [(h)] h [f] (l) [j] [(m)] h .
- 43 (2) (a) (i) Members who are not government employees shall receive no compensation or
- 44 benefits for their services, but may receive per diem and expenses incurred in the performance of
- 45 the member's official duties at the rates established by the Division of Finance under Sections
- 46 63A-3-106 and 63A-3-107.
- 47 (ii) Members may decline to receive per diem and expenses for their service.
- 48 (b) (i) State government officer and employee members who do not receive salary, per
- 49 diem, or expenses from their agency for their service may receive per diem and expenses incurred
- 50 in the performance of their official duties from the council at the rates established by the Division
- 51 of Finance under Sections 63A-3-106 and 63A-3-107.
- 52 (ii) State government officer and employee members may decline to receive per diem and
- 53 expenses for their service.
- 54 (3) The purpose of the Forensic Mental Health [and Corrections Advisory] Coordinating
- 55 Council is to:
- 56 (a) advise the director regarding admissions to the state hospital of persons in the custody
- 57 of the Department of Corrections;
- 58 (b) develop policies for coordination between the division and the Department of

59 Corrections; [and]

60 (c) advise the executive director of the Department of Corrections regarding issues of care
61 for persons in the custody of the Department of Corrections who are mentally ill[-];

62 (d) promote communication between and coordination among all agencies dealing with
63 persons with mental retardation, as defined in Section 62A-5-101, or mental illness who become
64 involved in the civil commitment system or in the criminal or juvenile justice system;

65 (e) study, evaluate, and recommend changes to laws and procedures relating to persons
66 with mental retardation or mental illness who become involved in the civil commitment system
67 or in the criminal or juvenile justice system;

68 (f) identify and promote the implementation of specific policies and programs to deal fairly
69 and efficiently with persons with mental retardation or mental illness who become involved in the
70 civil commitment system or in the criminal or juvenile justice system; and

71 (g) promote judicial education relating to persons with mental retardation or mental illness
72 who become involved in the civil commitment system or in the criminal or juvenile justice system.

73 [~~(4) The executive director of the Department of Corrections may request the director to~~
74 ~~admit a person who is in the custody of the Department of Corrections to the state hospital, if the~~
75 ~~clinical director of mental health within the Department of Corrections finds that the inmate has~~
76 ~~mentally deteriorated to the point that admission to the state hospital is necessary to ensure~~
77 ~~adequate mental health treatment. In determining whether that inmate should be placed in the state~~
78 ~~hospital, the director of the division shall consider:]~~

79 [~~(a) the mental health treatment needs of the inmate;]~~

80 [~~(b) the treatment programs available at the state hospital; and]~~

81 [~~(c) whether the inmate meets the requirements of Subsection 62A-12-209(2).]~~

82 [~~(5) If the director denies the admission of an inmate as requested by the clinical director~~
83 ~~of mental health within the Department of Corrections, the Board of Pardons and Parole shall~~
84 ~~determine whether the inmate will be admitted to the state hospital. The Board of Pardons and~~
85 ~~Parole shall consider:]~~

86 [~~(a) the mental health treatment needs of the inmate;]~~

87 [~~(b) the treatment programs available at the state hospital; and]~~

88 [~~(c) whether the inmate meets the requirements of Subsection 62A-12-209(2).]~~

89 [~~(6) The state hospital shall receive any person in the custody of the Department of~~

90 ~~Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to~~
91 ~~Subsection (5). Any person so transferred to the state hospital shall remain in the custody of the~~
92 ~~Department of Corrections, and the state hospital shall act solely as the agent of the Department~~
93 ~~of Corrections.]~~

94 ~~[(7) Inmates transferred to the state hospital pursuant to this section shall be transferred~~
95 ~~back to the Department of Corrections through negotiations between the director and the director~~
96 ~~of the Department of Corrections. If agreement between the director and the director of the~~
97 ~~Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final~~
98 ~~authority in determining whether a person will be transferred back to the Department of~~
99 ~~Corrections. In making that determination, that board shall consider:]~~

- 100 ~~[(a) the mental health treatment needs of the inmate;]~~
101 ~~[(b) the treatment programs available at the state hospital;]~~
102 ~~[(c) whether the person continues to meet the requirements of Subsection 62A-12-209(2);]~~
103 ~~[(d) the ability of the state hospital to provide adequate treatment to the person, as well as~~
104 ~~safety and security to the public; and]~~
105 ~~[(e) whether, in the opinion of the director of the division, in consultation with the clinical~~
106 ~~director of the state hospital, the person's treatment needs have been met.]~~

107 Section 2. Section **62A-12-204.6** is enacted to read:

108 **62A-12-204.6. Admission of person in custody of Department of Corrections to state**
109 **hospital -- Retransfer of person to Department of Corrections.**

110 (1) The executive director of the Department of Corrections may request the director to
111 admit a person who is in the custody of the Department of Corrections to the state hospital, if the
112 clinical director within the Department of Corrections finds that the inmate has mentally
113 deteriorated to the point that admission to the state hospital is necessary to ensure adequate mental
114 health treatment. In determining whether that inmate should be placed in the state hospital, the
115 director of the division shall consider:

- 116 (a) the mental health treatment needs of the inmate;
117 (b) the treatment programs available at the state hospital; and
118 (c) whether the inmate meets the requirements of Subsection 62A-12-209(2).

119 (2) If the director denies the admission of an inmate as requested by the clinical director
120 within the Department of Corrections, the Board of Pardons and Parole shall determine whether

121 the inmate will be admitted to the state hospital. The Board of Pardons and Parole shall consider:

122 (a) the mental health treatment needs of the inmate;

123 (b) the treatment programs available at the state hospital; and

124 (c) whether the inmate meets the requirements of Subsection 62A-12-209(2).

125 (3) The state hospital shall receive any person in the custody of the Department of

126 Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to

127 Subsection (2). Any person so transferred to the state hospital shall remain in the custody of the

128 Department of Corrections, and the state hospital shall act solely as the agent of the Department

129 of Corrections.

130 (4) Inmates transferred to the state hospital pursuant to this section shall be transferred

131 back to the Department of Corrections through negotiations between the director and the director

132 of the Department of Corrections. If agreement between the director and the director of the

133 Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final

134 authority in determining whether a person will be transferred back to the Department of

135 Corrections. In making that determination, that board shall consider:

136 (a) the mental health treatment needs of the inmate;

137 (b) the treatment programs available at the state hospital;

138 (c) whether the person continues to meet the requirements of Subsection 62A-12-209(2);

139 (d) the ability of the state hospital to provide adequate treatment to the person, as well as
140 safety and security to the public; and

141 (e) whether, in the opinion of the director, in consultation with the clinical director of the
142 state hospital, the person's treatment needs have been met.

143 Section 3. Section **62A-12-209** is amended to read:

144 **62A-12-209. Objectives of state hospital and other facilities -- Persons who may be**
145 **admitted to state hospital.**

146 (1) The objectives of the state hospital and other mental health facilities shall be to care
147 for all persons within this state who are subject to the provisions of this chapter; and to furnish
148 them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement,
149 occupation, and support that is conducive to their physical and mental well-being.

150 (2) Only the following persons may be admitted to the state hospital:

151 (a) persons 18 years of age and older who meet the criteria necessary for commitment

152 under this part and who have severe mental disorders for whom no appropriate, less restrictive
153 treatment alternative is available;

154 (b) persons under 18 years of age who meet the criteria necessary for commitment under
155 Part 2A and for whom no less restrictive alternative is available;

156 (c) persons adjudicated and found to be guilty and mentally ill under Title 77, Chapter 16a,
157 Commitment and Treatment of Mentally Ill Persons;

158 (d) persons adjudicated and found to be not guilty by reason of insanity who are under a
159 subsequent commitment order because they are mentally ill and a danger to themselves or others,
160 under Section 77-16a-302;

161 (e) persons found incompetent to proceed under Section 77-15-6;

162 (f) persons who require an examination under Title 77; and

163 (g) persons in the custody of the Department of Corrections, admitted in accordance with
164 Section [~~62A-12-204.5~~] 62A-12-204.6, giving priority to those persons with severe mental
165 disorders.

166 Section 4. Section **77-16a-204** is amended to read:

167 **77-16a-204. UDC acceptance of transfer of guilty and mentally ill persons --**
168 **Retransfer from UDC to department for admission to the Utah State Hospital.**

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

174 (2) The transfer team shall concur in the recommendation if it determines that UDC can
175 provide the mentally ill offender with adequate mental health treatment.

176 (3) The UDC transfer team and medical administrator shall recommend the facility in
177 which the offender should be placed and the treatment to be provided in order for his mental
178 condition to remain stabilized to the director of the Division of Institutional Operations, within the
179 Department of Corrections.

180 (4) In the event that the department and UDC do not agree on the transfer of a mentally
181 ill offender, the administrator of the mental health facility where the offender is located shall notify
182 the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall

183 be provided with copies of all reports and recommendations. The board's mental health adviser
184 shall make a recommendation to the board on the transfer and the board shall issue its decision
185 within 30 days.

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

188 (6) When a mentally ill offender sentenced under Section 77-16a-202, who has been
189 transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined
190 that the offender's mental condition has deteriorated or that the offender has become mentally
191 unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings
192 and procedures described in [~~Subsections 62A-12-204.5(4) through (6)~~] Section 62A-12-204.6.

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

195 (8) A mentally ill offender who has been readmitted to the Utah State Hospital pursuant
196 to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section
197 77-16a-203.

Legislative Review Note
as of 11-19-01 12:48 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel