# CONSOLIDATION OF DIVISIONS OF MENTAL HEALTH AND SUBSTANCE ABUSE

2002 FIFTH SPECIAL SESSION

STATE OF UTAH

## Sponsor: Jack A. Seitz

**This act modifies the Human Services Code. This act creates a new Division of Substance Abuse and Mental Health within the Department of Human Services by combining the Division of Substance Abuse and the Division of Mental Health. This act makes a corresponding change to the policy boards associated with each division. This act makes conforming changes to other statutes and makes technical changes.**

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

AMENDS:

**17-50-318**, as renumbered and amended by Chapter 133, Laws of Utah 2000

**17A-3-602**, as last amended by Chapter 291, Laws of Utah 2002

**17A-3-606**, as last amended by Chapter 181 and renumbered and amended by Chapter 186, Laws of Utah 1990

**17A-3-701**, as last amended by Chapters 18 and 291, Laws of Utah 2002

**26-8a-601**, as last amended by Chapter 62, Laws of Utah 2000

**26-18-3.7**, as last amended by Chapter 1, Laws of Utah 2000

**26-25-1**, as last amended by Chapter 201, Laws of Utah 1996

**26-25-2**, as last amended by Chapter 201, Laws of Utah 1996

**32A-1-401**, as last amended by Chapter 341, Laws of Utah 2001

**41-6-44**, as last amended by Chapters 8, 54 and 106, Laws of Utah 2002

**51-2-1**, as last amended by Chapter 254, Laws of Utah 1998

**53-3-231**, as last amended by Chapters 185 and 200, Laws of Utah 2002

**53-10-208.1**, as enacted by Chapters 218 and 303, Laws of Utah 2000

**53-13-105**, as last amended by Chapter 79, Laws of Utah 2002

**53A-1-403**, as last amended by Chapter 318, Laws of Utah 1996

**53A-13-102**, as last amended by Chapter 64, Laws of Utah 1997

**58-17a-801**, as enacted by Chapter 247, Laws of Utah 1996

**58-31b-401**, as last amended by Chapter 290, Laws of Utah 2002

**58-67-601**, as last amended by Chapter 39, Laws of Utah 1998

**58-68-601**, as enacted by Chapter 248, Laws of Utah 1996

**58-69-601**, as enacted by Chapter 116, Laws of Utah 1996

**58-71-601**, as last amended by Chapter 185, Laws of Utah 2002

**62A-1-105**, as last amended by Chapter 69, Laws of Utah 1999

**62A-1-111**, as last amended by Chapter 73, Laws of Utah 2001

**62A-3-101**, as last amended by Chapter 254, Laws of Utah 1998

**62A-5a-102**, as last amended by Chapter 179, Laws of Utah 1996

**62A-5a-103**, as last amended by Chapter 276, Laws of Utah 1997

**62A-7-401**, as last amended by Chapter 13, Laws of Utah 1998

**62A-13-105**, as enacted by Chapter 158, Laws of Utah 1994

**62A-14-106**, as enacted by Chapter 69, Laws of Utah 1999

**63-25a-201**, as last amended by Chapter 115, Laws of Utah 2002

**63-38-2**, as last amended by Chapter 376, Laws of Utah 2001

**63-46b-1**, as last amended by Chapter 163, Laws of Utah 2002

**63-63a-7**, as last amended by Chapter 156, Laws of Utah 1993

**63-75-5**, as last amended by Chapters 27 and 276, Laws of Utah 1997

**64-13-7.5**, as last amended by Chapter 224, Laws of Utah 1996

**76-5-412**, as enacted by Chapter 35, Laws of Utah 2001

**76-8-311.1**, as last amended by Chapter 323, Laws of Utah 2002

**76-8-311.3**, as last amended by Chapters 5, 97 and 197, Laws of Utah 1999

**76-10-1312**, as enacted by Chapter 179, Laws of Utah 1993

**77-15-5**, as last amended by Chapter 162, Laws of Utah 1994

**77-15-6**, as last amended by Chapter 162, Laws of Utah 1994

**77-16a-202**, as last amended by Chapter 209, Laws of Utah 2001

**77-16a-204**, as last amended by Chapter 88, Laws of Utah 2002

**77-16a-302**, as enacted by Chapter 171, Laws of Utah 1992

**77-18-1**, as last amended by Chapter 35, Laws of Utah 2002

**78-3a-104**, as last amended by Chapters 200 and 283, Laws of Utah 2002

**78-3a-118**, as last amended by Chapters 22 and 140, Laws of Utah 2002

**78-3a-119**, as last amended by Chapter 213, Laws of Utah 2001

**78-3a-121**, as renumbered and amended by Chapter 365, Laws of Utah 1997

**78-3a-209**, as enacted by Chapter 1, Laws of Utah 1996

**78-3a-910**, as enacted by Chapter 1 and last amended by Chapter 318, Laws of Utah 1996

ENACTS:

**62A-15-101**, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

**62A-15-102**, (Renumbered from 62A-8-101, as last amended by Chapter 106, Laws of Utah 1999)

**62A-15-103**, (Renumbered from 62A-8-103, as last amended by Chapter 256, Laws of Utah 2002)

**62A-15-104**, (Renumbered from 62A-8-106, as last amended by Chapter 104, Laws of Utah 1992)

**62A-15-105**, (Renumbered from 62A-8-107, as last amended by Chapter 334, Laws of Utah 2000)

**62A-15-106**, (Renumbered from 62A-8-108, as last amended by Chapter 242, Laws of Utah 1988)

**62A-15-107**, (Renumbered from 62A-8-104, as last amended by Chapter 106, Laws of Utah 1999)

**62A-15-108**, (Renumbered from 62A-8-109, as last amended by Chapter 106, Laws of Utah 1999)

**62A-15-109**, (Renumbered from 62A-8-110.1, as enacted by Chapter 106, Laws of Utah 1999)

**62A-15-110**, (Renumbered from 62A-8-110.5, as repealed and reenacted by Chapter 106,

Laws of Utah 1999)

**62A-15-111**, (Renumbered from 62A-8-110.7, as last amended by Chapter 30, Laws of Utah 1992)

**62A-15-112**, (Renumbered from 62A-8-112, as last amended by Chapter 106, Laws of Utah 1999)

**62A-15-201**, (Renumbered from 62A-8-201, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-202**, (Renumbered from 62A-8-202, as last amended by Chapter 1, Laws of Utah 1996)

**62A-15-203**, (Renumbered from 62A-8-203, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-204**, (Renumbered from 62A-8-204, as last amended by Chapters 10 and 365, Laws of Utah 1997)

**62A-15-301**, (Renumbered from 62A-8-501, as enacted by Chapter 194, Laws of Utah 1988)

**62A-15-401**, (Renumbered from 62A-8-103.5, as last amended by Chapter 341, Laws of Utah 2001)

**62A-15-501**, (Renumbered from 62A-8-301, as last amended by Chapter 76, Laws of Utah 1988)

**62A-15-502**, (Renumbered from 62A-8-302, as last amended by Chapter 68, Laws of Utah 1997)

**62A-15-503**, (Renumbered from 62A-8-303, as last amended by Chapter 76, Laws of Utah 1988)

**62A-15-504**, (Renumbered from 62A-8-304, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-601**, (Renumbered from 62A-12-201, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-602**, (Renumbered from 62A-12-202, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-603**, (Renumbered from 62A-12-203, as last amended by Chapter 164, Laws of Utah 1996)

**62A-15-604**, (Renumbered from 62A-12-204, as last amended by Chapter 256, Laws of Utah 2002)

**62A-15-605**, (Renumbered from 62A-12-204.5, as last amended by Chapter 88, Laws of Utah 2002)

**62A-15-605.5**, (Renumbered from 62A-12-204.6, as enacted by Chapter 88, Laws of Utah 2002)

**62A-15-606**, (Renumbered from 62A-12-205, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-607**, (Renumbered from 62A-12-206, as last amended by Chapter 258, Laws of Utah 1995)

**62A-15-608**, (Renumbered from 62A-12-207, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-609**, (Renumbered from 62A-12-208, as last amended by Chapter 231, Laws of Utah 1992)

**62A-15-610**, (Renumbered from 62A-12-209, as last amended by Chapter 88, Laws of Utah 2002)

**62A-15-611**, (Renumbered from 62A-12-209.5, as last amended by Chapter 238, Laws of Utah 2002)

**62A-15-612**, (Renumbered from 62A-12-209.6, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-613**, (Renumbered from 62A-12-210, as last amended by Chapter 104, Laws of Utah 1992)

**62A-15-614**, (Renumbered from 62A-12-212, as last amended by Chapter 161, Laws of Utah 1989)

**62A-15-615**, (Renumbered from 62A-12-214, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-616**, (Renumbered from 62A-12-215, as last amended by Chapter 12, Laws of Utah 1994)

**62A-15-617**, (Renumbered from 62A-12-216, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-618**, (Renumbered from 62A-12-217, as last amended by Chapter 227, Laws of Utah 1993)

**62A-15-619**, (Renumbered from 62A-12-219, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-620**, (Renumbered from 62A-12-222, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-621**, (Renumbered from 62A-12-224, as last amended by Chapter 161, Laws of Utah 1989)

**62A-15-622**, (Renumbered from 62A-12-225, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-623**, (Renumbered from 62A-12-226, as last amended by Chapter 1, Laws of Utah 1989)

**62A-15-624**, (Renumbered from 62A-12-227, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-625**, (Renumbered from 62A-12-228, as last amended by Chapters 20 and 352, Laws of Utah 1995)

**62A-15-626**, (Renumbered from 62A-12-229, as last amended by Chapter 365, Laws of Utah 1997)

**62A-15-627**, (Renumbered from 62A-12-230, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-628**, (Renumbered from 62A-12-231, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-629**, (Renumbered from 62A-12-232, as last amended by Chapter 141, Laws of Utah 1999)

**62A-15-630**, (Renumbered from 62A-12-233, as enacted by Chapter 151, Laws of Utah 1991)

**62A-15-631**, (Renumbered from 62A-12-234, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-632**, (Renumbered from 62A-12-235, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-633**, (Renumbered from 62A-12-236, as last amended by Chapter 161, Laws of Utah 1989)

**62A-15-634**, (Renumbered from 62A-12-237, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-635**, (Renumbered from 62A-12-238, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-636**, (Renumbered from 62A-12-240, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-637**, (Renumbered from 62A-12-241, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-638**, (Renumbered from 62A-12-242, as last amended by Chapter 227, Laws of Utah 1993)

**62A-15-639**, (Renumbered from 62A-12-243, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-640**, (Renumbered from 62A-12-244, as last amended by Chapter 161, Laws of Utah 1989)

**62A-15-641**, (Renumbered from 62A-12-245, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-642**, (Renumbered from 62A-12-246, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-643**, (Renumbered from 62A-12-247, as last amended by Chapters 218 and 303, Laws of Utah 2000)

**62A-15-644**, (Renumbered from 62A-12-248, as last amended by Chapter 285, Laws of Utah 1993)

**62A-15-645**, (Renumbered from 62A-12-249, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-646**, (Renumbered from 62A-12-250, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-647**, (Renumbered from 62A-12-252, as enacted by Chapter 1, Laws of Utah 1988)

**62A-15-701**, (Renumbered from 62A-12-280.1, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-702**, (Renumbered from 62A-12-281.1, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-703**, (Renumbered from 62A-12-282.1, as last amended by Chapter 1, Laws of Utah

2000)

**62A-15-704**, (Renumbered from 62A-12-283.1, as last amended by Chapter 13, Laws of Utah 1998)

**62A-15-705**, (Renumbered from 62A-12-283.2, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-706**, (Renumbered from 62A-12-283.3, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-707**, (Renumbered from 62A-12-284, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-708**, (Renumbered from 62A-12-285, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-709**, (Renumbered from 62A-12-286, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-710**, (Renumbered from 62A-12-287, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-711**, (Renumbered from 62A-12-288, as enacted by Chapter 234, Laws of Utah 1996)

**62A-15-712**, (Renumbered from 62A-12-289, as last amended by Chapter 106, Laws of Utah 1999)

**62A-15-713**, (Renumbered from 62A-12-289.1, as enacted by Chapter 106, Laws of Utah 1999)

**62A-15-801**, (Renumbered from 62A-12-301, as enacted by Chapter 73, Laws of Utah 1989)

**62A-15-802**, (Renumbered from 62A-12-302, as enacted by Chapter 73, Laws of Utah 1989)

**62A-15-901**, (Renumbered from 62A-12-401, as last amended by Chapter 42, Laws of Utah 1994)

**62A-15-902**, (Renumbered from 62A-12-402, as last amended by Chapter 42, Laws of Utah 1994)

**62A-15-1001**, (Renumbered from 62A-12-501, as enacted by Chapter 111, Laws of Utah

1996)

**62A-15-1002**, (Renumbered from 62A-12-502, as enacted by Chapter 111, Laws of Utah 1996)

**62A-15-1003**, (Renumbered from 62A-12-503, as enacted by Chapter 111, Laws of Utah 1996)

**62A-15-1004**, (Renumbered from 62A-12-504, as enacted by Chapter 111, Laws of Utah 1996)

REPEALS:

**62A-12-101**, as last amended by Chapter 106, Laws of Utah 1999

**62A-12-102**, as last amended by Chapter 256, Laws of Utah 2002

**62A-12-102.5**, as last amended by Chapter 106, Laws of Utah 1999

**62A-12-103**, as last amended by Chapter 104, Laws of Utah 1992

**62A-12-104**, as last amended by Chapter 30, Laws of Utah 1992

**62A-12-105**, as last amended by Chapter 106, Laws of Utah 1999

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

Section 1. Section **17-50-318** is amended to read:

**17-50-318. Mental health and substance abuse services.**

Each county shall provide mental health and substance abuse services in accordance with Title 62A, Chapter [~~12, Mental Health, and substance abuse services in accordance with Title 62A, Chapter 8,~~] 15, Substance Abuse and Mental Health Act.

Section 2. Section **17A-3-602** is amended to read:

**17A-3-602. Local mental health authorities -- Responsibilities.**

(1) All county legislative bodies in this state are local mental health authorities. Within legislative appropriations and county matching funds required by this section, under the policy direction of the state Board of Substance Abuse and Mental Health Act and the administrative direction of the Division of Substance Abuse and Mental Health within the Department of Human Services, local mental health authorities shall provide mental health services to persons within their respective counties. Two or more counties may join to provide mental health prevention and

treatment services.

(2) The legislative bodies may establish acceptable ways of apportioning the cost of mental health services. Any agreement for joint mental health services may designate the treasurer of one of the participating counties as the custodian of moneys available for those joint services, and that the designated treasurer, or other disbursing officer, may make payments from those moneys for such purposes upon audit of the appropriate auditing officer or officers representing the participating counties. The agreement may provide for:

(a) joint operation of services and facilities or for operation of services and facilities under contract by one participating local mental health authority for other participating local mental health authorities; and

(b) allocation of appointments of members of the mental health advisory council between or among participating counties.

(3) (a) All county legislative bodies, as local mental health authorities, are accountable to the Department of Human Services, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for mental health services, regardless of whether the services are provided by a private contract provider.

(b) A local mental health authority shall comply, and require compliance by its contract provider, with all directives issued by the Department of Human Services and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing mental health programs and services. The Department of Human Services and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local mental health authorities with regard to programs and services.

(4) Local mental health authorities shall:

(a) review and evaluate mental health needs and services;

(b) annually prepare and submit to the division a plan for mental health funding and service delivery. The plan shall include services for adults, youth, and children, including, but not limited to, the following:

(i) inpatient care and services;

(ii) residential care and services;

(iii) outpatient care and services;

(iv) 24-hour crisis care and services;

(v) psychotropic medication management;

(vi) psychosocial rehabilitation including vocational training and skills development;

(vii) case management;

(viii) community supports including in-home services, housing, family support services, and respite services; and

(ix) consultation and education services, including but not limited to, case consultation, collaboration with other service agencies, public education, and public information;

(c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(d) appoint directly or by contract a full-time or part-time director for mental health programs and prescribe his duties;

(e) provide input and comment on new and revised policies established by the state Board of Substance Abuse and Mental Health;

(f) establish and require contract providers to establish administrative, clinical, personnel, financial, and management policies regarding mental health services and facilities, in accordance with the policies of the state Board of Substance Abuse and Mental Health[~~, the Division of Mental Health,~~] and state and federal law;

(g) establish mechanisms allowing for direct citizen input;

(h) annually contract with the Division of Substance Abuse and Mental Health to provide mental health programs and services in accordance with the provisions of Title 62A, Chapter [~~12,~~] 15, Substance Abuse and Mental Health Act;

(i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

(j) provide funding equal to at least 20% of the state funds that it receives to fund services

described in the plan; and

(k) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities[~~, and Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act~~].

(5) Before disbursing any public funds, local mental health authorities shall require that all entities that receive any public funds from a local mental health authority agree in writing that:

(a) the division may examine the entity's financial records;

(b) the county auditor may examine and audit the entity's financial records; and

(c) the entity will comply with the provisions of Subsection (3)(b).

(6) Local mental health authorities may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for mental health services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) For purposes of this section "public funds" means the same as that term is defined in Section 17A-3-603.5.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 3. Section **17A-3-606** is amended to read:

**17A-3-606. Contracts for mental health services provided by local mental health authorities.**

Where a local mental health authority has established a plan to provide services authorized by this part, and those services meet standards fixed by rules of the board, the local mental health authority may enter into a contract with the [~~division for mental health services~~] Division of Substance Abuse and Mental Health to be furnished by that local mental health authority for an agreed compensation to be paid by the division.

Section 4. Section **17A-3-701** is amended to read:

**17A-3-701. Local substance abuse authorities -- Responsibilities.**

(1) All county legislative bodies in this state are local substance abuse authorities. Within legislative appropriations and county matching funds required by this section, and under the policy direction of the state Board of Substance Abuse and Mental Health and the administrative direction of the Division of Substance Abuse and Mental Health within the Department of Human Services, local substance abuse authorities shall provide substance abuse services to residents of their respective counties. Two or more counties may join to provide substance abuse prevention and treatment services.

(2) The legislative bodies may establish acceptable ways of apportioning the cost of substance abuse services. Any agreement for joint substance abuse services may designate the treasurer of one of the participating counties as the custodian of moneys available for those joint services, and that the designated treasurer, or other disbursing officer, may make payments from those moneys for such purposes upon audit of the appropriate auditing officer or officers representing the participating counties. The agreement may provide for joint operation of services and facilities or for operation of services and facilities under contract by one participating local substance abuse authority for other participating local substance abuse authorities.

(3) (a) All county legislative bodies, as local substance abuse authorities, are accountable to the Department of Human Services, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for substance abuse services, regardless of whether the services are provided by a private contract provider.

(b) A local substance abuse authority shall comply, and require compliance by its contract provider, with all directives issued by the Department of Human Services and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing substance abuse programs and services. The Department of Human Services and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local substance abuse authorities with regard to programs and services.

(4) Local substance abuse authorities shall:

(a) review and evaluate substance abuse prevention and treatment needs and services;

(b) annually prepare and submit a plan to the division for funding and service delivery; the plan shall include, but is not limited to, primary prevention, targeted prevention, early intervention, and treatment services;

(c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(d) appoint directly or by contract a full or part time director for substance abuse programs, and prescribe his duties;

(e) provide input and comment on new and revised policies established by the state Board of Substance Abuse and Mental Health;

(f) establish and require contract providers to establish administrative, clinical, personnel, financial, and management policies regarding substance abuse services and facilities, in accordance with the policies of the state Board of Substance Abuse and Mental Health, and state and federal law;

(g) establish mechanisms allowing for direct citizen input;

(h) annually contract with the Division of Substance Abuse and Mental Health to provide substance abuse programs and services in accordance with the provisions of Title 62A, Chapter [~~8~~] 15, Substance Abuse and Mental Health Act;

(i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

(j) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(k) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan;

(l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities[~~, and Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act~~];

(m) for persons convicted of driving under the influence in violation of Subsection 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:

(i) a screening and assessment;

(ii) an educational series; and

(iii) substance abuse treatment; and

(n) utilize proceeds of the accounts described in Subsection [~~62A-8-303~~] 62A-15-503(1) to supplement the cost of providing the services described in Subsection (4)(m).

(5) Before disbursing any public funds, local substance abuse authorities shall require that all entities that receive any public funds from a local substance abuse authority agree in writing that:

(a) the division may examine the entity's financial records;

(b) the county auditor may examine and audit the entity's financial records; and

(c) the entity will comply with the provisions of Subsection (3)(b).

(6) Local substance abuse authorities may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for substance abuse services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) For purposes of this section "public funds" means the same as that term is defined in Section 17A-3-703.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 5. Section **26-8a-601** is amended to read:

**26-8a-601. Persons and activities exempt from civil liability.**

(1) A licensed physician, physician's assistant, or licensed registered nurse who, gratuitously and in good faith, gives oral or written instructions to an individual certified under Section 26-8a-302 or a person permitted to use a fully automated external defibrillator because of Section 26-8a-308 is not liable for any civil damages as a result of issuing the instructions, unless the instructions given were the result of gross negligence or willful misconduct.

(2) An individual certified under Section 26-8a-302, during either training or after certification, a licensed physician, physician's assistant, or a registered nurse who, gratuitously and in good faith, provides emergency medical instructions or renders emergency medical care

authorized by this chapter is not liable for any civil damages as a result of any act or omission in providing the emergency medical instructions or medical care, unless the act or omission is the result of gross negligence or willful misconduct.

(3) An individual certified under Section 26-8a-302 is not subject to civil liability for failure to obtain consent in rendering emergency medical services authorized by this chapter to any individual who is unable to give his consent, regardless of the individual's age, where there is no other person present legally authorized to consent to emergency medical care, provided that the certified individual acted in good faith.

(4) A principal, agent, contractor, employee, or representative of an agency, organization, institution, corporation, or entity of state or local government that sponsors, authorizes, supports, finances, or supervises any functions of an individual certified under Section 26-8a-302 is not liable for any civil damages for any act or omission in connection with such sponsorship, authorization, support, finance, or supervision of the certified individual where the act or omission occurs in connection with the certified individual's training or occurs outside a hospital where the life of a patient is in immediate danger, unless the act or omission is inconsistent with the training of the certified individual, and unless the act or omission is the result of gross negligence or willful misconduct.

(5) A physician who gratuitously and in good faith arranges for, requests, recommends, or initiates the transfer of a patient from a hospital to a critical care unit in another hospital is not liable for any civil damages as a result of such transfer where:

(a) sound medical judgment indicates that the patient's medical condition is beyond the care capability of the transferring hospital or the medical community in which that hospital is located; and

(b) the physician has secured an agreement from the receiving facility to accept and render necessary treatment to the patient.

(6) A person who is a registered member of the National Ski Patrol System (NSPS) or a member of a ski patrol who has completed a course in winter emergency care offered by the NSPS combined with CPR for medical technicians offered by the American Red Cross or American Heart Association, or an equivalent course of instruction, and who in good faith renders emergency care

in the course of ski patrol duties is not liable for civil damages as a result of any act or omission in rendering the emergency care, unless the act or omission is the result of gross negligence or willful misconduct.

(7) An emergency medical service provider who, in good faith, transports an individual against his will but at the direction of a law enforcement officer pursuant to Section [~~62A-12-232~~] 62A-15-629 is not liable for civil damages for transporting the individual.

(8) A person who is permitted to use a fully automated external defibrillator because of Section 26-8a-308 is not liable for civil damages as a result of any act or omission related to the use of the defibrillator in providing emergency medical care gratuitously and in good faith to a person who reasonably appears to be in cardiac arrest, unless the act or omission is the result of gross negligence or wilful misconduct.

Section 6. Section **26-18-3.7** is amended to read:

**26-18-3.7. Prepaid health care delivery systems.**

(1) (a) Before July 1, 1996, the division shall submit to the Health Care Financing Administration within the United States Department of Health and Human Services, an amendment to the state's freedom of choice waiver. That amendment shall provide that the following persons who are eligible for services under the state plan for medical assistance, who reside in Salt Lake, Utah, Davis, or Weber counties, shall enroll in the recipient's choice of a health care delivery system that meets the requirements of Subsection (2):

(i) by July 1, 1994, 40% of eligible persons;

(ii) by July 1, 1995, 65% of eligible persons; and

(iii) by July 1, 1996, 100% of eligible persons.

(b) The division may not enter into any agreements with mental health providers that establish a prepaid capitated delivery system for mental health services that were not in existence prior to July 1, 1993, until the application of the Utah Medicaid Hospital Provider Temporary Assessment Act with regard to a specialty hospital as defined in Section 26-21-2 that may be engaged exclusively in rendering psychiatric or other mental health treatment is repealed.

(c) The following are exempt from the requirements of Subsection (1)(a):

(i) persons who:

(A) receive medical assistance for the first time after July 1, 1996;

(B) have a mental illness, as that term is defined in Section [~~62A-12-202~~] 62A-15-602; and

(C) are receiving treatment for that mental illness. The division, when appropriate, shall enroll these persons in a health care delivery system that meets the requirements of this section;

(ii) persons who are institutionalized in a facility designated by the division as a nursing facility or an intermediate care facility for the mentally retarded; or

(iii) persons with a health condition that requires specialized medical treatment that is not available from a health care delivery system that meets the requirements of this section.

(2) In submitting the amendment to the state's freedom of choice waiver under Subsection (1), the division shall ensure that the proposed health care delivery systems have at least the following characteristics, so that the system:

(a) is financially at risk, for a specified continuum of health care services, for a defined population, and has incentives to balance the patient's need for care against the need for cost control;

(b) follows utilization and quality controls developed by the department;

(c) is encouraged to promote the health of patients through primary and preventive care;

(d) coordinates care to avoid unnecessary duplication and services;

(e) conserves health care resources; and

(f) if permissible under the waiver, utilizes private insurance plans including health maintenance organizations and other private health care delivery organizations.

(3) Subsection (2) does not prevent the division from contracting with other health care delivery organizations if the division determines that it is advantageous to do so.

(4) Health care delivery systems that meet the requirements of this section may provide all services otherwise available under the state plan for medical assistance, except prescribed drugs.

(5) The division shall periodically report to the Health and Human Services Interim Committee regarding the development and implementation of the amendment to the state's freedom of choice waiver required under this section.

Section 7. Section **26-25-1** is amended to read:

**26-25-1. Authority to provide data on treatment and condition of persons to designated agencies -- Immunity from liability.**

(1) Any person, health facility, or other organization may, without incurring liability, provide the following information to the persons and entities described in Subsection (2):

(a) information as determined by the state registrar of vital records appointed under Title 26, Chapter 2, Utah Vital Statistics Act;

(b) interviews;

(c) reports;

(d) statements;

(e) memoranda; and

(f) other data relating to the condition and treatment of any person.

(2) The information described in Subsection (1) may be provided to:

(a) the department and local health departments;

(b) the Division of Substance Abuse and Mental Health within the Department of Human Services;

(c) scientific and health care research organizations affiliated with institutions of higher education;

(d) the Utah Medical Association or any of its allied medical societies;

(e) peer review committees;

(f) professional review organizations;

(g) professional societies and associations; and

(h) any health facility's in-house staff committee for the uses described in Subsection (3).

(3) The information described in Subsection (1) may be provided for the following purposes:

(a) study, with the purpose of reducing morbidity or mortality; or

(b) the evaluation and improvement of hospital and health care rendered by hospitals, health facilities, or health care providers.

(4) Any person may, without incurring liability, provide information, interviews, reports, statements, memoranda, or other information relating to the ethical conduct of any health care

provider to peer review committees, professional societies and associations, or any in-hospital staff committee to be used for purposes of intraprofessional society or association discipline.

(5) No liability may arise against any person or organization as a result of:

(a) providing information or material authorized in this section;

(b) releasing or publishing findings and conclusions of groups referred to in this section to advance health research and health education; or

(c) releasing or publishing a summary of these studies in accordance with this chapter.

(6) As used in this chapter:

(a) "health care provider" has the meaning set forth in Section 78-14-3; and

(b) "health care facility" has the meaning set forth in Section 26-21-2.

Section 8. Section **26-25-2** is amended to read:

**26-25-2. Restrictions on use of data.**

The Division of Substance Abuse and Mental Health within the Department of Human Services, scientific and health care research organizations affiliated with institutions of higher education, the Utah Medical Association or any of its allied medical societies, peer review committees, professional review organizations, professional societies and associations, or any health facility's in-house staff committee may only use or publish the material received or gathered under Section 26-25-1 for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of studies conducted in accordance with Section 26-25-1 may be released by those groups for general publication.

Section 9. Section **32A-1-401** is amended to read:

**32A-1-401. Alcohol training and education -- Revocation or suspension of licenses.**

(1) The commission may revoke, suspend, withhold, or not renew the license of any new or renewing licensee if any of the following persons, as defined in Section [~~62A-8-103.5~~] 62A-15-401, fail to complete the seminar required in Section [~~62A-8-103.5~~] 62A-15-401:

(a) a person who manages operations at the premises of the licensee;

(b) a person who supervises the serving of alcoholic beverages to a customer for consumption on the premises of the licensee; or

(c) a person who serves alcoholic beverages to a customer for consumption on the premises of the licensee.

(2) A city, town, or county in which an establishment conducts its business may revoke, suspend, withhold, or not renew the business license of the establishment if any person described in Subsection (1) fails to complete the seminar required in Section [~~62A-8-103.5~~] 62A-15-401.

Section 10. Section **41-6-44** is amended to read:

**41-6-44. Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.**

(1) As used in this section:

(a) "conviction" means any conviction for a violation of:

(i) this section;

(ii) alcohol, any drug, or a combination of both-related reckless driving under Subsections (9) and (10);

(iii) Section 41-6-44.6, driving with any measurable controlled substance that is taken illegally in the body;

(iv) local ordinances similar to this section or alcohol, any drug, or a combination of both-related reckless driving adopted in compliance with Section 41-6-43;

(v) automobile homicide under Section 76-5-207; or

(vi) a violation described in Subsections (1)(a)(i) through (v), which judgment of conviction is reduced under Section 76-3-402; or

(vii) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol, any drug, or a combination of both-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;

(b) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse and Mental Health in accordance with Section

[~~62A-8-107~~] 62A-15-105;

(c) "screening and assessment" means a substance abuse addiction and dependency screening and assessment obtained at a substance abuse program that is approved by the Board of Substance Abuse and Mental Health in accordance with Section [~~62A-8-107~~] 62A-15-105;

(d) "serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death;

(e) "substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Board of Substance Abuse and Mental Health in accordance with Section [~~62A-8-107~~] 62A-15-105;

(f) "substance abuse treatment program" means a state licensed substance abuse program;

(g) a violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6-43; and

(h) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control.

(b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per

210 liters of breath.

(3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:

(i) class B misdemeanor; or

(ii) class A misdemeanor if the person:

(A) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;

(B) had a passenger under 16 years of age in the vehicle at the time of the offense; or

(C) was 21 years of age or older and had a passenger under 18 years of age in the vehicle at the time of the offense.

(b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony if the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner.

(4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a mandatory jail sentence of not less than 48 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 48 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (4)(d); and

(iii) impose a fine of not less than $700.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) (i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the

person in accordance with Subsection (14).

(ii) If there is admissible evidence that the person had a blood alcohol level of .16 or higher, the court shall order probation for the person in accordance with Subsection (14).

(5) (a) If a person is convicted under Subsection (2) within ten years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence of not less than 240 consecutive hours.

(b) The court may, as an alternative to all or part of a jail sentence, require the person to:

(i) work in a compensatory-service work program for not less than 240 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (5)(d); and

(iii) impose a fine of not less than $800.

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court shall order probation for the person in accordance with Subsection (14).

(6) (a) A conviction for a violation of Subsection (2) is a third degree felony if it is:

(i) a third or subsequent conviction under this section within ten years of two or more prior convictions; or

(ii) at any time after a conviction of:

(A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or

(B) a felony violation under this section that is committed after July 1, 2001.

(b) Any conviction described in this Subsection (6) which judgment of conviction is reduced under Section 76-3-402 is a conviction for purposes of this section.

(c) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison sentence

and places the defendant on probation the court shall impose:

(i) a fine of not less than $1,500; and

(ii) a mandatory jail sentence of not less than 1,500 hours.

(d) For Subsection (6)(a) or (c), the court shall impose an order requiring the person to obtain a screening and assessment and substance abuse treatment at a substance abuse treatment program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment for not less than 240 hours.

(e) In addition to the penalties required under Subsection (6)(c), if the court orders probation, the probation shall be supervised probation which may include requiring the person to participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

(7) The mandatory portion of any sentence required under this section may not be suspended and the convicted person is not eligible for parole or probation until any sentence imposed under this section has been served. Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in a screening and assessment; and an educational series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance abuse treatment; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding screening and assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) The court shall notify the Driver License Division if a person fails to:

(i) complete all court ordered:

(A) screening and assessment;

(B) educational series;

(C) substance abuse treatment; and

(D) hours of work in compensatory-service work program; or

(ii) pay all fines and fees, including fees for restitution and treatment costs. Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section, the prosecution shall state for the record a factual basis for the plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation.

(ii) The statement is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(b) The court shall advise the defendant before accepting the plea offered under this Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

(c) The court shall notify the Driver License Division of each conviction of Section 41-6-44.6 or 41-6-45 entered under this Subsection (9).

(10) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(11) (a) The Driver License Division shall:

(i) suspend for 90 days the operator's license of a person convicted for the first time under Subsection (2);

(ii) revoke for one year the license of a person convicted of any subsequent offense under Subsection (2) or if the person has a prior conviction as defined under Subsection (1) if the violation is committed within a period of ten years from the date of the prior violation; and

(iii) suspend or revoke the license of a person as ordered by the court under Subsection (12).

(b) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(12) (a) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, one year, or two years to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person's license under this Subsection (12)(b), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

(13) (a) If the court orders a person to participate in home confinement through the use of electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

(b) The electronic monitoring device shall be used under conditions which require:

(i) the person to wear an electronic monitoring device at all times;

(ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored; and

(iii) the person to pay the costs of the electronic monitoring.

(c) The court shall order the appropriate entity described in Subsection (13)(e) to place an electronic monitoring device on the person and install electronic monitoring equipment in the residence of the person or other specified location.

(d) The court may:

(i) require the person's electronic home monitoring device to include a substance abuse testing instrument;

(ii) restrict the amount of alcohol the person may consume during the time the person is subject to home confinement;

(iii) set specific time and location conditions that allow the person to attend school

educational classes, or employment and to travel directly between those activities and the person's home; and

(iv) waive all or part of the costs associated with home confinement if the person is determined to be indigent by the court.

(e) The electronic monitoring described in this section may either be administered directly by the appropriate corrections agency, probation monitoring agency, or by contract with a private provider.

(f) The electronic monitoring provider shall cover the costs of waivers by the court under Subsection (13)(c)(iv).

(14) (a) If supervised probation is ordered under Section 41-6-44.6 or Subsection (4)(e) or (5)(e):

(i) the court shall specify the period of the probation;

(ii) the person shall pay all of the costs of the probation; and

(iii) the court may order any other conditions of the probation.

(b) The court shall provide the probation described in this section by contract with a probation monitoring agency or a private probation provider.

(c) The probation provider described in Subsection (14)(b) shall monitor the person's compliance with all conditions of the person's sentence, conditions of probation, and court orders received under this article and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders.

(d) (i) The court may waive all or part of the costs associated with probation if the person is determined to be indigent by the court.

(ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers by the court under Subsection (14)(d)(i).

(15) If a person is convicted of a violation of Subsection (2) and there is admissible evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

(a) treatment as described under Subsection (4)(d), (5)(d), or (6)(d), then the court shall enter the reasons on the record; and

(b) the following penalties, the court shall enter the reasons on the record:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6-44.7; or

(ii) the imposition of home confinement through the use of electronic monitoring in accordance with Subsection (13).

Section 11. Section **51-2-1** is amended to read:

**51-2-1. Audits of political subdivisions, interlocal organizations, and other local entities required.**

(1) (a) Each of the following entities, except as exempted under Section 51-2-8, shall cause an audit to be made of its accounts by a competent certified public accountant:

(i) the governing board of each political subdivision;

(ii) the governing board of each interlocal organization having the power to tax or to expend public funds;

(iii) the governing board of any local mental health authority established under the authority of Title 62A, Chapter [~~12~~] 15, Substance Abuse and Mental Health Act;

(iv) the governing board of any substance abuse authority established under the authority of Title 62A, Chapter [~~8~~] 15, Substance Abuse and Mental Health Act;

(v) the governing board of any area agency established under the authority of Title 62A, Chapter 3, Aging and Adult Services;

(vi) the governing board of any nonprofit corporation that receives at least 50% of its funds from federal, state, and local government entities through contracts; and

(vii) the governing board of any other entity established by a local governmental unit that receives tax exempt status for bonding or taxing purposes.

(b) In municipalities organized under an optional form of municipal government, the council shall cause the audit to be made.

(c) The audit shall be made at least annually.

(2) The auditors shall review the accounts of all officers of the entity having responsibility for the care, management, collection, or disbursement of moneys belonging to it or appropriated by

law or otherwise acquired for its use or benefit.

(3) The audits shall:

(a) be performed and financial statements presented in accordance with generally accepted auditing standards and accounting principles and procedures adopted by recognized authoritative bodies; and

(b) conform to the uniform classification of accounts established or approved by the state auditor or any other classification of accounts established by any federal government agency.

(4) If the political subdivision, interlocal organization, or other local entity receives federal funding, the audits shall be performed in accordance with both federal and state auditing requirements.

Section 12. Section **53-3-231** is amended to read:

**53-3-231. Person under 21 may not operate vehicle or motorboat with detectable alcohol in body -- Chemical test procedures -- Temporary license -- Hearing and decision -- Suspension of license or operating privilege -- Fees -- Judicial review -- Referral to local substance abuse authority or program.**

(1) (a) As used in this section:

(i) "Local substance abuse authority" has the same meaning as provided in Section [~~62A-8-101~~] 62A-15-102.

(ii) "Substance abuse program" means any substance abuse program licensed by the Department of Human Services or the Department of Health and approved by the local substance abuse authority.

(b) Calculations of blood, breath, or urine alcohol concentration under this section shall be made in accordance with the procedures in Subsection 41-6-44(2).

(2) (a) A person younger than 21 years of age may not operate or be in actual physical control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol concentration in his body as shown by a chemical test.

(b) (i) A person with a valid operator license who violates Subsection (2)(a), in addition to any other applicable penalties arising out of the incident, shall have his operator license denied or

suspended as provided in Subsection (2)(b)(ii).

(ii) (A) For a first offense under Subsection (2)(a), the Driver License Division of the Department of Public Safety shall deny the person's operator license if ordered or not challenged under this section for a period of 90 days beginning on the 30th day after the date of the arrest under Section 32A-12-209.

(B) For a second or subsequent offense under Subsection (2)(a), within three years of a prior denial or suspension, the Driver License Division shall suspend the person's operator license for a period of one year beginning on the 30th day after the date of arrest.

(c) (i) A person who has not been issued an operator license who violates Subsection (2)(a), in addition to any other penalties arising out of the incident, shall be punished as provided in Subsection (2)(c)(ii).

(ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle and the Driver License Division may not issue the person an operator license or learner's permit.

(3) (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Subsection (2), the peace officer may, in connection with arresting the person for a violation of Section 32A-12-209, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

(b) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Subsection (2)(a) will result in denial or suspension of the person's license to operate a motor vehicle or a refusal to issue a license.

(c) If the person submits to a chemical test and the test results indicate a blood, breath, or urine alcohol content in violation of Subsection (2)(a), or if the officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the officer directing administration of the test or making the determination shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver License Division's intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license under Subsection (2).

(4) When the officer serves immediate notice on behalf of the Driver License Division, he shall:

(a) take the Utah license certificate or permit, if any, of the operator;

(b) issue a temporary license certificate effective for only 29 days if the driver had a valid operator's license; and

(c) supply to the operator, in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the Driver License Division.

(5) A citation issued by the officer may, if approved as to form by the Driver License Division, serve also as the temporary license certificate under Subsection (4)(b).

(6) As a matter of procedure, the peace officer serving the notice shall send to the Driver License Division within ten calendar days after the date of arrest and service of the notice:

(a) the person's driver license certificate, if any;

(b) a copy of the citation issued for the offense;

(c) a signed report in a manner specified by the Driver License Division indicating the chemical test results, if any; and

(d) any other basis for the officer's determination that the person has violated Subsection (2).

(7) (a) (i) Upon request in a manner specified by the division, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest under Section 32A-12-209.

(ii) The request shall be made within ten calendar days of the date of the arrest.

(b) A hearing, if held, shall be before the Driver License Division in the county in which the arrest occurred, unless the Driver License Division and the person agree that the hearing may be held in some other county.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was operating a motor vehicle or motorboat in violation of Subsection (2)(a);

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) In connection with a hearing the Driver License Division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of

relevant books and papers and records as defined in Section 46-4-102.

(e) One or more members of the Driver License Division may conduct the hearing.

(f) Any decision made after a hearing before any number of the members of the Driver License Division is as valid as if made after a hearing before the full membership of the Driver License Division.

(g) After the hearing, the Driver License Division shall order whether the person:

(i) with a valid license to operate a motor vehicle will have his license denied or not or suspended or not; or

(ii) without a valid operator license will be refused a license under Subsection (2)(c).

(h) If the person for whom the hearing is held fails to appear before the Driver License Division as required in the notice, the division shall order whether the person shall have his license denied, suspended, or not denied or suspended, or whether an operator license will be refused or not refused.

(8) (a) Following denial or suspension the Driver License Division shall assess against a person, in addition to any fee imposed under Subsection 53-3-205(13), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs. This fee shall be canceled if the person obtains an unappealed Driver License Division hearing or court decision that the suspension was not proper.

(b) A person whose operator license has been denied, suspended, or postponed by the Driver License Division under this section may file a petition within 30 days after the suspension for a hearing on the matter which, if held, is governed by Section 53-3-224.

(9) After reinstatement of an operator license for a first offense under this section, a report authorized under Section 53-3-104 may not contain evidence of the denial or suspension of the person's operator license under this section if he has not been convicted of any other offense for which the denial or suspension may be extended.

(10) (a) In addition to the penalties in Subsection (2), a person who violates Subsection (2)(a) shall:

(i) obtain an assessment and recommendation for appropriate action from a substance abuse

program, but any associated costs shall be the person's responsibility; or

(ii) be referred by the Driver License Division to the local substance abuse authority for an assessment and recommendation for appropriate action.

(b) (i) Reinstatement of the person's operator license or the right to obtain an operator license is contingent upon successful completion of the action recommended by the local substance abuse authority or the substance abuse program.

(ii) The local substance abuse authority's or the substance abuse program's recommended action shall be determined by an assessment of the person's alcohol abuse and may include:

(A) a targeted education and prevention program;

(B) an early intervention program; or

(C) a substance abuse treatment program.

(iii) Successful completion of the recommended action shall be determined by standards established by the Division of Substance Abuse and Mental Health.

(c) At the conclusion of the penalty period imposed under Subsection (2), the local substance abuse authority or the substance abuse program shall notify the Driver License Division of the person's status regarding completion of the recommended action.

(d) The local substance abuse authorities and the substance abuse programs shall cooperate with the Driver License Division in:

(i) conducting the assessments;

(ii) making appropriate recommendations for action; and

(iii) notifying the Driver License Division about the person's status regarding completion of the recommended action.

(e) (i) The local substance abuse authority is responsible for the cost of the assessment of the person's alcohol abuse, if the assessment is conducted by the local substance abuse authority.

(ii) The local substance abuse authority or a substance abuse program selected by a person is responsible for:

(A) conducting an assessment of the person's alcohol abuse; and

(B) for making a referral to an appropriate program on the basis of the findings of the

assessment.

(iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees associated with the recommended program to which the person selected or is referred.

(B) The costs and fees under Subsection (10)(e)(iii)(A) shall be based on a sliding scale consistent with the local substance abuse authority's policies and practices regarding fees for services or determined by the substance abuse program.

Section 13. Section **53-10-208.1** is amended to read:

**53-10-208.1. Magistrates and court clerks to supply information.**

Every magistrate or clerk of a court responsible for court records in this state shall, within 30 days of the disposition and on forms and in the manner provided by the division, furnish the division with information pertaining to:

(1) all dispositions of criminal matters, including:

(a) guilty pleas;

(b) convictions;

(c) dismissals;

(d) acquittals;

(e) pleas held in abeyance;

(f) judgments of not guilty by reason of insanity for a violation of:

(i) a felony offense;

(ii) Title 76, Chapter 5, Offenses Against the Person; or

(iii) Title 76, Chapter 10, Part 5, Weapons;

(g) judgments of guilty and mentally ill;

(h) finding of mental incompetence to stand trial for a violation of:

(i) a felony offense;

(ii) Title 76, Chapter 5, Offenses Against the Person; or

(iii) Title 76, Chapter 10, Part 5, Weapons; or

(i) probations granted; and

(2) orders of civil commitment under the terms of Section [~~62A-12-234~~] 62A-15-631;

(3) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within one day of the action and in a manner provided by the division; and

(4) protective orders issued after notice and hearing, pursuant to:

(a) Title 30, Chapter 6, Cohabitant Abuse Act; or

(b) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

Section 14. Section **53-13-105** is amended to read:

**53-13-105. Special function officer.**

(1) (a) "Special function officer" means a sworn and certified peace officer performing specialized investigations, service of legal process, security functions, or specialized ordinance, rule, or regulatory functions.

(b) "Special function officer" includes:

(i) state military police;

(ii) constables;

(iii) port-of-entry agents as defined in Section 72-1-102;

(iv) authorized employees or agents of the Department of Transportation assigned to administer and enforce the provisions of Title 72, Chapter 9, Motor Carrier Safety Act;

(v) school district security officers;

(vi) Utah State Hospital security officers designated pursuant to Section [~~62A-12-203~~] 62A-15-603;

(vii) Utah State Developmental Center security officers designated pursuant to Subsection 62A-5-206(9);

(viii) fire arson investigators for any political subdivision of the state;

(ix) ordinance enforcement officers employed by municipalities or counties may be special function officers;

(x) employees of the Department of Natural Resources who have been designated to conduct supplemental enforcement functions as a collateral duty;

(xi) railroad special agents deputized by a county sheriff under Section 17-30-2, or appointed

pursuant to Section 56-1-21.5;

(xii) auxiliary officers, as described by Section 53-13-112;

(xiii) special agents, process servers, and investigators employed by city attorneys;

(xiv) criminal tax investigators designated under Section 59-1-206; and

(xv) all other persons designated by statute as having special function officer authority or limited peace officer authority.

(2) (a) A special function officer may exercise that spectrum of peace officer authority that has been designated by statute to the employing agency, and only while on duty, and not for the purpose of general law enforcement.

(b) If the special function officer is charged with security functions respecting facilities or property, the powers may be exercised only in connection with acts occurring on the property where the officer is employed or when required for the protection of the employer's interest, property, or employees.

(c) A special function officer may carry firearms only while on duty, and only if authorized and under conditions specified by the officer's employer or chief administrator.

(3) (a) A special function officer may not exercise the authority of a peace officer until:

(i) the officer has satisfactorily completed an approved basic training program for special function officers as provided under Subsection (4); and

(ii) the chief law enforcement officer or administrator has certified this fact to the director of the division.

(b) City and county constables and their deputies shall certify their completion of training to the legislative governing body of the city or county they serve.

(4) (a) The agency that the special function officer serves may establish and maintain a basic special function course and in-service training programs as approved by the director of the division with the advice and consent of the council.

(b) The in-service training shall consist of no fewer than 40 hours per year and may be conducted by the agency's own staff or by other agencies.

Section 15. Section **53A-1-403** is amended to read:

**53A-1-403. Education of persons under 21 in custody of state agency -- Establishment of coordinating council -- Advisory councils.**

(1) The State Board of Education is directly responsible for the education of all persons under the age of 21 who are:

(a) in the custody of the Department of Human Services;

(b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or

(c) being held in a juvenile detention facility.

(2) Subsection (1)(b) does not apply to persons taken into custody for the primary purpose of obtaining access to education programs provided for youth in custody.

(3) The board shall, where feasible, contract with school districts or other appropriate agencies to provide educational, administrative, and supportive services, but the board shall retain responsibility for the programs.

(4) The Legislature shall establish and maintain separate education budget categories for youth in custody who are under the jurisdiction of the following state agencies:

(a) detention centers and the Divisions of Youth Corrections and Child and Family Services;

(b) the Division of Substance Abuse and Mental Health; and

(c) the Division of Services for People with Disabilities.

(5) (a) The Department of Human Services and the State Board of Education shall appoint a coordinating council to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Youth Corrections and the Division of Child and Family Services.

(b) The department and board may appoint similar councils for those in the custody of the Division of Substance Abuse and Mental Health or the Division of Services for People with Disabilities.

(6) A school district contracting to provide services under Subsection (3) shall establish an advisory council to plan, coordinate, and review education and treatment programs for persons held

in custody in the district.

Section 16. Section **53A-13-102** is amended to read:

**53A-13-102. Instruction on the harmful effects of alcohol, tobacco, and controlled substances -- Rulemaking authority -- Assistance from the Division of Substance Abuse and Mental Health.**

(1) The State Board of Education shall adopt rules providing for instruction at each grade level on the harmful effects of alcohol, tobacco, and controlled substances upon the human body and society. The rules shall require but are not limited to instruction on the following:

(a) teaching of skills needed to evaluate advertisements for, and media portrayal of, alcohol, tobacco, and controlled substances;

(b) directing students towards healthy and productive alternatives to the use of alcohol, tobacco, and controlled substances; and

(c) discouraging the use of alcohol, tobacco, and controlled substances.

(2) At the request of the board, the Division of Substance Abuse and Mental Health shall cooperate with the board in developing programs to provide this instruction.

(3) The board shall participate in efforts to enhance communication among community organizations and state agencies, and shall cooperate with those entities in efforts which are compatible with the purposes of this section.

Section 17. Section **58-17a-801** is amended to read:

**58-17a-801. Mentally incompetent or incapacitated pharmacist -- Division action and procedures.**

(1) As used in this section:

(a) "incapacitated person" has the same definition as in Section 75-1-201; and

(b) "mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

(2) If a court of competent jurisdiction determines a pharmacist is an incapacitated person, or that he is mentally ill and unable to safely engage in the practice of pharmacy, the director shall immediately suspend the license of the pharmacist upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless

of whether an appeal from the court's ruling is pending. The director shall promptly notify the pharmacist, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a pharmacist, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing pharmacy with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the pharmacist with a notice of hearing on the sole issue of the capacity of the pharmacist to competently and safety engage in the practice of pharmacy.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in this Subsection (3) [~~of this section~~].

(4) (a) Every pharmacist who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division, with the consent of a majority of the board, to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination in any proceeding regarding the license of the pharmacist, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the pharmacist is mentally ill or incapacitated or otherwise unable to practice pharmacy with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the pharmacist's patients or the general public.

(c) (i) Failure of a pharmacist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the pharmacist's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title

63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the pharmacist and was not related directly to the illness or incapacity of the pharmacist.

(5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the pharmacist's patients or the general public.

(6) A pharmacist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the pharmacist, under procedures established by division rule, regarding any change in the pharmacist's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of pharmacy; and

(b) he is qualified to have his licensure to practice under this chapter restored completely or in part.

Section 18. Section **58-31b-401** is amended to read:

**58-31b-401. Grounds for denial of licensure or registration and disciplinary proceedings.**

(1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

(2) If a court of competent jurisdiction determines a nurse or health care assistant is an incapacitated person as defined in Section 75-1-201 or that he is mentally ill as defined in Section [~~62A-12-202~~] 62A-15-602, and unable to safely engage in the practice of nursing or the practice of a health care assistant, the director shall immediately suspend the license of the nurse or health care assistant upon the entry of the judgment of the court, without further proceedings under Title 63,

Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the nurse or health care assistant, in writing, of the suspension.

(3) (a) If the division and the majority of the board find reasonable cause to believe a nurse or health care assistant, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing nursing or the practice of a health care assistant with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the nurse or health care assistant with a notice of hearing on the sole issue of the capacity of the nurse or health care assistant to competently, safely engage in the practice of nursing or the practice of a health care assistant.

(b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every nurse or health care assistant who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting to an immediate mental or physical examination, at the nurse's or health care assistant's expense and by a division-approved practitioner selected by the nurse or health care assistant, when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the nurse or health care assistant is mentally ill or incapacitated or otherwise unable to practice nursing or health care assistance with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the nurse's or health care assistant's patients or the general public.

(c) (i) Failure of a nurse or health care assistant to submit to the examination ordered under this section is a ground for the division's immediate suspension of the nurse's or health care

assistant's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the nurse or health care assistant and was not related directly to the illness or incapacity of the nurse or health care assistant.

(5) (a) A nurse or health care assistant whose license is suspended under Subsection (2), (3), or (4)(c) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the nurse's or health care assistant's patients or the general public.

(6) A nurse or health care assistant whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the nurse or health care assistant, under procedures established by division rule, regarding any change in the nurse's or health care assistant's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of nursing or the practice of a health care assistant; and

(b) he is qualified to have his license to practice under this chapter restored completely or in part.

(7) Nothing in Section 63-2-206 may be construed as limiting the authority of the division to report current significant investigative information to the coordinated licensure information system for transmission to party states as required of the division by Article VII of the Nurse Licensure Compact in Section 58-31c-102.

(8) For purposes of this section and Section 58-31b-402, "licensed" or "license" includes "registered" and "registration" under this chapter.

Section 19. Section **58-67-601** is amended to read:

**58-67-601. Mentally incompetent or incapacitated physician.**

(1) As used in this section:

(a) "Incapacitated person" has the same definition as in Section [~~75-5-303~~] 75-1-201.

(b) "Mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

(2) If a court of competent jurisdiction determines a physician is an incapacitated person or that he is mentally ill and unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the physician is mentally ill or incapacitated or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the physician's patients or the general public.

(c) (i) Failure of a physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the physician's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.

(5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the physician's patients or the general public.

(6) A physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the physician, under procedures established by division rule, regarding any change in the physician's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of medicine; and

(b) he is qualified to have his license to practice under this chapter restored completely or in part.

Section 20. Section **58-68-601** is amended to read:

**58-68-601. Mentally incompetent or incapacitated osteopathic physician.**

(1) As used in this section:

(a) "Incapacitated person" has the same definition as in Section 75-1-201.

(b) "Mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

(2) If a court of competent jurisdiction determines an osteopathic physician and surgeon is an incapacitated person or that he is mentally ill and unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the osteopathic physician and surgeon upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the osteopathic physician and surgeon, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe an osteopathic physician and surgeon, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing osteopathic medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the osteopathic physician and surgeon with a notice of hearing on the sole issue of the capacity of the osteopathic physician and surgeon to competently and safety engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every osteopathic physician and surgeon who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the osteopathic physician and surgeon is mentally ill or incapacitated or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the osteopathic physician and surgeon's patients or the general public.

(c) (i) Failure of an osteopathic physician and surgeon to submit to the examination ordered under this section is a ground for the division's immediate suspension of the osteopathic physician and surgeon's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the osteopathic physician and surgeon and was not related directly to the illness or incapacity of the osteopathic physician and surgeon.

(5) (a) An osteopathic physician and surgeon whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the osteopathic physician and surgeon's patients or the general public.

(6) An osteopathic physician and surgeon whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the osteopathic physician and surgeon, under procedures established by division rule, regarding any change in the osteopathic physician and surgeon's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of medicine; and

(b) he is qualified to have his license to practice under this chapter restored completely or in part.

Section 21. Section **58-69-601** is amended to read:

**58-69-601. Mentally incompetent or incapacitated dentist or dental hygienist.**

(1) As used in this section:

(a) "Incapacitated person" has the same definition as in Section 75-1-201.

(b) "Mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

(2) If a court of competent jurisdiction determines a dentist or dental hygienist is an incapacitated person or that he is mentally ill and unable to safely engage in the practice of dentistry or dental hygiene, the director shall immediately suspend the license of the dentist or dental hygienist upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing dentistry or dental hygiene with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the dentist or dental hygienist with a notice of hearing on the sole issue of the capacity of the dentist or dental hygienist to competently and safely engage in the practice of dentistry or dental hygiene.

(b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every dentist or dental hygienist who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the dentist or dental hygienist is mentally ill or incapacitated or otherwise unable to practice dentistry or dental hygiene with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the dentist's or dental hygienist's patients or the general public.

(c) (i) Failure of a dentist or dental hygienist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the dentist's or dental hygienist's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the dentist or dental hygienist and was not related directly to the illness or incapacity of the dentist or dental hygienist.

(5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the dentist's or dental hygienist's patients or the general public.

(6) A dentist or dental hygienist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the dentist or dental hygienist, under procedures established by division rule, regarding any change in the dentist's or dental hygienist's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of dentistry or dental hygiene; and

(b) he is qualified to have his licensure to practice under this chapter restored completely or in part.

Section 22. Section **58-71-601** is amended to read:

**58-71-601. Mentally incompetent or incapacitated naturopathic physician.**

(1) As used in this section:

(a) "Incapacitated person" has the same definition as in Section 75-1-201.

(b) "Mentally ill" has the same definition as in Section [~~62A-12-202~~] 62A-15-602.

(2) If a court of competent jurisdiction determines a naturopathic physician is an incapacitated person or that he is mentally ill and unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the naturopathic physician upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the naturopathic physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a naturopathic physician, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the naturopathic physician with a notice of hearing on the sole issue of the capacity of the naturopathic physician to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every naturopathic physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the naturopathic physician is mentally ill or incapacitated or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the naturopathic physician's patients or the general public.

(c) (i) Failure of a naturopathic physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the naturopathic physician's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the naturopathic physician and was not related directly to the illness or incapacity of the naturopathic physician.

(5) (a) A naturopathic physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the naturopathic physician's patients or the general public.

(6) A naturopathic physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the naturopathic physician, under procedures established by division rule, regarding any change in the naturopathic physician's condition, to determine whether:

(a) he is or is not able to safely and competently engage in the practice of medicine; and

(b) he is qualified to have his license to practice under this chapter restored completely or in part.

Section 23. Section **62A-1-105** is amended to read:

**62A-1-105. Creation of boards, divisions, and offices.**

(1) The following policymaking boards are created within the Department of Human Services:

(a) the Board of Aging and Adult Services;

(b) the Board of Child and Family Services;

[~~(c) the Board of Mental Health;~~]

[~~(d)~~] (c) the Board of Public Guardian Services;

[~~(e)~~] (d) the Board of Services for People with Disabilities;

[~~(f)~~] (e) the Board of Substance Abuse and Mental Health; and

[~~(g)~~] (f) the Board of Youth Corrections.

(2) The following divisions are created within the Department of Human Services:

(a) the Division of Aging and Adult Services;

(b) the Division of Child and Family Services;

[~~(c) the Division of Mental Health;~~]

[~~(d)~~] (c) the Division of Services for People with Disabilities;

[~~(e)~~] (d) the Division of Substance Abuse and Mental Health; and

[~~(f)~~] (e) the Division of Youth Corrections.

(3) The following offices are created within the Department of Human Services:

(a) the Office of Licensing;

(b) the Office of Public Guardian; and

(c) the Office of Recovery Services.

Section 24. Section **62A-1-111** is amended to read:

**62A-1-111. Department authority.**

The department may, in addition to all other authority and responsibility granted to it by law:

(1) adopt rules, not inconsistent with law, as the department may consider necessary or desirable for providing social services to the people of this state;

(2) establish and manage client trust accounts in the department's institutions and community programs, at the request of the client or his legal guardian or representative, or in accordance with federal law;

(3) purchase, as authorized or required by law, services that the department is responsible to provide for legally eligible persons;

(4) conduct adjudicative proceedings for clients and providers in accordance with the

procedures of Title 63, Chapter 46b, Administrative Procedures Act;

(5) establish eligibility standards for its programs, not inconsistent with state or federal law or regulations;

(6) take necessary steps, including legal action, to recover money or the monetary value of services provided to a recipient who was not eligible;

(7) set and collect fees for its services;

(8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or limited by law;

(9) acquire, manage, and dispose of any real or personal property needed or owned by the department, not inconsistent with state law;

(10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the proceeds thereof, may be credited to the program designated by the donor, and may be used for the purposes requested by the donor, as long as the request conforms to state and federal policy; all donated funds shall be considered private, nonlapsing funds and may be invested under guidelines established by the state treasurer;

(11) accept and employ volunteer labor or services; the department is authorized to reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;

(12) carry out the responsibility assigned in the Workforce Services Plan by the State Council on Workforce Services;

(13) carry out the responsibility assigned by Section 9-4-802 with respect to coordination of services for the homeless;

(14) carry out the responsibility assigned by Section 62A-5a-105 with respect to coordination of services for students with a disability;

(15) provide training and educational opportunities for its staff;

(16) collect child support payments and any other monies due to the department;

(17) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for Support Act, to parents whose child lives out of the home in a department licensed or certified setting;

(18) establish policy and procedures in cases where the department is given custody of a minor by the juvenile court pursuant to Section 78-3a-118; any policy and procedures shall include:

(a) designation of interagency teams for each juvenile court district in the state;

(b) delineation of assessment criteria and procedures;

(c) minimum requirements, and timeframes, for the development and implementation of a collaborative service plan for each minor placed in department custody; and

(d) provisions for submittal of the plan and periodic progress reports to the court;

(19) carry out the responsibilities assigned to it by statute; and

(20) examine and audit the expenditures of any public funds provided to local substance abuse authorities, local mental health authorities, local area agencies on aging, and any person, agency, or organization that contracts with or receives funds from those authorities or agencies. Those local authorities, area agencies, and any person or entity that contracts with or receives funds from those authorities or area agencies, shall provide the department with any information the department considers necessary. The department is further authorized to issue directives resulting from any examination or audit to local authorities, area agencies, and persons or entities that contract with or receive funds from those authorities with regard to any public funds. If the department determines that it is necessary to withhold funds from a local mental health authority or local substance abuse authority based on failure to comply with state or federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of services. For purposes of this Subsection (20) "public funds" means the same as that term is defined in [~~Sections 62A-8-101 and 62A-12-101~~] Section 62A-15-102.

Section 25. Section **62A-3-101** is amended to read:

**62A-3-101. Definitions.**

As used in this chapter:

(1) "Adult" or "high risk adult" means a person 18 years of age or older who experiences a condition:

(a) that places the person at a high risk of being unable to care for himself, as determined by assessment, because of the onset of a physical or cognitive impairment or frailty; and

(b) for which the person is not eligible to receive services under Chapter 5, Services to People with Disabilities, or Chapter [~~12,~~] 15, Substance Abuse and Mental Health Act.

(2) "Aging" and "aged" means a person 60 years of age or older.

(3) "Area agency" means an area agency that provides services to the aged, high risk adults, or both within a planning and service area.

(4) "Area agency on aging" means a public or private nonprofit agency or office designated by the division to operate within a planning and service area of the state to develop and implement a broad range of services for the aged in that area.

(5) "Area agency on high risk adults" means a public or private nonprofit agency or office designated by the division to operate within a planning and service area of the state to develop and implement services for high risk adults in that area.

(6) "Board" means the Board of Aging and Adult Services.

(7) "Director" means the director of the Division of Aging and Adult Services.

(8) "Division" means the Division of Aging and Adult Services within the department.

(9) "Planning and service area" means a geographical area of the state designated by the division for purposes of planning, development, delivery, and overall administration of services for the aged or high risk adults.

Section 26. Section **62A-5a-102** is amended to read:

**62A-5a-102. Definitions.**

As used in this chapter:

(1) "Council" means the Coordinating Council for Persons with Disabilities.

(2) "State agencies" means:

(a) the Division of Services for People with Disabilities and the Division of Substance Abuse and Mental Health, within the Department of Human Services;

(b) the Division of Health Care Financing within the Department of Health;

(c) family health services programs established under Title 26, Chapter 10, Family Health Services, operated by the Department of Health;

(d) the Utah State Office of Rehabilitation; and

(e) special education programs operated by the State Office of Education and local school districts under Title 53A, Chapter 15, Part 3, Education of Children with Disabilities.

Section 27. Section **62A-5a-103** is amended to read:

**62A-5a-103. Coordinating Council for Persons with Disabilities -- Creation -- Membership -- Expenses.**

(1) There is created the Coordinating Council for Persons with Disabilities.

(2) The council shall consist of:

(a) the director of the Division of Services for People with Disabilities within the Department of Human Services, or his designee;

(b) the director of family health services programs, appointed under Section 26-10-3, or his designee;

(c) the executive director of the Utah State Office of Rehabilitation, or his designee;

(d) the state director of special education, or his designee;

(e) the director of the Division of Health Care Financing within the Department of Health, or his designee;

(f) the director of the Division of Substance Abuse and Mental Health within the Department of Human Services, or his designee;

(g) the superintendent of Schools for the Deaf and Blind, or his designee; and

(h) a person with a disability, a family member of a person with a disability, or an advocate for persons with disabilities, appointed by the members listed in Subsections (2)(a) through (g).

(3) (a) The council shall annually elect a chair from its membership.

(b) Five members of the council are a quorum.

(4) (a) 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.

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

Section 28. Section **62A-7-401** is amended to read:

**62A-7-401. Juvenile Sex Offender Authority -- Purpose -- Duties -- Members -- Staff specialists.**

(1) There is established the Utah State Juvenile Sex Offender Authority within the Department of Human Services, Division of Youth Corrections.

(2) The purpose of the authority is to supervise and coordinate the efforts of law enforcement, the Divisions of Youth Corrections, Substance Abuse and Mental Health, Child and Family Services, and Services for People with Disabilities, the State Office of Education, the Juvenile Court, prosecution, and juvenile sex offender intervention and treatment specialists.

(3) The authority shall:

(a) coordinate and develop effective and cost-effective programs for the treatment of juveniles who sexually offend;

(b) administer the development of a comprehensive continuum of juvenile sex offender services;

(c) administer the development of programs to protect the communities from juvenile sex offending and offenders; and

(d) by June 30, 2000, implement fully the comprehensive and detailed plan which shall include provisions for the type of services by levels of intensity, agency responsibility for services, and professional qualifications for persons delivering the services. The plan shall also include detailed outcome measures to determine program effectiveness.

(4) The authority shall be comprised of:

(a) the director of the Division of Youth Corrections or a designee;

(b) the director of the Division of Substance Abuse and Mental Health or a designee;

(c) the director of the Division of Child and Family Services or a designee;

(d) the director of the Division of Services for People with Disabilities or a designee;

(e) the State Superintendent of Public Instruction;

(f) the juvenile court administrator or a designee;

(g) a representative of the Statewide Association of Public Attorneys as designated by its

director;

(h) a representative of the Utah Sheriffs Association as designated by its president;

(i) a representative of the Utah Police Chiefs Association as designated by its president;

(j) a citizen appointed by the governor;

(k) a representative of the Utah Network on Juveniles Offending Sexually (NOJOS) as designated by its director; and

(l) the attorney general or a designee.

(5) Staff to the authority shall be the staff specialists of the statewide juvenile sex offender supervision and treatment unit.

Section 29. Section **62A-13-105** is amended to read:

**62A-13-105. Department duties and powers.**

(1) The department shall administer this chapter within the Division of Substance Abuse and Mental Health, created in Section [~~62A-12-102~~] 62A-15-103, and provide division staff to the committee.

(2) The department may accept gifts, grants, loans, and other aid or funds from any person, association, foundation, trust, corporation, governmental agency, or other entity for the purposes set forth in this chapter.

Section 30. Section **62A-14-106** is amended to read:

**62A-14-106. Board of Public Guardian Services.**

(1) The Board of Public Guardian Services, created in accordance with this section and Section 62A-1-105, is responsible for establishing the policy of the office in accordance with this chapter and seeing that the legislative purposes for the office are carried out.

(2) The executive director shall appoint nine members to the Board of Public Guardian Services, as follows:

(a) a member of the Board of Aging and Adult Services;

(b) a member of the Board of Services for Persons with Disabilities;

(c) a member of the Board of Substance Abuse and Mental Health;

(d) a representative of the long-term care industry;

(e) a representative of the hospital industry;

(f) a representative of persons with disabilities;

(g) a representative of senior citizens;

(h) a physician; and

(i) an attorney with experience in guardianship and conservatorship law.

(3) (a) Except as provided in Subsection (3)(b), each member shall be appointed for a four-year term and eligible for one reappointment.

(b) Notwithstanding Subsection (3)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years, taking into account the remaining term of board members who serve on other department boards.

(c) A board member shall continue in office until the expiration of the member's term and until a successor is appointed, which may not exceed 90 days after the formal expiration of the term.

(d) When a vacancy occurs in membership for any reason, the replacement shall be appointed for the unexpired term.

(e) The make up of the board should reflect political and geographic diversity.

(4) The board shall annually elect a chairperson from its membership. The board shall hold meetings at least once every three months. Meetings shall be held from time to time on the call of the chairperson or a majority of the board members. Five board members are necessary to constitute a quorum at any meeting and, if a quorum exists, the action of a majority of members present shall be the action of the board.

(5) (a) Board members who are not government employees may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of their official duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members of the board may decline to receive per diem expenses for their services.

(6) The board shall:

(a) establish program policy for the office;

(b) establish a mechanism for systematic and regular review of existing policy and for consideration of policy changes; and

(c) set fees for the office, excluding attorneys fees, in accordance with Section 63-38-3.2.

Section 31. Section **62A-15-101** is enacted to read:

**CHAPTER 15. SUBSTANCE ABUSE AND MENTAL HEALTH ACT**

**Part 1. Division and Board of Substance Abuse and Mental Health**

**62A-15-101. Title.**

(1) This chapter is known as the "Substance Abuse and Mental Health Act."

(2) This part is known as the "Division and Board of Substance Abuse and Mental Health."

Section 32. Section **62A-15-102**, which is renumbered from Section 62A-8-101 is renumbered and amended to read:

**[~~62A-8-101~~]. 62A-15-102. Definitions.**

As used in this chapter:

(1) "Board" means the Board of Substance Abuse and Mental Health established in accordance with [~~Section~~] Sections 62A-1-105 and 62A-15-106.

(2) "Director" means the director of the Division of Substance Abuse and Mental Health.

(3) "Division" means the Division of Substance Abuse and Mental Health established in Section [~~62A-8-103~~] 62A-15-103.

(4) "Local mental health authority" means a county legislative body.

[~~(4)~~] (5) "Local substance abuse authority" means a county legislative body.

[~~(5)~~] (6) (a) "Public funds" means federal monies received from the Department of Human Services or the Department of Health, and state monies appropriated by the Legislature to the Department of Human Services, the Department of Health, a county governing body, or a local substance abuse authority, or a local mental health authority for the purposes of providing substance abuse or mental health programs or services. "Public funds" includes those federal and state monies that have been transferred by a local substance abuse authority or a local mental health authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local

mental health authority. Those monies maintain the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local substance abuse authority or a local mental health authority to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority.

(b) This definition of "public funds" does not limit or prohibit an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

(7) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the board.

Section 33. Section **62A-15-103**, which is renumbered from Section 62A-8-103 is renumbered and amended to read:

**[~~62A-8-103~~]. 62A-15-103. Division -- Creation -- Responsibilities.**

(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director, and, with regard to its programs, under the policy direction of the board. The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

[~~(b)~~] (ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

[~~(c)~~] (iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

[~~(d) promote or establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;~~]

[~~(e) provide consultation and other assistance to public and private agencies and groups;~~]

[~~(f)~~] (iv) cooperate and assist other organizations and private treatment centers for substance

abusers, by providing them with essential materials for furthering programs of prevention and rehabilitation of actual and potential substance abusers; and

[~~(g) promote or conduct research on substance abuse issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;~~]

[~~(h) receive, distribute, and provide direction over public funds for substance abuse services;~~]

[~~(i) consult and coordinate with local substance abuse authorities regarding substance abuse programs and services;~~]

[~~(j)~~] (v) promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health; and

(ii) provide direction over the state hospital including approval of its budget, administrative policy, and coordination of services with local service plans; and

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

[~~(k)~~] (vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

[~~(l)~~] (vii) examine expenditures of any local, state, and federal funds;

[~~(m)~~] (viii) monitor the expenditure of public funds by:

[~~(i)~~] (A) local substance abuse authorities; [~~and~~]

(B) local mental health authorities; and

[~~(ii)~~] (C) in counties where they exist, the private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authorities;

[~~(n)~~] (ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services in accordance with board and division policy, contract provisions, and the local plan;

[~~(o)~~] (x) contract with private and public entities for special statewide or nonclinical services according to board and division policy;

[~~(p)~~] (xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to [~~assure~~] ensure:

[~~(i)~~] (A) a statewide comprehensive continuum of substance abuse services; [~~and~~]

(B) a statewide comprehensive continuum of mental health services; and

[~~(ii)~~] (C) appropriate expenditure of public funds;

[~~(q)~~] (xii) review and make recommendations regarding each local substance abuse authority's contract with its provider of substance abuse programs and services [~~to assure~~] and each local mental health authority's contract with its provider of mental health programs and services to ensure compliance with state and federal law and policy;

[~~(r)~~] (xiii) monitor and [~~assure~~] ensure compliance with board and division policy and contract requirements; and

[~~(s)~~] (xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or monies.

(3) (a) The division may refuse to contract with and may pursue its legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued

in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract with its provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with its oversight and management responsibilities described in Sections 17A-3-601, 17A-3-603.5, 17A-3-701 and 17A-3-703. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17A-3-603.5 and to the responsibility and liability described in Section 17A-3-703.

(5) In carrying out its duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

(6) (a) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(b) Those donations, gifts, devises, or bequests shall be used by the division in performing its powers and duties. Any money so obtained shall be considered private nonlapsing funds and shall be deposited into an interest-bearing restricted special revenue fund to be used by the division for substance abuse or mental health services. The state treasurer may invest the fund and all interest shall remain with the fund.

(7) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:

(a) the use of public funds;

(b) oversight responsibilities regarding public funds; and

(c) governance of substance abuse and mental health programs and services.

Section 34. Section **62A-15-104**, which is renumbered from Section 62A-8-106 is renumbered and amended to read:

**[~~62A-8-106~~]. 62A-15-104. Director -- Qualifications.**

(1) The director of the division shall be appointed by the executive director with the concurrence of the board.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning substance abuse and mental health.

(3) The director is the administrative head of the division.

Section 35. Section **62A-15-105**, which is renumbered from Section 62A-8-107 is renumbered and amended to read:

**[~~62A-8-107~~]. 62A-15-105. Authority and responsibilities of board.**

The board is the policymaking body for the division and for programs funded with state and federal moneys under Sections 17A-3-602, 17A-3-606, 17A-3-701, and [~~62A-8-110.5~~] 62A-15-110. The board [~~has the following duties and responsibilities~~] shall:

(1) in establishing policy, [~~the board shall~~] seek input from local substance abuse authorities, local mental health authorities, consumers, providers, advocates, division staff, and other interested parties as determined by the board;

(2) [~~to~~] establish, by rule, minimum standards for local substance abuse authorities and local mental health authorities;

(3) [~~to~~] establish, by rule, procedures for developing its policies which ensure that local substance abuse authorities and local mental health authorities are given opportunity to comment and provide input on any new policy of the board or proposed changes in existing policy of the board;

(4) [~~the board shall also~~] provide a mechanism for review of its existing policy, and for consideration of policy changes that are proposed by local substance abuse authorities or local mental
health authorities;

(5) [~~to~~] develop program policies, standards, rules, and fee schedules for the division; and

(6) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules approving the form and content of substance abuse treatment, educational series, and screening and assessment that are described in Section 41-6-44.

Section 36. Section **62A-15-106**, which is renumbered from Section 62A-8-108 is renumbered and amended to read:

**[~~62A-8-108~~]. 62A-15-106. Membership of board.**

Effective September 1, 2002, the governor shall appoint seven members to the board in accordance with Section 62A-1-107. At least one member of the board shall be:

(1) a registered pharmacist licensed to practice in this state[~~. Another member of the board shall be~~];

(2) a physician licensed to practice medicine in this state[~~. At least one member of the board shall be~~];

(3) a person recovered or recovering from substance abuse[~~.~~]; and

(4) a psychiatrist licensed to practice in this state.

Section 37. Section **62A-15-107**, which is renumbered from Section 62A-8-104 is renumbered and amended to read:

**[~~62A-8-104~~]. 62A-15-107. Authority to assess fees.**

(1) The division may, with the approval of the Legislature, the executive director, and the board, establish fee schedules and assess fees for services rendered by the division.

(2) Fees shall be charged for substance abuse and mental health treatment services, but services may not be refused to any person because of [~~his~~] inability to pay.

Section 38. Section **62A-15-108**, which is renumbered from Section 62A-8-109 is renumbered and amended to read:

**[~~62A-8-109~~]. 62A-15-108. Formula for allocation of funds to local substance abuse authorities and local mental health authorities.**

(1) The board shall establish, by rule, [~~a formula~~] formulas for allocating funds to local substance abuse authorities and local mental health authorities through contracts, to provide substance abuse prevention and treatment services in accordance with the provisions of this chapter and [~~of~~] Title 17A, Chapter 3, Part 7, Local Substance Abuse Authorities[~~. That formula~~], and mental health services in accordance with the provisions of this chapter and Title 17A, Chapter 3, Part 6, Local Mental Health Authorities. The formulas shall provide for allocation of funds based

on need. Determination of need shall be based on population unless the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. The [~~formula~~] formulas shall include a differential to compensate for additional costs of providing services in rural areas.

(2) The [~~formula~~] formulas established under Subsection (1) [~~applies~~] apply to all state and federal funds appropriated by the Legislature to the division for local substance abuse authorities and local mental health authorities, but does not apply to:

(a) funds that local substance abuse authorities and local mental health authorities receive from sources other than the division;

(b) funds that local substance abuse authorities and local mental health authorities receive from the division to operate [~~a~~] specific [~~program~~] programs within [~~its jurisdiction~~] their jurisdictions which [~~is~~] are available to all residents of the state;

(c) funds that local substance abuse authorities and local mental health authorities receive from the division to meet [~~a need~~] needs that [~~exists~~] exist only within [~~that~~] their local [~~area~~] areas; and

(d) funds that local substance abuse authorities and local mental health authorities receive from the division for research projects.

(3) Contracts with local substance abuse authorities and local mental health authorities shall provide that the division may withhold funds otherwise allocated pursuant to this section to cover the costs of audits, attorneys' fees, and other expenditures associated with reviewing the expenditure of public funds by a local substance abuse authority or its contract provider or a local mental health authority or its contract provider, if there has been an audit finding or judicial determination that public funds have been misused by the local substance abuse authority or its contract provider or the local mental health authority or its contract provider.

Section 39. Section **62A-15-109**, which is renumbered from Section 62A-8-110.1 is renumbered and amended to read:

**[~~62A-8-110.1~~]. 62A-15-109. Responsibilities of the Division of Substance Abuse and Mental Health.**

(1) It is the responsibility of the division to assure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state.

(2) Since it is the division's responsibility to contract with, review, approve, and oversee local substance abuse authority plans and local mental health authority plans, and to withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance or misuse of public funds, the division shall:

(a) require each local substance abuse authority and each local mental health authority to submit its plan to the division by May 1 of each year;

(b) conduct an annual program audit and review of each local substance abuse authority in the state and its contract provider and each local mental health authority in the state, and its contract provider; and

(c) provide a written report to the Health and Human Services Interim Committee on July 1, 1999, and each year thereafter, and provide an oral report to that committee, as requested. That report shall provide information regarding:

(i) the annual audit and review;

(ii) the financial expenditures of each local substance abuse authority and its contract provider and each local mental health authority and its contract provider;

(iii) the status of each local authority's and its contract provider's compliance with its plan, state statutes, and with the provisions of the contract awarded; and

(iv) whether audit guidelines established pursuant to Section [~~62A-8-110.5~~] 62A-15-110 and Subsection 67-3-1(2)(o) provide the division with sufficient criteria and assurances of appropriate expenditures of public funds.

(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether public funds allocated to local substance abuse authorities and local mental health authorities are consistent with services rendered and outcomes reported by [~~it~~] them or [~~its~~] their contract [~~provider~~] providers, and whether each local substance abuse authority and each local

mental health authority is exercising sufficient oversight and control over public funds allocated for substance abuse and mental health programs and services.

(4) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

Section 40. Section **62A-15-110**, which is renumbered from Section 62A-8-110.5 is renumbered and amended to read:

**[~~62A-8-110.5~~]. 62A-15-110. Contracts for substance abuse and mental health services -- Provisions -- Responsibilities.**

When the division contracts with a local substance abuse authority or a local mental health authority to provide substance abuse or mental health programs and services in accordance with the provision of this chapter and Title 17A, Chapter 3, Part 7, Local Substance Abuse Authorities, or Title 17A, Chapter 3, Part 6, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

(1) that an independent auditor shall conduct any audit of the local substance abuse authority or its contract provider's programs or services and any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2;

(2) in addition to the requirements described in Title 51, Chapter 2, the division:

(a) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers, directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and

(b) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local substance abuse authority, local mental health authority, or contract provider at issue;

(3) the local substance abuse authority or its contract provider and the local mental health authority and its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;

(4) each member of the local substance abuse authority and each member of the local mental

health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;

(5) requested information and outcome data will be provided to the division in the manner and within the time lines defined by the division; and

(6) all audit reports by state or county persons or entities concerning the local substance abuse authority or its contract provider, or the local mental health authority or its contract provider shall be provided to the executive director of the department, the local substance abuse authority or local mental health authority, and members of the contract provider's governing board.

Section 41. Section **62A-15-111**, which is renumbered from Section 62A-8-110.7 is renumbered and amended to read:

**[~~62A-8-110.7~~]. 62A-15-111. Responsibility for cost of services provided by local substance abuse or mental health authority.**

Whenever a local substance abuse authority or local mental health authority, through its designated provider, provides any service described in [~~Subsection~~] Section 17A-3-602 or Subsection 17A-3-701(3) to a person who resides within the jurisdiction of another local [~~substance abuse~~] authority, the local [~~substance abuse~~] authority in whose jurisdiction the person resides is responsible for the cost of that service if its designated provider has authorized the provision of that service.

Section 42. Section **62A-15-112**, which is renumbered from Section 62A-8-112 is renumbered and amended to read:

**[~~62A-8-112~~]. 62A-15-112. Receipt of funds.**

Local substance abuse authorities, local mental health authorities, and entities that contract with these authorities to provide substance abuse services or mental health services may receive funds made available by federal, state, or local health, substance abuse, mental health, education, welfare, or other agencies, in accordance with the provisions of this chapter [~~and~~], Title 17A, Chapter 3, Part 6, Local Mental Health Authorities, and Title 17A, Chapter 3, Part 7, Local Substance Abuse Authorities.

Section 43. Section **62A-15-201**, which is renumbered from Section 62A-8-201 is

renumbered and amended to read:

**Part 2. Teen Substance Abuse Intervention and Prevention Act**

**[~~62A-8-201~~]. 62A-15-201. Title.**

This part [~~shall be~~] is known as the "Teen Substance Abuse Intervention and Prevention Act."

Section 44. Section **62A-15-202**, which is renumbered from Section 62A-8-202 is renumbered and amended to read:

**[~~62A-8-202~~]. 62A-15-202. Definitions.**

As used in this part:

(1) "Juvenile substance abuse offender" means any juvenile found to come within the provisions of Section 78-3a-104 for a drug or alcohol related offense, as designated by the Board of Juvenile Court Judges.

(2) "Local substance abuse authority" means a county legislative body designated to provide substance abuse services in accordance with Section 17A-3-701.

(3) "Teen substance abuse school" means any school established by the local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, that provides an educational, interpersonal, skill-building experience for juvenile substance abuse offenders and their parents or legal guardians.

Section 45. Section **62A-15-203**, which is renumbered from Section 62A-8-203 is renumbered and amended to read:

**[~~62A-8-203~~]. 62A-15-203. Teen substance abuse schools -- Establishment.**

The division or a local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, may establish teen substance abuse schools in the districts of the juvenile court.

Section 46. Section **62A-15-204**, which is renumbered from Section 62A-8-204 is renumbered and amended to read:

**[~~62A-8-204~~]. 62A-15-204. Court order to attend substance abuse school -- Assessments.**

(1) In addition to any other disposition ordered by the juvenile court pursuant to Section 78-3a-118, the court may order a juvenile and his parents or legal guardians to attend a teen

substance abuse school, and order payment of an assessment in addition to any other fine imposed.

(2) All assessments collected shall be forwarded to the county treasurer of the county where the juvenile resides, to be used exclusively for the operation of a teen substance abuse program.

Section 47. Section **62A-15-301**, which is renumbered from Section 62A-8-501 is renumbered and amended to read:

**Part 3. Commitment of Minors to Drug or Alcohol Programs or Facilities**

**[~~62A-8-501~~]. 62A-15-301. Commitment of minor to secure drug or alcohol facility or program -- Procedures -- Review.**

(1) For purposes of this [~~section~~] part:

(a) "Approved treatment facility or program" means a public or private secure, inpatient facility or program that is licensed or operated by the department or by the Department of Health to provide drug or alcohol treatment or rehabilitation.

(b) "Drug or alcohol addiction" means that the person has a physical or psychological dependence on drugs or alcohol in a manner not prescribed by a physician.

(2) The parent or legal guardian of a minor under the age of 18 years may submit that child, without the child's consent, to an approved treatment facility or program for treatment or rehabilitation of drug or alcohol addiction, upon application to a facility or program, and after a careful diagnostic inquiry is made by a neutral and detached fact finder, in accordance with the requirements of this section.

(3) The neutral fact finder who conducts the inquiry:

(a) shall be either a physician, psychologist, marriage and family therapist, psychiatric and mental health nurse specialist, or social worker licensed to practice in this state, who is trained and practicing in the area of substance abuse; and

(b) may not profit, financially or otherwise, from the commitment of the child and may not be employed by the proposed facility or program.

(4) The review by a neutral fact finder may be conducted on the premises of the proposed treatment facility or program.

(5) The inquiry conducted by the neutral fact finder shall include a private interview with

the child, and an evaluation of the child's background and need for treatment.

(6) The child may be committed to the approved treatment facility or program if it is determined by the neutral fact finder that:

(a) the child is addicted to drugs or alcohol and because of that addiction poses a serious risk of harm to himself or others;

(b) the proposed treatment or rehabilitation is in the child's best interest; and

(c) there is no less restrictive alternative that would be equally as effective, from a clinical standpoint, as the proposed treatment facility or program.

(7) Any approved treatment facility or program that receives a child under this section shall conduct a periodic review, at intervals not to exceed 30 days, to determine whether the criteria described in Subsection (6) continue to exist.

(8) A minor committed under this section shall be released from the facility or program upon the request of his parent or legal guardian.

(9) Commitment of a minor under this section terminates when the minor reaches the age of 18 years.

(10) Nothing in this section requires a program or facility to accept any person for treatment or rehabilitation.

(11) The parent or legal guardian who requests commitment of a minor under this section is responsible to pay any fee associated with the review required by this section and any necessary charges for commitment, treatment, or rehabilitation for a minor committed under this section.

(12) The child shall be released from commitment unless the report of the neutral fact finder is submitted to the juvenile court within 72 hours of commitment and approved by the court.

Section 48. Section **62A-15-401**, which is renumbered from Section 62A-8-103.5 is renumbered and amended to read:

**Part 4. Alcohol Training and Education**

**[~~62A-8-103.5~~]. 62A-15-401. Alcohol training and education seminar.**

(1) As used in this [~~section~~] part:

(a) "instructor" means a person that directly provides the instruction during an alcohol

training and education seminar for a seminar provider;

(b) "licensee" means a person who is:

(i) a new or renewing licensee under Title 32A, Alcoholic Beverage Control Act; and

(ii) engaged in the retail sale of alcoholic beverages for consumption on the premises of the licensee; and

(c) "seminar provider" means a person other than the division who provides an alcohol training and education seminar meeting the requirements of this section.

(2) (a) This section applies to a person who, as defined by the board by rule:

(i) manages operations at the premises of a licensee;

(ii) supervises the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(iii) serves alcoholic beverages to a customer for consumption on the premises of a licensee.

(b) A person described in Subsection (2)(a) shall:

(i) complete an alcohol training and education seminar within 30 days of:

(A) if the person is an employee, the day the person begins employment;

(B) if the person is an independent contractor, the day the person is first hired;

(C) if the person holds an ownership interest in the licensee, the day that person first engages in an activity that would result in that person being required to complete an alcohol training and education seminar; and

(ii) pay a fee:

(A) to the seminar provider; and

(B) that is equal to or greater than the amount established under Subsection (4)(h).

(c) Notwithstanding Subsection (2)(b)(i)(C), a person described in Subsection (2)(b)(i)(C) shall complete an alcohol training and education seminar by no later than July 31, 2001, if as of May 1, 2001 the person:

(i) holds an ownership interest in the licensee; and

(ii) has engaged in an activity that would result in that person being required to complete an alcohol training and education seminar.

(3) (a) A licensee may not permit a person who is not in compliance with Subsection (2) to:

(i) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of the licensee; or

(ii) engage in any activity that would constitute managing operations at the premises of a licensee.

(b) A licensee that violates Subsection (3)(a), is subject to Section 32A-1-401.

(4) The division shall:

(a) (i) provide alcohol training and education seminars; or

(ii) certify one or more seminar providers;

(b) establish the curriculum for an alcohol training and education seminar that includes the following subjects:

(i) (A) alcohol as a drug; and

(B) alcohol's effect on the body and behavior;

(ii) recognizing the problem drinker;

(iii) an overview of state alcohol laws related to responsible beverage service, as determined in consultation with the Department of Alcoholic Beverage Control;

(iv) dealing with the problem customer, including ways to terminate service; and

(v) alternative means of transportation to get the customer safely home;

(c) recertify each seminar provider every three years;

(d) monitor compliance with the curriculum described in Subsection (4)(b);

(e) maintain for at least three years a record of every person who has completed an alcohol training and education seminar;

(f) provide the information described in Subsection (4)(e) on request to:

(i) the Department of Alcoholic Beverage Control; or

(ii) law enforcement;

(g) provide the Department of Alcoholic Beverage Control on request a list of any seminar provider certified by the division; and

(h) establish a fee amount for each person attending an alcohol training and education

seminar that is sufficient to offset the division's cost of administering this section.

(5) The board shall by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(a) define what constitutes under this section a person who:

(i) manages operations at the premises of a licensee;

(ii) supervises the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(iii) serves alcoholic beverages to a customer for consumption on the premises of a licensee;

(b) establish criteria for certifying and recertifying a seminar provider; and

(c) establish guidelines for the manner in which an instructor provides an alcohol education and training seminar.

(6) A seminar provider shall:

(a) obtain recertification by the division every three years;

(b) ensure that an instructor used by the seminar provider:

(i) follows the curriculum established under this section; and

(ii) conducts an alcohol training and education seminar in accordance with the guidelines established by rule;

(c) ensure that any information provided by the seminar provider or instructor of a seminar provider is consistent with:

(i) the curriculum established under this section; and

(ii) this section;

(d) provide the division with the names of all persons who complete an alcohol training and education seminar provided by the seminar provider;

(e) collect a fee for each person attending an alcohol training and education seminar in accordance with Subsection (2); and

(f) forward to the division the portion of the fee that is equal to the amount described in Subsection (4)(h).

(7) (a) If after a hearing conducted in accordance with Title 63, Chapter 46b, Administrative

Procedures Act, the division finds that a seminar provider violates this section or that an instructor of the seminar provider violates this section, the division may:

(i) suspend the certification of the seminar provider for a period not to exceed 90 days;

(ii) revoke the certification of the seminar provider;

(iii) require the seminar provider to take corrective action regarding an instructor; or

(iv) prohibit the seminar provider from using an instructor until such time that the seminar provider establishes to the satisfaction of the division that the instructor is in compliance with Subsection (6)(b).

(b) The division may certify a seminar provider whose certification is revoked:

(i) no sooner than 90 days from the date the certification is revoked; and

(ii) if the seminar provider establishes to the satisfaction of the division that the seminar provider will comply with this section.

Section 49. Section **62A-15-501**, which is renumbered from Section 62A-8-301 is renumbered and amended to read:

**Part 5. Programs for DUI Drivers**

**[~~62A-8-301~~]. 62A-15-501. DUI -- Legislative policy -- Rehabilitation treatment and evaluation -- Use of victim impact panels.**

The Legislature finds that drivers impaired by alcohol or drugs constitute a major problem in this state and that the problem demands a comprehensive detection, intervention, education, and treatment program including emergency services, outpatient treatment, detoxification, residential care, inpatient care, diagnostic evaluation, medical and psychological care, social service care, vocational rehabilitation, and career counseling through public and private agencies. It is the policy of this state to provide those programs at the expense of persons convicted of driving while under the influence of intoxicating liquor or drugs. It is also the policy of this state to utilize victim impact panels to assist persons convicted of driving under the influence of intoxicating liquor or drugs to gain a full understanding of the severity of their offense.

Section 50. Section **62A-15-502**, which is renumbered from Section 62A-8-302 is renumbered and amended to read:

**[~~62A-8-302~~]. 62A-15-502. Penalty for DUI conviction -- Amounts.**

(1) Courts of record and not of record may at sentencing assess against the defendant, in addition to any fine, an amount that will fully compensate agencies that treat the defendant for their costs in each case where a defendant is convicted of violating:

(a) Section 41-6-44 or 41-6-44.6;

(b) a criminal prohibition resulting from a plea bargain after an original charge of violating Section 41-6-44; or

(c) an ordinance that complies with the requirements of Subsection 41-6-43(1).

(2) The fee assessed shall be collected by the court or an entity appointed by the court.

Section 51. Section **62A-15-503**, which is renumbered from Section 62A-8-303 is renumbered and amended to read:

**[~~62A-8-303~~]. 62A-15-503. Assessments for DUI -- Use of money for rehabilitation programs, including victim impact panels -- Rulemaking power granted.**

(1) Assessments imposed under Section [~~62A-8-302~~] 62A-15-502 may, pursuant to court order, either:

(a) be collected by the clerk of the court in which the person was convicted; or

(b) be paid directly to the licensed alcohol or drug treatment program. Those assessments collected by the court shall either be:

(i) forwarded to the state treasurer for credit to a special account in the General Fund, designated as the "Intoxicated Driver Rehabilitation Account"; or

(ii) forwarded to a special nonlapsing account created by the county treasurer of the county in which the fee is collected.

(2) Proceeds of the accounts described in Subsection (1) shall be used exclusively for the operation of licensed alcohol or drug rehabilitation programs and education, assessment, supervision, and other activities related to and supporting the rehabilitation of persons convicted of driving while under the influence of intoxicating liquor or drugs. A requirement of the rehabilitation program shall be participation with a victim impact panel or program providing a forum for victims of alcohol or drug related offenses and defendants to share experiences on the impact of alcohol or drug related

incidents in their lives. The Division of Substance Abuse and Mental Health shall establish guidelines to implement victim impact panels where, in the judgment of the licensed alcohol or drug program, appropriate victims are available, and shall establish guidelines for other programs where such victims are not available.

(3) None of the assessments shall be maintained for administrative costs by the division.

Section 52. Section **62A-15-504**, which is renumbered from Section 62A-8-304 is renumbered and amended to read:

**[~~62A-8-304~~]. 62A-15-504. Policy -- Alternatives to incarceration.**

It is the policy of this state to provide adequate and appropriate health and social services as alternatives to incarceration for public intoxication.

Section 53. Section **62A-15-601**, which is renumbered from Section 62A-12-201 is renumbered and amended to read:

**Part 6. Utah State Hospital and Other Mental Health Facilities**

**[~~62A-12-201~~]. 62A-15-601. Utah State Hospital.**

The Utah State Hospital is established and located in Provo, in Utah county. For purposes of this part it is referred to as the "state hospital."

Section 54. Section **62A-15-602**, which is renumbered from Section 62A-12-202 is renumbered and amended to read:

**[~~62A-12-202~~]. 62A-15-602. Definitions.**

As used in this [~~chapter~~] part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

(1) "Adult" means a person 18 years of age or older.

(2) "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 in which the proposed patient resides or is found.

(3) "Designated examiner" means a licensed physician, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related

illness or another licensed mental health professional designated by the division as specially qualified

by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section [~~62A-12-234~~] 62A-15-631 may be a designated examiner in the same case.

(4) "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 an agency that has contracted with a local mental health authority to provide mental health services under Section 17A-3-606.

(5) "Institution" means a hospital, or a health facility licensed under the provisions of Section 26-21-9.

(6) "Licensed physician" means an individual licensed under the laws of this state to practice medicine, or a medical officer of the United States government while in this state in the performance of official duties.

(7) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

(8) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.

(9) "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, or organization that contracts with a local mental health authority.

(10) "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 interact with and transport persons to any mental health facility.

(11) "Patient" means an individual who has been temporarily placed in the custody of a local mental health authority, or who has been committed to a local mental health authority either voluntarily or by court order.

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

Section 55. Section **62A-15-603**, which is renumbered from Section 62A-12-203 is renumbered and amended to read:

**[~~62A-12-203~~]. 62A-15-603. Administration of state hospital -- Division -- Authority.**

(1) The administration of the state hospital is vested in the division where it shall function and be administered as a part of the state's comprehensive mental health program and, to the fullest extent possible, shall be coordinated with local mental health authority programs. When it becomes feasible the board may direct that the hospital be decentralized and administered at the local level by being integrated with, and becoming a part of, the community mental health services.

(2) The division shall succeed to all the powers, discharge all the duties, and perform all the functions, duties, rights, and responsibilities pertaining to the state hospital which by law are conferred upon it or required to be discharged or performed. However, the functions, powers, duties, rights, and responsibilities of the division and of the board otherwise provided by law and by this part apply.

(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 to perform special security functions for the state hospital that require peace officer authority. These special function officers may not become or be designated as members of the Public Safety Retirement System.

(4) Directors of mental health facilities that house involuntary detainees or detainees committed pursuant to judicial order may establish secure areas, as prescribed in Section 76-8-311.1,

within the mental health facility for the detainees.

Section 56. Section **62A-15-604**, which is renumbered from Section 62A-12-204 is renumbered and amended to read:

**[~~62A-12-204~~]. 62A-15-604. Receipt of gift -- 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 it may convert that property which is not suitable for its use into money or property that is suitable for that use.

(2) The state hospital is authorized to receive from any other institution within the department any person committed to that institution, when a careful evaluation of the treatment needs of the person and of the treatment programs available at the state hospital indicates that the transfer would be in the interest of that person.

(3) (a) Notwithstanding the provisions of Subsection 62A-1-111 (10), the state hospital is authorized to receive gifts, grants, devises, and donations and shall deposit them into an interest-bearing restricted special revenue fund. The state treasurer may invest the fund and all interest is to remain with the fund.

(b) Those gifts, grants, devises, donations, and the proceeds thereof shall be used by the superintendent or his designee for the use and benefit of patients at the state hospital.

Section 57. Section **62A-15-605**, which is renumbered from Section 62A-12-204.5 is renumbered and amended to read:

**[~~62A-12-204.5~~]. 62A-15-605. Forensic Mental Health Coordinating Council -- Establishment and purpose.**

(1) There is established the Forensic Mental Health Coordinating Council composed of the following members:

(a) the director or the director's appointee;

(b) the superintendent of the state hospital or the superintendent's appointee;

(c) the executive director of the Department of Corrections or the executive director's appointee;

(d) a member of the Board of Pardons and Parole or its appointee;

(e) the attorney general or the attorney general's appointee;

(f) the director of the Division of Services for People with Disabilities or the director's appointee;

(g) the director of the Division of Youth Corrections or the director's appointee;

(h) the director of the Commission on Criminal and Juvenile Justice or the director's appointee;

(i) the state court administrator or the administrator's appointee;

(j) the state juvenile court administrator or the administrator's appointee;

(k) 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 Substance Abuse and Mental Health or a local mental health authority, as appointed by the director of the division;

(l) the executive director of the Governor's Council for People with Disabilities or the director's appointee; and

(m) other persons as appointed by the members described in Subsections (1)(a) through (l).

(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 Forensic Mental Health Coordinating 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;

(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;

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

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

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

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

Section 58. Section **62A-15-605.5**, which is renumbered from Section 62A-12-204.6 is renumbered and amended to read:

**[~~62A-12-204.6~~]. 62A-15-605.5. 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 [~~62A-12-209~~] 62A-15-610(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 [~~62A-12-209~~] 62A-15-610(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 [~~62A-12-209~~] 62A-15-610(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.

Section 59. Section **62A-15-606**, which is renumbered from Section 62A-12-205 is

renumbered and amended to read:

**[~~62A-12-205~~]. 62A-15-606. Board -- Rulemaking authority -- Administration by division.**

The board may make rules applying to the state hospital, to be enforced and administered by the division.

Section 60. Section **62A-15-607**, which is renumbered from Section 62A-12-206 is renumbered and amended to read:

**[~~62A-12-206~~]. 62A-15-607. 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 78, Chapter 45, Uniform Civil Liability for Support Act, and Title 62A, Chapter 11, [~~Public Support of Children Act~~] Recovery Services.

Section 61. Section **62A-15-608**, which is renumbered from Section 62A-12-207 is renumbered and amended to read:

**[~~62A-12-207~~]. 62A-15-608. Local mental health authority -- Supervision and treatment of mentally ill persons.**

(1) Each local mental health authority has responsibility for supervision and treatment of mentally ill persons 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 [~~62A-12-203~~] 62A-15-603, shall enforce Sections [~~62A-12-222~~] 62A-15-620 through [~~62A-12-227~~] 62A-15-624 to the extent they pertain to the state hospital.

Section 62. Section **62A-15-609**, which is renumbered from Section 62A-12-208 is renumbered and amended to read:

**[~~62A-12-208~~]. 62A-15-609. 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.

Section 63. Section **62A-15-610**, which is renumbered from Section 62A-12-209 is renumbered and amended to read:

**[~~62A-12-209~~]. 62A-15-610. 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 of age 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 of age who meet the criteria necessary for commitment under Part 2A and for whom no less restrictive alternative is available;

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

(d) persons adjudicated and found to be not guilty by reason of insanity who are under a

subsequent commitment order because they are mentally ill and 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 [~~62A-12-204.6~~] 62A-15-605.5, giving priority to those persons with severe mental disorders.

Section 64. Section **62A-15-611**, which is renumbered from Section 62A-12-209.5 is renumbered and amended to read:

**[~~62A-12-209.5~~]. 62A-15-611. 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 board shall establish by rule a formula to separately allocate to local mental health authorities adult beds for persons who meet the requirements of Subsection [~~62A-12-209~~] 62A-15-610(2)(a). Beginning on the effective date of this act and until June 30, 2002, one hundred eighty two 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, 2002, to restore the number of beds allocated to 212 beds as funding permits; and

(ii) every three years thereafter according to the state's population.

(c) All population figures utilized shall reflect the most recent available population estimates from the Utah Population Estimates 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.

Section 65. Section **62A-15-612**, which is renumbered from Section 62A-12-209.6 is renumbered and amended to read:

**[~~62A-12-209.6~~]. 62A-15-612. Allocation of pediatric state hospital beds -- Formula.**

(1) As used in this section:

(a) "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.

(b) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.

(2) The board shall establish by rule a formula to separately allocate to local mental health authorities pediatric beds for persons who meet the requirements of Subsection [~~62A-12-209~~] 62A-15-610(2)(b). On July 1, 1996, 72 pediatric beds shall be allocated to local mental health authorities under this section. That number shall be reviewed and adjusted as necessary every three years according to the state's population of persons under 18 years of age. All population figures utilized shall reflect the most recent available population estimates from the governor's Office of Planning and Budget.

(3) The formula established under Subsection (2) becomes effective on July 1, 1996, and shall provide for allocation of beds based on the percentage of the state's population of persons under the age of 18 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.

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

Section 66. Section **62A-15-613**, which is renumbered from Section 62A-12-210 is renumbered and amended to read:

**[~~62A-12-210~~]. 62A-15-613. Appointment of superintendent -- Qualifications -- Powers and responsibilities.**

(1) The director, with the advice and consent of the board and the approval 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) Subject to the rules of the board, the superintendent has general responsibility for the buildings, grounds, and property of the state hospital. 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 their compensation and administer personnel functions according to the standards of the Department of Human Resource Management.

Section 67. Section **62A-15-614**, which is renumbered from Section 62A-12-212 is renumbered and amended to read:

**[~~62A-12-212~~]. 62A-15-614. 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, he 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. 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.

(3) If the superintendent is qualified to be the clinical director, he may assume the duties of the clinical director.

Section 68. Section **62A-15-615**, which is renumbered from Section 62A-12-214 is renumbered and amended to read:

**[~~62A-12-214~~]. 62A-15-615. Forms.**

The division shall furnish the clerks of the district courts with forms, blanks, warrants, and certificates, to enable the district court judges, with regularity and facility, to comply with the provisions of this chapter.

Section 69. Section **62A-15-616**, which is renumbered from Section 62A-12-215 is renumbered and amended to read:

**[~~62A-12-215~~]. 62A-15-616. 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 mentally ill person, if known, or to a hospital in the state where that mentally ill person is domiciled, in accordance with Title 62A, Chapter [~~12~~] 15,

Part [~~3~~] 8, Interstate Compact on Mental Health.

(2) This section does not prevent commitment of persons who are traveling through or temporarily residing in this state.

Section 70. Section **62A-15-617**, which is renumbered from Section 62A-12-216 is renumbered and amended to read:

**[~~62A-12-216~~]. 62A-15-617. 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 [~~62A-12-206~~] 62A-15-607.

Section 71. Section **62A-15-618**, which is renumbered from Section 62A-12-217 is renumbered and amended to read:

**[~~62A-12-217~~]. 62A-15-618. Designated examiners -- Fees.**

Designated examiners shall be allowed a reasonable fee by the county legislative body of the county in which the proposed patient resides or is found, unless they are otherwise paid.

Section 72. Section **62A-15-619**, which is renumbered from Section 62A-12-219 is renumbered and amended to read:

**[~~62A-12-219~~]. 62A-15-619. Liability of estate of mentally ill person.**

The provisions made in this part for the support of mentally ill persons 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.

Section 73. Section **62A-15-620**, which is renumbered from Section 62A-12-222 is renumbered and amended to read:

**[~~62A-12-222~~]. 62A-15-620. 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.

Section 74. Section **62A-15-621**, which is renumbered from Section 62A-12-224 is renumbered and amended to read:

**[~~62A-12-224~~]. 62A-15-621. 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.

Section 75. Section **62A-15-622**, which is renumbered from Section 62A-12-225 is renumbered and amended to read:

**[~~62A-12-225~~]. 62A-15-622. 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.

Section 76. Section **62A-15-623**, which is renumbered from Section 62A-12-226 is renumbered and amended to read:

**[~~62A-12-226~~]. 62A-15-623. 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 16, Mental Examination after Conviction, who escapes or leaves the state hospital without proper legal authority is guilty of a class A misdemeanor.

Section 77. Section **62A-15-624**, which is renumbered from Section 62A-12-227 is renumbered and amended to read:

**[~~62A-12-227~~]. 62A-15-624. 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.

Section 78. Section **62A-15-625**, which is renumbered from Section 62A-12-228 is

renumbered and amended to read:

**[~~62A-12-228~~]. 62A-15-625. Voluntary admission of adults.**

(1) A local mental health authority or its designee may admit to that authority, for observation, diagnosis, care, and treatment any individual who is mentally ill or has symptoms of mental illness and who, being 18 years of age or older, applies for voluntary admission.

(2) (a) No adult may be committed or continue to be committed to a local mental health authority against his will except as provided in this chapter.

(b) No person under 18 years of age may be committed to a local mental health authority, but may be committed to the division in accordance with the provisions of Part [~~2A~~] 7.

(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 Subsection 77-18-1[~~(14)~~] (13) have been met.

Section 79. Section **62A-15-626**, which is renumbered from Section 62A-12-229 is renumbered and amended to read:

**[~~62A-12-229~~]. 62A-15-626. Release from commitment.**

(1) A local mental health authority or its designee shall release from commitment any person who, in the opinion of the local mental health authority or its designee, has recovered or no longer meets the criteria specified in Section [~~62A-12-234~~] 62A-15-631.

(2) A local mental health authority or its designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by Section 78-3a-121, 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 [~~62A-12-240~~] 62A-15-636 and [~~62A-12-241~~] 62A-15-637.

Section 80. Section **62A-15-627**, which is renumbered from Section 62A-12-230 is renumbered and amended to read:

**[~~62A-12-230~~]. 62A-15-627. Release of voluntary patient -- Exceptions.**

A voluntary patient who requests release, or whose release is requested in writing by his legal guardian, parent, spouse, or adult next of kin, shall be immediately released except that:

(1) if the patient was voluntarily admitted on his own application, and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient; and

(2) if a local mental health authority, or its designee is of the opinion that release of a patient would be unsafe for that patient or others, release of that patient may be postponed for up to 48 hours, excluding weekends and holidays, provided that the local mental health authority, or its designee, shall cause to be instituted involuntary commitment proceedings with the district court within the specified time period, unless cause no longer exists for instituting those proceedings. Written notice of that postponement with the reasons, shall be given to the patient without undue delay. No judicial proceedings may be commenced with respect to a voluntary patient unless he has requested release.

Section 81. Section **62A-15-628**, which is renumbered from Section 62A-12-231 is renumbered and amended to read:

**[~~62A-12-231~~]. 62A-15-628. 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 [~~62A-12-232~~] 62A-15-629(1);

(b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection [~~62A-12-232~~] 62A-15-629(2); or

(c) commitment on court order, as provided in Section [~~62A-12-234~~] 62A-15-631.

(2) A person under 18 years of age may not be committed to a local mental health authority, but may be committed to the division in accordance with the provisions of Part [~~2A~~] 7.

Section 82. Section **62A-15-629**, which is renumbered from Section 62A-12-232 is renumbered and amended to read:

**[~~62A-12-232~~]. 62A-15-629. Temporary commitment -- Requirements and**

**procedures.**

(1) (a) An adult may be temporarily, involuntarily committed to a local mental health authority upon:

(i) written application by a responsible person who has reason to know, stating a belief that the individual is likely to cause serious injury to himself or others if not immediately restrained, and stating the personal knowledge of the individual's condition or circumstances which lead to that belief; and

(ii) a certification by a licensed physician or designated examiner stating that the physician or designated examiner has examined the individual within a three-day period immediately preceding that certification, and that he is of the opinion that the individual is mentally ill and, because of his mental illness, is likely to injure himself or others if not immediately restrained.

(b) Application and certification as described in Subsection (1)(a) authorizes any peace officer to take the individual into the custody of a local mental health authority and transport the individual to that authority's designated facility.

(2) If a duly authorized peace officer observes a person involved in conduct that gives the officer probable cause to believe that the person is mentally ill, as defined in Section [~~62A-12-202~~] 62A-15-602, and because of that apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or others, pending proceedings for examination and certification under this part, the officer may take that person into protective custody. The peace officer shall transport the person to be transported to the designated facility of the appropriate local mental health authority pursuant to this section, either on the basis of his own observation or on the basis of a mental health officer's observation that has been reported to him by that mental health officer. Immediately thereafter, the officer shall place the person in the custody of the local mental health authority and make application for commitment of that person to the local mental health authority. The application shall be on a prescribed form and shall include the following:

(a) a statement by the officer that he believes, on the basis of personal observation or on the basis of a mental health officer's observation reported to him by the mental health officer, that the person is, as a result of a mental illness, a substantial and immediate danger to himself or others;

(b) the specific nature of the danger;

(c) a summary of the observations upon which the statement of danger is based; and

(d) a statement of facts which called the person to the attention of the officer.

(3) A person committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the person shall be released unless application for involuntary commitment has been commenced pursuant to Section [~~62A-12-234~~] 62A-15-631. If that application has been made, an order of detention may be entered under Subsection [~~62A-12-234~~] 62A-15-631(3). If no order of detention is issued, the patient shall be released unless he has made voluntary application for admission.

(4) Transportation of mentally ill persons pursuant to Subsections (1) and (2) shall be conducted by the appropriate municipal, or city or town, law enforcement authority or, under the appropriate law enforcement's authority, by ambulance to the extent that Subsection (5) applies. However, if the designated facility is outside of that authority's jurisdiction, the appropriate county sheriff shall transport the person or cause the person to be transported by ambulance to the extent that Subsection (5) applies.

(5) Notwithstanding Subsections (2) and (4), a peace officer shall cause a person to be transported by ambulance if the person meets any of the criteria in Section 26-8a-305. In addition, if the person requires physical medical attention, the peace officer shall direct that transportation be to an appropriate medical facility for treatment.

Section 83. Section **62A-15-630**, which is renumbered from Section 62A-12-233 is renumbered and amended to read:

**[~~62A-12-233~~]. 62A-15-630. Mental health commissioners.**

The court may appoint a mental health commissioner to assist in conducting commitment proceedings in accordance with Section 78-3-31.

Section 84. Section **62A-15-631**, which is renumbered from Section 62A-12-234 is renumbered and amended to read:

**[~~62A-12-234~~]. 62A-15-631. Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs.**

(1) Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition or circumstances of the proposed patient which lead to the belief that the individual is mentally ill and should be involuntarily committed. That application shall be accompanied by:

(a) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual, and that he is of the opinion that the individual is mentally ill and should be involuntarily committed; or

(b) a written statement by the applicant that the individual has been requested to but has refused to submit to an examination of mental condition by a licensed physician or designated examiner. That application shall be sworn to under oath and shall state the facts upon which the application is based.

(2) Prior to issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, or 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.

(3) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient's mental condition and immediate danger to himself, others, or property requires involuntary commitment pending examination and hearing; or, if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section [~~62A-12-237~~] 62A-15-634 to be detained for the purpose of examination. Within 24 hours of the issuance of the order for examination, a local mental health authority or its designee shall report to the court, orally or in writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a

voluntary patient under Section [~~62A-12-228~~] 62A-15-625, and whether treatment programs are available and acceptable without court proceedings. Based on that information, the court may, without taking any further action, terminate the proceedings and dismiss the application. In any event, if the examiner reports orally, he shall immediately send the report in writing to the clerk of the court.

(4) 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, shall be provided by the court to a proposed patient prior to, or upon, placement in the custody of a local mental health authority or, with respect to any individual 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. A copy of that order of detention shall be maintained at the place of detention.

(5) Notice of commencement of those proceedings shall 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, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.

(6) Proceedings for commitment of an individual under the age of 18 years to the division may be commenced by filing a written application with the juvenile court in accordance with the provisions of Part [~~2A~~] 7.

(7) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.

(8) (a) 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 under court order for detention or examination, the court shall appoint two designated examiners to examine the proposed patient. If requested by the proposed patient's counsel, the court shall appoint, as one of the examiners, a reasonably available qualified person designated by counsel. The

examinations, to be conducted separately, shall be held at the home of the proposed patient, a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the patient's health.

(b) A time shall be set for a hearing to be held within ten court days of the appointment of the designated examiners, unless those examiners or a local mental health authority or its designee informs the court prior to that hearing date that the patient is not mentally ill, that he has agreed to become a voluntary patient under Section [~~62A-12-228~~] 62A-15-625, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application.

(9) (a) Prior to the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the patient nor others provide counsel, the court shall appoint counsel and allow him sufficient time to consult with the patient prior to the hearing. In the case of an indigent patient, the payment of reasonable attorneys' fees for counsel, as determined by the court, shall be made by the county in which the patient resides or was found.

(b) The proposed patient, the applicant, and all other 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 person. The court may allow a waiver of the patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.

(c) The court is authorized to exclude all persons 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.

(d) 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.

(e) The court shall receive all relevant and material evidence which is offered, subject to the rules of evidence.

(f) A local mental health authority or its designee, or the physician in charge of the patient's

care shall, at the time of the hearing, provide the court with the following information:

(i) the detention order;

(ii) admission notes;

(iii) the diagnosis;

(iv) any doctors' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records pertaining to the current commitment.

That information shall also be supplied to the patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

(10) The court shall order commitment of an individual who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that:

(a) the proposed patient has a mental illness;

(b) because of the proposed patient's mental illness he poses an immediate danger of physical injury to others or himself, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;

(c) the 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 costs and benefits of 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 individual with treatment that is adequate and appropriate to his conditions and needs. In the absence of the required findings of the court after the hearing, the court shall forthwith dismiss the proceedings.

(11) (a) The order of commitment shall designate the period for which the individual shall be treated. When the individual is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for

an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Subsection (10) will last for an indeterminate period.

(b) The court shall maintain a current list of all patients under its order of commitment. That list shall be reviewed to determine those patients who have been under an order of commitment for the designated period. At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee. The local mental health authority or its designee shall immediately reexamine the reasons upon which the order of commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, it shall discharge the patient from involuntary commitment and immediately report that to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(c) The local mental health authority or its 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. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and his counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(12) In the event that the designated examiners are unable, because a proposed patient refuses to submit to an examination, to complete that examination on the first attempt, the court shall fix a reasonable compensation to be paid to those designated examiners for their services.

(13) Any person committed as a result of an original hearing or a person'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 of the entry of the court order. The petition must 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. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.

(14) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

Section 85. Section **62A-15-632**, which is renumbered from Section 62A-12-235 is renumbered and amended to read:

**[~~62A-12-235~~]. 62A-15-632. Circumstances under which conditions justifying initial involuntary commitment shall be considered to continue to exist.**

(1) After a person has been involuntarily committed to the custody of a local mental health authority under Subsection [~~62A-12-234~~] 62A-15-631(10), the conditions justifying commitment under that subsection shall be considered to continue to exist, for purposes of continued treatment under Subsection [~~62A-12-234~~] 62A-15-631(11) or conditional release under Section [~~62A-12-241~~] 62A-15-637, if the court finds that the patient is still mentally ill, and that absent an order of involuntary commitment and without continued treatment he will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his ability to function in the least restrictive environment, thereby making him a substantial danger to himself or others.

(2) 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 which can provide him with the treatment that is adequate and appropriate.

Section 86. Section **62A-15-633**, which is renumbered from Section 62A-12-236 is renumbered and amended to read:

**[~~62A-12-236~~]. 62A-15-633. Persons eligible for care or treatment by federal agency -- Continuing jurisdiction of state courts.**

(1) If an individual committed pursuant to Section [~~62A-12-234~~] 62A-15-631 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.

Section 87. Section **62A-15-634**, which is renumbered from Section 62A-12-237 is renumbered and amended to read:

**[~~62A-12-237~~]. 62A-15-634. 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.

Section 88. Section **62A-15-635**, which is renumbered from Section 62A-12-238 is renumbered and amended to read:

**[~~62A-12-238~~]. 62A-15-635. Notice of commitment.**

Whenever a patient has been temporarily, involuntarily committed to a local mental health

authority pursuant to Section [~~62A-12-232~~] 62A-15-629 on the application of any person other than his legal guardian, spouse, or next of kin, the local mental health authority or its designee shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

Section 89. Section **62A-15-636**, which is renumbered from Section 62A-12-240 is renumbered and amended to read:

**[~~62A-12-240~~]. 62A-15-636. 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.

Section 90. Section **62A-15-637**, which is renumbered from Section 62A-12-241 is renumbered and amended to read:

**[~~62A-12-241~~]. 62A-15-637. Release of patient to receive other treatment -- Placement in more restrictive environment -- Procedures.**

(1) A local mental health authority or its designee may release an improved patient to less restrictive treatment as it may specify, and when agreed to in writing by the patient. Whenever a local mental health authority or its designee determines that the conditions justifying commitment no longer exist, the patient shall be discharged. 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.

(2) (a) A local mental health authority or its designee is authorized to issue an order for the immediate placement of a patient not previously released from an order of commitment into a more restrictive environment, if the local mental health authority or its designee has reason to believe that the less restrictive environment in which the patient has been placed is aggravating the patient's mental illness as defined in Subsection [~~62A-12-234~~] 62A-15-631(10), or that the patient has failed to comply with the specified treatment plan to which he had agreed in writing.

(b) That order shall include the reasons therefor and shall authorize any peace officer to take the patient into physical custody and transport him to a facility designated by the division. Prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued release from inpatient care, copies of the order shall be personally delivered to the patient and sent to the person in whose care the patient is placed. The order shall also be sent to the patient's counsel of record and to the court that entered the original order of commitment. The order shall inform the patient of the right to a hearing, as prescribed in this section, the right to appointed counsel, and the other procedures prescribed in Subsection [~~62A-12-234~~] 62A-15-631(9).

(c) If the patient has been in the less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or his 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 [~~62A-12-234~~] 62A-15-631, with the exception of Subsection [~~62A-12-234~~] 62A-15-631(10), unless, by the time set for the hearing, the patient has again been placed in the less restrictive environment, or the patient has in writing withdrawn his request for a hearing.

(3) The court shall find that either:

(a) the less restrictive environment in which the patient has been placed is aggravating the patient's dangerousness or mental illness as defined in Subsection [~~62A-12-234~~] 62A-15-631(10), or the patient has failed to comply with a specified treatment plan to which he had agreed in writing; or

(b) the less restrictive environment in which the patient has been placed is not aggravating the patient's mental illness or dangerousness, and the patient has not failed to comply with any specified treatment plan to which he had agreed in writing, in which event the order shall designate that the individual shall be placed and treated in a less restrictive environment appropriate for his needs.

(4) The order shall also designate the period for which the individual shall be treated, in no event to extend beyond expiration of the original order of commitment.

(5) Nothing contained in this section prevents a local mental health authority or its designee, pursuant to Section [~~62A-12-240~~] 62A-15-636, from discharging a patient from commitment or from placing a patient in an environment that is less restrictive than that ordered by the court.

Section 91. Section **62A-15-638**, which is renumbered from Section 62A-12-242 is renumbered and amended to read:

**[~~62A-12-242~~]. 62A-15-638. Reexamination of court order for commitment -- Procedures -- Costs.**

(1) Any patient committed pursuant to Section [~~62A-12-234~~] 62A-15-631 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 district 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 [~~62A-12-234~~] 62A-15-631, 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 district court in the county where the proceedings are held, to the county legislative body that those proceedings were held and the costs incurred.

Section 92. Section **62A-15-639**, which is renumbered from Section 62A-12-243 is renumbered and amended to read:

**[~~62A-12-243~~]. 62A-15-639. 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.

Section 93. Section **62A-15-640**, which is renumbered from Section 62A-12-244 is renumbered and amended to read:

**[~~62A-12-244~~]. 62A-15-640. 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.

Section 94. Section **62A-15-641**, which is renumbered from Section 62A-12-245 is renumbered and amended to read:

**[~~62A-12-245~~]. 62A-15-641. 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 or to the appropriate local mental health authority.

(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 division, his attorney, and the court, if any, that ordered his commitment. 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 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 shall post a statement, promulgated by the division, describing patient's rights under Utah law.

(6) Notwithstanding Section 53B-17-303, any person committed under this chapter has the right to determine the final disposition of his body after death.

Section 95. Section **62A-15-642**, which is renumbered from Section 62A-12-246 is renumbered and amended to read:

**[~~62A-12-246~~]. 62A-15-642. Habeas corpus.**

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

Section 96. Section **62A-15-643**, which is renumbered from Section 62A-12-247 is renumbered and amended to read:

**[~~62A-12-247~~]. 62A-15-643. 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.

Section 97. Section **62A-15-644**, which is renumbered from Section 62A-12-248 is renumbered and amended to read:

**[~~62A-12-248~~]. 62A-15-644. 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 he finds to be reasonably necessary for the proper and efficient commitment of mentally ill persons.

(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.

Section 98. Section **62A-15-645**, which is renumbered from Section 62A-12-249 is renumbered and amended to read:

**[~~62A-12-249~~]. 62A-15-645. Retrospective effect of provisions.**

Patients who were in a mental health facility on May 8, 1951, shall be deemed to have been admitted under the provisions of this part appropriate in each instance, and their care, custody, and rights shall be governed by this part.

Section 99. Section **62A-15-646**, which is renumbered from Section 62A-12-250 is renumbered and amended to read:

**[~~62A-12-250~~]. 62A-15-646. 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.

Section 100. Section **62A-15-647**, which is renumbered from Section 62A-12-252 is renumbered and amended to read:

**[~~62A-12-252~~]. 62A-15-647. 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.

Section 101. Section **62A-15-701**, which is renumbered from Section 62A-12-280.1 is renumbered and amended to read:

**Part 7. Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health**

**[~~62A-12-280.1~~]. 62A-15-701. Definitions.**

As used in this part:

(1) "Child" means a person under 18 years of age.

(2) "Commit" and "commitment" mean the transfer of physical or legal custody in accordance with the requirements of this part.

(3) "Legal custody" means:

(a) the right to determine where and with whom the child shall live;

(b) the right to participate in all treatment decisions and to consent or withhold consent for treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery; and

(c) the right to authorize surgery or other extraordinary medical care.

(4) "Physical custody" means:

(a) placement of a child in any residential or inpatient setting;

(b) the right to physical custody of a child;

(c) the right and duty to protect the child; and

(d) the duty to provide, or insure that the child is provided with, adequate food, clothing, shelter, and ordinary medical care.

(5) "Residential" means any out-of-home placement made by a local mental health authority, but does not include out-of-home respite care.

(6) "Respite care" means temporary, periodic relief provided to parents or guardians from the daily care of children with serious emotional disorders for the limited time periods designated by the division.

Section 102. Section **62A-15-702**, which is renumbered from Section 62A-12-281.1 is renumbered and amended to read:

**[~~62A-12-281.1~~]. 62A-15-702. Treatment and commitment of minors in the public mental health system.**

A child is entitled to due process proceedings, in accordance with the requirements of this part, whenever the child:

(1) may receive or receives services through the public mental health system and is placed, by a local mental health authority, in a physical setting where his liberty interests are restricted, including residential and inpatient placements; or

(2) receives treatment in which a constitutionally protected privacy or liberty interest may be affected, including the administration of antipsychotic medication, electroshock therapy, and psychosurgery.

Section 103. Section **62A-15-703**, which is renumbered from Section 62A-12-282.1 is renumbered and amended to read:

**[~~62A-12-282.1~~]. 62A-15-703. Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.**

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

(a) shall be a designated examiner, as defined in Subsection [~~62A-12-202~~] 62A-15-602(3); and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by the fact finder that the following circumstances clearly exist, he may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in Subsection [~~62A-12-202~~] 62A-15-602(8);

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from care and treatment by the local mental health authority; and

(e) there is no appropriate less-restrictive alternative.

(5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible, and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the person who submitted the petition for commitment, and a representative of the appropriate local mental health authority shall all receive informal notice of the date and time of the proceeding. Those parties shall also be afforded an opportunity to appear and to address the petition for commitment.

(c) The neutral and detached fact finder may, in his discretion, receive the testimony of any other person.

(d) The fact finder may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made

a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) When a decision for commitment is made, the neutral and detached fact finder shall inform the child and his parent or legal guardian of that decision, and of the reasons for ordering commitment at the conclusion of the hearing, and also in writing.

(iii) The neutral and detached fact finder shall state in writing the basis of his decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) Absent the procedures and findings required by this section, a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection [~~62A-12-232~~] 62A-15-629(1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum

of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied.

(7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Youth Corrections has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Youth Corrections shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition, or that of his parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Youth Corrections, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

(i) the original petition for commitment;

(ii) admission notes;

(iii) diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, his parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive his right to appear at

the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to his parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport him to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, his parent or legal guardian, the administrator of the more restrictive environment, or his designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is

aggrieved by the change to a more restrictive environment, the child or his representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:

(i) the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating his mental illness, or increasing the risk of harm to himself or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.

(e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.

(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78-3a-121. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.

(14) Even though a child has been committed to the physical custody of a local mental health authority pursuant to this section, the child is still entitled to additional due process proceedings, in accordance with Section [~~62A-12-283.1~~] 62A-15-704, before any treatment which may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

Section 104. Section **62A-15-704**, which is renumbered from Section 62A-12-283.1 is renumbered and amended to read:

**[~~62A-12-283.1~~]. 62A-15-704. Invasive treatment -- Due process proceedings.**

(1) For purposes of this section, "invasive treatment" means treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic

medication, electroshock therapy, and psychosurgery.

(2) The requirements of this section apply to all children receiving services or treatment from a local mental health authority, its designee, or its provider regardless of whether a local mental health authority has physical custody of the child or the child is receiving outpatient treatment from the local authority, its designee, or provider.

(3) (a) The division shall promulgate rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing due process procedures for children prior to any invasive treatment as follows:

(i) with regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held in compliance with the procedures established under this Subsection (3);

(ii) with regard to psychosurgery and electroshock therapy, a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3), regardless of whether the parent or child agree or disagree with the treatment; and

(iii) other possible invasive treatments may be conducted unless either the parent or child disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3).

(b) In promulgating the rules required by Subsection (3)(a), the division shall consider the advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact finder, and other methods of providing due process for the purposes of this section. The division shall also establish the criteria and basis for determining when invasive treatment should be administered.

Section 105. Section **62A-15-705**, which is renumbered from Section 62A-12-283.2 is renumbered and amended to read:

**[62A-12-283.2]. 62A-15-705. Commitment proceedings in juvenile court -- Criteria -- Custody.**

(1) In addition to the processes described in Sections [62A-12-282.1] 62A-15-703 and [62A-12-283.1] 62-15-704, commitment proceedings for a child may be commenced by filing a

written application with the juvenile court of the county in which the child resides or is found, in accordance with the procedures described in Section [~~62A-12-234~~] 62A-15-631.

(2) The juvenile court shall order commitment to the legal custody of the division or to the physical custody of a local mental health authority if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that:

(a) the child has a mental illness, as defined in Subsection [~~62A-12-202~~] 62A-15-602(8);

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from the proposed care and treatment; and

(e) there is no appropriate less restrictive alternative.

(3) The division has an affirmative duty to conduct periodic reviews of children committed to its custody pursuant to this section, and to release any child who has sufficiently improved so that the director or his designee determines that commitment is no longer appropriate.

(4) When the division receives legal custody of a child upon order of the court pursuant to this section, it may place the child in the physical custody of a local mental health authority. The local mental health authority shall carry out its responsibilities with regard to that child in accordance with the provisions of this part.

Section 106. Section **62A-15-706**, which is renumbered from Section 62A-12-283.3 is renumbered and amended to read:

**[~~62A-12-283.3~~]. 62A-15-706. Parent advocate.**

The division shall establish the position of a parent advocate to assist parents of mentally ill children who are subject to the procedures required by this part.

Section 107. Section **62A-15-707**, which is renumbered from Section 62A-12-284 is renumbered and amended to read:

**[~~62A-12-284~~]. 62A-15-707. Confidentiality of information and records -- Exceptions -- Penalty.**

(1) Notwithstanding the provisions of Sections 63-2-101 through 63-2-909, Government Records Access Management Act, all certificates, applications, records, and reports made for the

purpose of this part 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 as follows:

(a) the individual identified consents after reaching 18 years of age;

(b) the child's parent or legal guardian consents;

(c) disclosure is necessary to carry out any of the provisions of this part; or

(d) 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 violates any provision of this section is guilty of a class B misdemeanor.

Section 108. Section **62A-15-708**, which is renumbered from Section 62A-12-285 is renumbered and amended to read:

**[~~62A-12-285~~]. 62A-15-708. Mechanical restraints -- Clinical record.**

Mechanical restraints may not be applied to a child unless it is determined, by the local mental health authority or its designee in conjunction with the child's current treating mental health professional, that they are required by the needs of that child. Every use of a mechanical restraint and the reasons for that use shall be made a part of the child's clinical record, under the signature of the local mental health authority, its designee, and the child's current treating mental health professional.

Section 109. Section **62A-15-709**, which is renumbered from Section 62A-12-286 is renumbered and amended to read:

**[~~62A-12-286~~]. 62A-15-709. Habeas corpus.**

Any child committed in accordance with Section [~~62A-12-282.1~~] 62A-15-703 is entitled to a writ of habeas corpus upon proper petition by himself or next of friend to the district court in the district in which he is detained.

Section 110. Section **62A-15-710**, which is renumbered from Section 62A-12-287 is renumbered and amended to read:

**[~~62A-12-287~~]. 62A-15-710. Restrictions and limitations -- Civil rights and privileges.**

(1) Subject to the specific rules of the division, and except to the extent that the local mental health authority or its designee, in conjunction with the child's current treating mental health professional, determines that it is necessary for the welfare of the person to impose restrictions, every child committed to the physical custody of a local mental health authority under Section [~~62A-12-282.1~~] 62A-15-703 is entitled to:

(a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside of the facility;

(b) receive visitors; and

(c) exercise his civil rights.

(2) When any right of a child is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the child'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.

(3) Notwithstanding any limitations authorized under this section on the right of communication, each child committed to the physical custody of a local mental health authority is entitled to communicate by sealed mail with his attorney, the local mental health authority, its designee, his current treating mental health professional, and the court, if commitment was court ordered. In no case may the child be denied a visit with the legal counsel or clergy of his choice.

(4) Each local mental health authority shall provide appropriate and reasonable means and arrangements for informing children and their parents or legal guardians of their rights as provided in this part, and for assisting them in making and presenting requests for release.

(5) All local mental health facilities shall post a statement, promulgated by the division, describing patient's rights under Utah law.

Section 111. Section **62A-15-711**, which is renumbered from Section 62A-12-288 is renumbered and amended to read:

**[~~62A-12-288~~]. 62A-15-711. Standards for care and treatment.**

Every child 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.

Section 112. Section **62A-15-712**, which is renumbered from Section 62A-12-289 is renumbered and amended to read:

**[~~62A-12-289~~]. 62A-15-712. Responsibilities of the Division of Substance Abuse and Mental Health.**

(1) It is the responsibility of the division to [~~assure~~] ensure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.

(2) Since it is the division's responsibility, under Section [~~62A-12-102~~] 62A-15-103, to contract with, review, approve, and oversee local mental health authority plans, and to withhold funds from local mental health authorities and public and private providers for contract noncompliance or misuse of public funds, the division shall:

(a) require each local mental health authority to submit its plan to the division by May 1 of each year;

(b) conduct an annual program audit and review of each local mental health authority in the state, and its contract provider; and

(c) provide a written report to the Health and Human Services Interim Committee on July 1, 1996, and each year thereafter, and provide an oral report to that committee, as requested. That report shall provide information regarding:

(i) the annual audit and review;

(ii) the financial expenditures of each local mental health authority and its contract provider;

(iii) the status of each local authority's and its contract provider's compliance with its plan, state statutes, and with the provisions of the contract awarded; and

(iv) whether audit guidelines established pursuant to [~~Subsection 62A-12-289.1~~] Subsections 62A-15-713(2)(a) and [~~Subsection~~] 67-3-1(2)(o) provide the division with sufficient criteria and assurances of appropriate expenditures of public funds.

(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether public funds allocated to local mental health authorities are consistent with

services rendered and outcomes reported by it or its contract provider, and whether each local mental health authority is exercising sufficient oversight and control over public funds allocated for mental health programs and services.

(4) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

Section 113. Section **62A-15-713**, which is renumbered from Section 62A-12-289.1 is renumbered and amended to read:

**[~~62A-12-289.1~~]. 62A-15-713. Contracts with local mental health authorities -- Provisions.**

When the division contracts with a local mental health authority to provide mental health programs and services in accordance with the provision of this chapter and Title 17A, Chapter 3, Part 6, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

(1) that an independent auditor shall conduct any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities;

(2) in addition to the requirements described in Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities, the division:

(a) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers, directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and

(b) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local mental health authority or contract provider at issue;

(3) the local mental health authority or its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;

(4) each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the

provider's executive officers;

(5) requested information and outcome data will be provided to the division in the manner and within the timelines defined by the division;

(6) all audit reports by state or county persons or entities concerning the local mental health authority or its contract provider shall be provided to the executive director of the department, the local mental health authority, and members of the contract provider's governing board; and

(7) the local mental health authority or its contract provider will offer and provide mental health services to residents who are indigent and who meet state criteria for serious and persistent mental illness or severe emotional disturbance.

Section 114. Section **62A-15-801**, which is renumbered from Section 62A-12-301 is renumbered and amended to read:

**Part 8. Interstate Compact on Mental Health**

**[~~62A-12-301~~]. 62A-15-801. 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.

Section 115. Section **62A-15-802**, which is renumbered from Section 62A-12-302 is

renumbered and amended to read:

**[~~62A-12-302~~]. 62A-15-802. 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 Part [~~2~~] 6 of this chapter.

Section 116. Section **62A-15-901**, which is renumbered from Section 62A-12-401 is renumbered and amended to read:

**Part 9. Utah Forensic Mental Health Facility**

**[~~62A-12-401~~]. 62A-15-901. Establishment and funding.**

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.

Section 117. Section **62A-15-902**, which is renumbered from Section 62A-12-402 is renumbered and amended to read:

**[~~62A-12-402~~]. 62A-15-902. Design and operation -- Security -- Funding.**

(1) The forensic mental health facility shall be designed as a secure treatment facility. The department shall have primary responsibility to design the treatment environment. However, the department shall consult with the Department of Corrections on all matters that affect the ability to secure the facility, its residents, and staff.

(2) (a) The forensic mental health facility shall be designed to separately accommodate the following populations:

(i) prison inmates displaying mental illness, as defined in Section [~~62A-12-202~~] 62A-15-602, necessitating treatment in a secure mental health facility;

(ii) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under Title 77, Chapter 16a, Commitment and Treatment of Mentally Ill Persons;

(iii) criminally adjudicated persons found guilty and mentally ill under Title 77, Chapter 16a, Commitment and Treatment of Mentally Ill Persons, who are also mentally retarded;

(iv) persons 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; and

(v) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter [~~12~~] 15, Part [~~2~~] 6, Utah State Hospital and Other Mental Health Facilities, 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 his designee.

(b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), or (iv) 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 63, Chapter 46a, 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 both as psychiatric technicians and certified by the Department of Corrections to perform security responsibilities for the forensic mental health facility.

Section 118. Section **62A-15-1001**, which is renumbered from Section 62A-12-501 is renumbered and amended to read:

**Part 10. Declaration for Mental Health Treatment**

**[~~62A-12-501~~]. 62A-15-1001. Definitions.**

As used in this part:

(1) "Attending physician" means a physician licensed to practice medicine in this state who has primary responsibility for the care and treatment of the declarant.

(2) "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.

(3) "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.

(4) "Mental health facility" means the same as that term is defined in Section [~~62A-12-202~~] 62A-15-602.

(5) "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.

Section 119. Section **62A-15-1002**, which is renumbered from Section 62A-12-502 is renumbered and amended to read:

**[~~62A-12-502~~]. 62A-15-1002. Declaration for mental health treatment.**

(1) An adult who is not incapable may make a declaration of preferences or instructions regarding his 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 [~~62A-12-503~~] 62A-15-1003(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 he, 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.

Section 120. Section **62A-15-1003**, which is renumbered from Section 62A-12-503 is renumbered and amended to read:

**[~~62A-12-503~~]. 62A-15-1003. 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 Part [~~2~~] 6; or

(b) in cases of emergency endangering life or health.

(3) A declaration does not limit any authority provided in Part [~~2~~] 6 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.

Section 121. Section **62A-15-1004**, which is renumbered from Section 62A-12-504 is renumbered and amended to read:

**[~~62A-12-504~~]. 62A-15-1004. 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 Division of Substance Abuse and Mental Health within the Department of 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.

Section 122. Section **63-25a-201** is amended to read:

**63-25a-201. Creation of council -- Membership -- Terms.**

(1) There is created within the governor's office the Utah Substance Abuse and Anti-Violence Coordinating Council.

(2) The Utah Substance Abuse and Anti-Violence Coordinating Council comprises [~~26~~] 25 voting members as follows:

(a) the attorney general or the attorney general's designee;

(b) a county commissioner designated by the Utah Association of Counties;

(c) the commissioner of public safety or the commissioner's designee;

(d) the director of the Division of Substance Abuse and Mental Health or the director's designee;

(e) the state superintendent of public instruction or the superintendent's designee;

(f) the director of the Department of Health or the director's designee;

[~~(g) the director of the Division of Mental Health or the director's designee;~~]

[~~(h)~~] (g) the executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee;

[~~(i)~~] (h) the governor or the governor's designee;

[~~(j)~~] (i) the executive director of the Department of Corrections or the executive director's designee;

[~~(k)~~] (j) the director of the Division of Youth Corrections or the director's designee;

[~~(l)~~] (k) the chair of the Domestic Violence Advisory Council or the chair's designee;

[~~(m)~~] (l) the following members designated to serve four-year terms:

(i) a member of the House of Representatives designated by the speaker;

(ii) a member of the Senate designated by the president;

(iii) a member of the judiciary designated by the chief justice of the Utah Supreme Court;

(iv) a representative designated by the Utah League of Cities and Towns; and

(v) a representative from the offices of minority affairs designated by the directors of those offices or a designee;

[~~(n)~~] (m) the following members appointed by the governor to serve four-year terms:

(i) a representative of the Utah National Guard, appointed by the governor;

(ii) one resident of the state who has been personally affected by domestic violence;

(iii) one resident of the state who has been personally affected by gang violence;

(iv) one resident of the state who has been personally affected by alcohol or other drug abuse; and

(v) one citizen representative; and

[~~(o)~~] (n) the following members appointed by the members in Subsections (2)(a) through (2)(n) to serve four-year terms:

(i) a person knowledgeable in criminal justice issues;

(ii) a person knowledgeable in substance abuse treatment issues;

(iii) a person knowledgeable in substance abuse prevention issues; and

(iv) a person knowledgeable in judiciary issues.

Section 123. Section **63-38-2** is amended to read:

**63-38-2. Governor to submit budget to Legislature -- Contents -- Preparation -- Appropriations based on current tax laws and not to exceed estimated revenues.**

(1) (a) The governor shall, within three days after the convening of the Legislature in the annual general session, submit a budget for the ensuing fiscal year by delivering it to the presiding officer of each house of the Legislature together with a schedule for all of the proposed appropriations of the budget, clearly itemized and classified.

(b) The budget message shall include a projection of estimated revenues and expenditures for the next fiscal year.

(2) At least 34 days before the submission of any budget, the governor shall deliver a confidential draft copy of his proposed budget recommendations to the Office of the Legislative Fiscal Analyst.

(3) (a) The budget shall contain a complete plan of proposed expenditures and estimated revenues for the next fiscal year based upon the current fiscal year state tax laws and rates.

(b) The budget may be accompanied by a separate document showing proposed expenditures and estimated revenues based on changes in state tax laws or rates.

(4) The budget shall be accompanied by a statement showing:

(a) the revenues and expenditures for the last fiscal year;

(b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and funds of the state;

(c) an estimate of the state's financial condition as of the beginning and the end of the period covered by the budget;

(d) a complete analysis of lease with an option to purchase arrangements entered into by state agencies;

(e) the recommendations for each state agency for new full-time employees for the next fiscal year; which recommendation should be provided also to the State Building Board under Subsection 63A-5-103(2);

(f) any explanation the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue; and

(g) the information detailing certain regulatory fee increases required by Section 63-38-3.2.

(5) The budget shall include an itemized estimate of the appropriations for:

(a) the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House;

(b) the Executive Department;

(c) the Judicial Department as certified to the governor by the state court administrator;

(d) payment and discharge of the principal and interest of the indebtedness of the state [~~of Utah~~];

(e) the salaries payable by the state under the Utah Constitution or under law for the lease agreements planned for the next fiscal year;

(f) other purposes that are set forth in the Utah Constitution or under law; and

(g) all other appropriations.

(6) Deficits or anticipated deficits shall be included in the budget.

(7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall require from the proper state officials, including public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state moneys, and all institutions applying for state moneys and appropriations, itemized estimates of revenues and expenditures. The entities required by this Subsection (7)(a)(i) to submit itemized estimates of revenues and expenditures to the governor, shall also report to the Utah Information Technology Commission created in Title 63D,

Chapter 1, Information Technology Act, before October 30 of each year. The report to the Information Technology Commission shall include the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures and an analysis of:

(A) the entity's need for appropriations for information technology;

(B) how the entity's development of information technology coordinates with other state or local government entities;

(C) any performance measures used by the entity for implementing information technology goals; and

(D) any efforts to develop public/private partnerships to accomplish information technology goals.

(ii) (A) The governor may also require other information under these guidelines and at times as the governor may direct.

(B) These guidelines may include a requirement for program productivity and performance measures, where appropriate, with emphasis on outcome indicators.

(b) The estimate for the Legislative Department as certified by the presiding officers of both houses shall be included in the budget without revision by the governor. Before preparing the estimates for the Legislative Department, the Legislature shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Legislature's implementation of information technology goals;

(ii) any coordination of information technology with other departments of state and local government;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the entity for implementing information technology goals.

(c) The estimate for the Judicial Department, as certified by the state court administrator, shall also be included in the budget without revision, but the governor may make separate recommendations on it. Before preparing the estimates for the Judicial Department, the state court administrator shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Judicial Department's information technology goals;

(ii) coordination of information technology statewide between all courts;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the entity for implementing information technology goals.

(d) Before preparing the estimates for the State Office of Education, the state superintendent shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) the Office of Education's information technology goals;

(ii) coordination of information technology statewide between all public schools;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the Office of Education for implementing information technology goals.

(e) Before preparing the estimates for the state system of Higher Education, the commissioner shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

(i) Higher Education's information technology goals;

(ii) coordination of information technology statewide within the state system of higher

education;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the state system of higher education for implementing information technology goals.

(f) The governor may require the attendance at budget meetings of representatives of public and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations.

(g) The governor may revise all estimates, except those relating to the Legislative Department, the Judicial Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(8) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year.

(9) If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

(10) (a) In submitting the budgets for the Departments of Health and Human Services and the Office of the Attorney General, the governor shall consider a separate recommendation in his budget for funds to be contracted to:

(i) local mental health authorities under Section [~~17A-3-606~~] 62A-15-110;

(ii) local substance abuse authorities under Section [~~62A-8-110.5~~] 62A-15-110;

(iii) area agencies under Section 62A-3-104.2;

(iv) programs administered directly by and for operation of the Divisions of Substance Abuse and Mental Health[~~, Substance Abuse,~~] and Aging and Adult Services;

(v) local health departments under Title 26A, Chapter 1, Local Health Departments; and

(vi) counties for the operation of Children's Justice Centers under Section 67-5b-102.

(b) In his budget recommendations under Subsections (10)(a)(i), (ii), and (iii), the governor shall consider an amount sufficient to grant local health departments, local mental health authorities,

local substance abuse authorities, and area agencies the same percentage increase for wages and benefits that he includes in his budget for persons employed by the state.

(c) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (10)(b), he shall include a message to the Legislature regarding his reason for not including that amount.

(11) (a) In submitting the budget for the Division of Services for People with Disabilities, the Division of Child and Family Services, and the Division of Youth Corrections within the Department of Human Services, the governor shall consider an amount sufficient to grant employees of corporations that provide direct services under contract with those divisions, the same percentage increase for cost-of-living that he includes in his budget for persons employed by the state.

(b) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (11)(a), he shall include a message to the Legislature regarding his reason for not including that amount.

(12) (a) The Families, Agencies, and Communities Together Council may propose to the governor under Subsection 63-75-4(4)(e) a budget recommendation for collaborative service delivery systems operated under Section 63-75-6.5.

(b) The Legislature may, through a specific program schedule, designate funds appropriated for collaborative service delivery systems operated under Section 63-75-6.5.

(13) The governor shall include in his budget the state's portion of the budget for the Utah Communications Agency Network established in Title 63C, Chapter 7, Utah Communications Agency Network Act.

Section 124. Section **63-46b-1** is amended to read:

**63-46b-1. Scope and applicability of chapter.**

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny,

revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of these actions.

(2) This chapter does not govern:

(a) the procedures for making agency rules, or the judicial review of those procedures or rules;

(b) the issuance of any notice of a deficiency in the payment of a tax, the decision to waive penalties or interest on taxes, the imposition of and penalties or interest on taxes, or the issuance of any tax assessment, except that this chapter governs any agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of those actions;

(c) state agency actions relating to extradition, to the granting of pardons or parole, commutations or terminations of sentences, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of grievances of, supervision of, confinement of, or the treatment of inmates or residents of any correctional facility, the Utah State Hospital, the Utah State Developmental Center, or persons in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or persons on probation or parole, or judicial review of those actions;

(d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote students or teachers in any school or educational institution, or judicial review of those actions;

(e) applications for employment and internal personnel actions within an agency concerning its own employees, or judicial review of those actions;

(f) the issuance of any citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Chapter 55, Utah Construction Trades Licensing Act, except that this chapter governs any agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency actions relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of those actions;

(h) state agency actions under Title 7, Chapter 1, Article 3, Powers and Duties of

Commissioner of Financial Institutions; and Title 7, Chapter 2, Possession of Depository Institution by Commissioner; Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies; and Title 63, Chapter 30, Utah Governmental Immunity Act, or judicial review of those actions;

(i) the initial determination of any person's eligibility for unemployment benefits, the initial determination of any person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency actions relating to the distribution or award of monetary grants to or between governmental units, or for research, development, or the arts, or judicial review of those actions;

(k) the issuance of any notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act; Title 19, Chapter 2, Air Conservation Act; Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act; Title 19, Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 4, Underground Storage Tank Act; or Title 19, Chapter 6, Part 7, Used Oil Management Act, except that this chapter governs any agency action commenced by any person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency actions, to the extent required by federal statute or regulation to be conducted according to federal procedures;

(m) the initial determination of any person's eligibility for government or public assistance benefits;

(n) state agency actions relating to wildlife licenses, permits, tags, and certificates of registration;

(o) licenses for use of state recreational facilities;

(p) state agency actions under Title 63, Chapter 2, Government Records Access and Management Act, except as provided in Section 63-2-603;

(q) state agency actions relating to the collection of water commissioner fees and delinquency penalties, or judicial review of those actions; and

(r) state agency actions relating to the installation, maintenance, and repair of headgates, caps, values, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of those actions.

(3) This chapter does not affect any legal remedies otherwise available to:

(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering conferences with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceedings; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56, respectively, of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) Declaratory proceedings authorized by Section 63-46b-21 are not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are governed by this chapter.

(6) This chapter does not preclude an agency from enacting rules affecting or governing adjudicative proceedings or from following any of those rules, if the rules are enacted according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if the rules conform to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that any provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of those provisions to that agency shall be suspended to the extent necessary to

prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening any time period prescribed in this chapter, except those time periods established for judicial review.

Section 125. Section **63-63a-7** is amended to read:

**63-63a-7. Intoxicated Driver Rehabilitation Account share of surcharge.**

The Division of Finance shall allocate 7.5% of the collected surcharge established in Section 63-63a-1, but not to exceed the amount appropriated by the Legislature, to the Intoxicated Driver Rehabilitation Account established by Section [~~62A-8-303~~] 62A-15-503.

Section 126. Section **63-75-5** is amended to read:

**63-75-5. Steering committee -- Membership -- Duties.**

(1) As used in this section, "Council of Mental Health Programs" means a council consisting of all of the directors of Utah public mental health centers.

(2) There is established a Families, Agencies, and Communities Together Steering Committee.

(3) The steering committee shall include at least [~~19~~] 18 voting members as follows:

(a) the director of the Division of Health Care Financing within the Department of Health;

(b) a representative annually designated by the Council of Mental Health Programs;

(c) the director of the Division of Substance Abuse and Mental Health within the Department of Human Services;

(d) the director of the Division of Youth Corrections within the Department of Human Services;

(e) the state director of special education;

(f) the person responsible for programs for at risk students within the Utah State Office of Education, if that person is not the state director of special education;

(g) the Juvenile Court Administrator;

(h) a representative annually designated by substance abuse directors;

(i) the director of the Division of Child and Family Services within the Department of Human Services;

[~~(j) the director of the Division of Mental Health within the Department of Human Services;~~]

[~~(k)~~] (j) the director of family health services programs;

[~~(l)~~] (k) a representative annually designated by the Utah School Superintendents Association;

[~~(m)~~] (l) a juvenile court judge designated by the presiding officer of the state Judicial Council;

[~~(n)~~] (m) a representative annually designated by the local health officers;

[~~(o)~~] (n) a representative annually designated by the executive director of the Department of Workforce Services;

[~~(p)~~] (o) three at-large members appointed by a majority of the committee to four-year terms, who represent a statewide perspective on children and youth issues; and

[~~(q)~~] (p) parent representatives appointed by members specified in Subsections (3)(a) through [~~(p)~~] (o).

(4) Additional members may be selected by a majority of the committee to serve as voting members for four-year terms.

(5) (a) Except as required by Subsection (5)(b), as terms of current at-large committee members expire, the committee shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (5)(a), the committee shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of at-large committee members are staggered so that approximately half of the at-large committee members are appointed every two years.

(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(7) The members shall annually elect a chair and vice chair.

(8) A majority of committee members are necessary to constitute a quorum and to transact the business of the committee.

(9) (a) (i) Members who are not government employees may not receive 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 committee 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.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(10) The committee shall:

(a) assist the council in fulfilling its duties set out in Section 63-75-4;

(b) monitor, solicit input for policy changes, and provide technical assistance to local collaborative programs; and

(c) report any formal recommendations to the council.

Section 127. Section **64-13-7.5** is amended to read:

**64-13-7.5. Persons in need of mental health services -- Contracts.**

(1) Except as provided for in Subsection (2), when the department determines that a person

in its custody is in need of mental health services, the department shall contract with the Division of Substance Abuse and Mental Health, local mental health authorities, or the state hospital to provide mental health services for that person. Those services may be provided at the Utah State Hospital or in community programs provided by or under contract with the Division of Substance Abuse and Mental Health, a local mental health authority, or other public or private mental health care providers.

(2) If the Division of Substance Abuse and Mental Health, a local mental health authority, or the state hospital notifies the department that it is unable to provide mental health services under Subsection (1), the department may contract with other public or private mental health care providers to provide mental health services for persons in its custody.

(3) A person who provides mental health services for sex offender treatment as required in Section 64-13-6 shall be licensed as a mental health professional in accordance with Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act, and exhibit competency to practice in the area of sex offender treatment based on education, training, and practice.

Section 128. Section **76-5-412** is amended to read:

**76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions -- Penalties -- Defenses.**

(1) As used in this section:

(a) "Actor" means:

(i) a correctional officer, as defined in Section 53-13-104;

(ii) a law enforcement officer, as defined in Section 53-13-103; or

(iii) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is:

(i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah

State Hospital established under Section [~~62A-12-201~~] 62A-15-601 or other medical facility;

(ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(iii) under lawful or unlawful arrest, either with or without a warrant.

(c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a person in custody;

(b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct if the actor commits any of the acts

under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a person in custody;

(b) touching the breast of a female person in custody;

(c) otherwise taking indecent liberties with a person in custody; or

(d) causing a person in custody to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:

(i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 129. Section **76-8-311.1** is amended to read:

**76-8-311.1. Secure areas -- Items prohibited -- Penalty.**

(1) In addition to the definitions in Section 76-10-501, as used in this section:

(a) "Correctional facility" has the same meaning as defined in Section 76-8-311.3.

(b) "Explosive" has the same meaning as defined for "explosive, chemical, or incendiary device" defined in Section 76-10-306.

(c) "Law enforcement facility" means a facility which is owned, leased, or operated by a law enforcement agency.

(d) "Mental health facility" has the same meaning as defined in Section [~~62A-12-202~~] 62A-15-602.

(e) (i) "Secure area" means any area into which certain persons are restricted from transporting any firearm, ammunition, dangerous weapon, or explosive.

(ii) A "secure area" may not include any area normally accessible to the public.

(2) (a) A person in charge of a correctional, law enforcement, or mental health facility may establish secure areas within the facility and may prohibit or control by rule any firearm, ammunition, dangerous weapon, or explosive.

(b) Subsections (2)(a), (3), (4), (5), and (6) apply to higher education secure area hearing

rooms referred to in Subsections 53B-3-103(2)(a)(ii) and (b).

(3) At least one notice shall be prominently displayed at each entrance to an area in which a firearm, ammunition, dangerous weapon, or explosive is restricted.

(4) (a) Provisions shall be made to provide a secure weapons storage area so that persons entering the secure area may store their weapons prior to entering the secure area.

(b) The entity operating the facility shall be responsible for weapons while they are stored in the storage area.

(5) It is a defense to any prosecution under this section that the accused, in committing the act made criminal by this section, acted in conformity with the facility's rule or policy established pursuant to this section.

(6) (a) Any person who knowingly or intentionally transports into a secure area of a facility any firearm, ammunition, or dangerous weapon is guilty of a third degree felony.

(b) Any person violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a secure area of a facility.

Section 130. Section **76-8-311.3** is amended to read:

**76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.**

(1) As used in this section:

(a) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

(b) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

(c) "Correctional facility" means:

(i) any facility operated by or contracting with the Department of Corrections to house offenders in either a secure or nonsecure setting;

(ii) any facility operated by a municipality or a county to house or detain criminal offenders;

(iii) any juvenile detention facility; and

(iv) any building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.

(d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a, Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

(e) "Mental health facility" has the same meaning as defined in Section [~~62A-12-202~~] 62A-15-602.

(f) "Offender" means a person in custody at a correctional facility.

(g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

(2) Notwithstanding Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:

(a) transported to or upon a correctional or mental health facility;

(b) sold or given away at any correctional or mental health facility;

(c) given to or used by any offender at a correctional or mental health facility; or

(d) knowingly or intentionally possessed at a correctional or mental health facility.

(3) It is a defense to any prosecution under this section if the accused in committing the act made criminal by this section:

(a) with respect to a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;

(b) with respect to a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

(c) with respect to a correctional facility operated by a county, acted in conformity with the policy of the county; or

(d) with respect to a mental health facility, acted in conformity with the policy of the mental health facility.

(4) (a) Any person who transports to or upon a correctional facility, or into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

(b) Any person who provides or sells to any offender at a correctional facility, or any

detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(c) Any offender who possesses at a correctional facility, or any detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(d) Any person who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a third degree felony.

(e) Any person violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

(5) (a) A person is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports to or upon a correctional facility or into a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(b) A person is guilty of a third degree felony who knowingly violates correctional or mental health facility policy or rule by providing or selling to any offender at a correctional facility or detainee within a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(c) An inmate is guilty of a third degree felony who, in violation of correctional or mental health facility policy or rule, possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, other than medicine provided by the facility's health care providers in

compliance with facility policy; or

(iii) poison in any quantity.

(d) A person is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine; or

(iii) poison in any quantity.

(e) A person is guilty of a class B misdemeanor who, without the permission of the authority operating the facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility.

(f) Exemptions may be granted for worship for Native American inmates pursuant to Section 64-13-40.

(6) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.

Section 131. Section **76-10-1312** is amended to read:

**76-10-1312. Notice to offender of HIV positive test results.**

(1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested positive for the HIV infection shall be notified of the test results in person at the sentencing hearing in the presence of the judge and counsel only.

(2) Whenever practicable, prior to notification in the district court, the offender shall be served personally with written notice by the local law enforcement agency at a meeting with a local law enforcement officer and a person from the state or county health department.

(a) At that meeting, the offender shall be informed of the test results and counseled on HIV infection and its effects.

(b) The local law enforcement agency shall arrange the time and place of notification and counseling.

(3) The notice shall contain the following information:

(a) the date of the test;

(b) the positive test results;

(c) the name of the HIV positive individual; and

(d) the following language:

"A person who has been convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 after being tested and diagnosed as an HIV positive individual and receiving actual notice and personal written notice of the positive test results shall be guilty of a felony of the third degree pursuant to Section 76-10-1309."

(4) Upon conviction under Section 76-10-1309, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection and drug abuse as provided in Title 62A, Chapter [~~8~~] 15, Substance Abuse and Mental Health Act.

Section 132. Section **77-15-5** is amended to read:

**77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.**

(1) When a petition is filed pursuant to Section 77-15-3 raising the issue of the defendant's competency to stand trial or when the court raises the issue of the defendant's competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. If the proceedings are in a court other than the district court in which the petition is filed, the district court shall notify that court of the filing of the petition. The district court in which the petition is filed shall pass upon the sufficiency of the allegations of incompetency. If a petition is opposed by either party, the court shall, prior to granting or denying the petition, hold a limited hearing solely for the purpose of determining the sufficiency of the petition. If the court finds that the allegations of incompetency raise a bona fide doubt as to the defendant's competency to stand trial, it shall enter an order for a hearing on the mental condition of the person who is the subject of the petition.

(2) (a) After the granting of a petition and prior to a full competency hearing, the court may order the Department of Human Services to examine the person and to report to the court concerning

the defendant's mental condition.

(b) The defendant shall be examined by at least two mental health experts not involved in the current treatment of the defendant.

(c) If the issue is sufficiently raised in the petition or if it becomes apparent that the defendant may be incompetent due to mental retardation, at least one expert experienced in mental retardation assessment shall evaluate the defendant. Upon appointment of the experts, the petitioner or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's competency and shall provide copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(d) The court may make the necessary orders to provide the information listed in Subsection (2)(c) to the examiners.

(3) During the examination under Subsection (2), unless the court or the executive director of the department directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(4) The experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors determined to be relevant by the experts:

(a) the defendant's present capacity to:

(i) comprehend and appreciate the charges or allegations against him;

(ii) disclose to counsel pertinent facts, events, and states of mind;

(iii) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against him;

(iv) engage in reasoned choice of legal strategies and options;

(v) understand the adversary nature of the proceedings against him;

(vi) manifest appropriate courtroom behavior; and

(vii) testify relevantly, if applicable;

(b) the impact of the mental disorder, or mental retardation, if any, on the nature and quality of the defendant's relationship with counsel;

(c) if psychoactive medication is currently being administered:

(i) whether the medication is necessary to maintain the defendant's competency; and

(ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings.

(5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate in the report:

(a) which of the above factors contributes to the defendant's incompetency;

(b) the nature of the defendant's mental disorder or mental retardation and its relationship to the factors contributing to the defendant's incompetency;

(c) the treatment or treatments appropriate and available; and

(d) the defendant's capacity to give informed consent to treatment to restore competency.

(6) The experts examining the defendant shall provide an initial report to the court and the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by the experts shall:

(a) identify the specific matters referred for evaluation;

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

(c) state the expert's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and

(d) identify the sources of information used by the expert and present the basis for the

expert's clinical findings and opinions.

(8) (a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by the expert based upon such statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

(b) Prior to examining the defendant, examiners should specifically advise the defendant of the limits of confidentiality as provided under this Subsection (8).

(9) When the report is received the court shall set a date for a mental hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause. The hearing shall be conducted according to the procedures outlined in Subsections [~~62A-12-234~~] 62A-15-631(9)(b) through (9)(f). Any person or organization directed by the department to conduct the examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency of the defendant, all experts should be called to testify at the hearing if reasonably available. The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

(10) A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing. An adjudication of incompetency to proceed shall not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(11) (a) If the court finds the defendant incompetent to stand trial, its order shall contain findings addressing each of the factors in Subsections [~~77-15-5~~](4)(a) and (b) of this section. The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is committed or to the person who is responsible for assessing his progress toward competency shall be provided contemporaneously with the transportation and commitment order of

the defendant, unless exigent circumstances require earlier commitment in which case the court shall forward the order within five working days of the order of transportation and commitment of the defendant.

(b) The order finding the defendant incompetent to stand trial shall be accompanied by:

(i) copies of the reports of the experts filed with the court pursuant to the order of examination if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant; and

(iii) any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition.

(12) If the court finds it necessary to order the defendant transported prior to the completion of findings and compilation of documents required under Subsection (11), the transportation and commitment order delivering the defendant to the Utah State Hospital, or other mental health facility as directed by the executive director of the Department of Human Services or his designee, shall indicate that the defendant's commitment is based upon a finding of incompetency, and the mental health facility's copy of the order shall be accompanied by the reports of any experts filed with the court pursuant to the order of examination. The executive director of the Department of Human Services or his designee may refuse to accept a defendant as a patient unless he is accompanied by a transportation and commitment order which is accompanied by the reports.

(13) Upon a finding of incompetency to stand trial by the court, the prosecuting and defense attorneys shall provide information and materials relevant to the defendant's competency to the facility where the defendant is committed or to the person responsible for assessing his progress towards competency. In addition to any other materials, the prosecuting attorney shall provide:

(a) copies of the charging document and supporting affidavits or other documents used in the determination of probable cause;

(b) arrest or incident reports prepared by a law enforcement agency pertaining to the charged offense; and

(c) information concerning the defendant's known criminal history.

(14) The court may make any reasonable order to insure compliance with this section.

(15) Failure to comply with this section shall not result in the dismissal of criminal charges.

Section 133. Section **77-15-6** is amended to read:

**77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent hearings -- Notice to prosecuting attorneys.**

(1) Except as provided in Subsection (5), if after hearing, the person is found to be incompetent to stand trial, the court shall order the defendant committed to the custody of the executive director of the Department of Human Services or his designee for the purpose of treatment intended to restore the defendant to competency. The court may recommend but not order placement of the defendant. The court may, however, order that the defendant be placed in a secure setting rather than a nonsecure setting. The director or his designee shall designate the specific placement of the defendant during the period of evaluation and treatment to restore competency.

(2) The examiner or examiners designated by the executive director to assess the defendant's progress toward competency may not be involved in the routine treatment of the defendant. The examiner or examiners shall provide a full report to the court and prosecuting and defense attorneys within 90 days of receipt of the court's order. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner shall have up to an additional 90 days to provide the full report. The full report shall assess:

(a) the facility's or program's capacity to provide appropriate treatment for the defendant;

(b) the nature of treatments provided to the defendant;

(c) what progress toward competency restoration has been made with respect to the factors identified by the court in its initial order;

(d) the defendant's current level of mental disorder or mental retardation and need for treatment, if any; and

(e) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party or by the executive director may appoint additional mental health examiners to examine the defendant and advise the court on his current mental status and progress toward competency restoration.

(4) Upon receipt of the full report, the court shall hold a hearing to determine the defendant's current status. At the hearing, the burden of proving that the defendant is competent is on the proponent of competency. Following the hearing, the court shall determine by a preponderance of evidence whether the defendant is:

(a) competent to stand trial;

(b) incompetent to stand trial with a substantial probability that the defendant may become competent in the foreseeable future; or

(c) incompetent to stand trial without a substantial probability that the defendant may become competent in the foreseeable future.

(5) (a) If the court enters a finding pursuant to Subsection (4)(a), the court shall proceed with the trial or such other procedures as may be necessary to adjudicate the charges.

(b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that the defendant remain committed to the custody of the executive director of the Department of Human Services or his designee for the purpose of treatment intended to restore the defendant to competency.

(c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the defendant released from the custody of the director unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter [~~12,~~] 15, Substance Abuse and Mental Health Act, [~~or Title 62A, Chapter 5, Services to People with Disabilities,~~] will be initiated. These commitment proceedings must be initiated within seven days after the court's order entering the finding in Subsection (4)(c), unless the court enlarges the time for good cause shown. The defendant may be ordered to remain in the custody of the director until commitment proceedings have been concluded. If the defendant is committed, the court which entered the order pursuant to Subsection (4)(c), shall be notified by the director at least ten days prior to any release of the committed person.

(6) If the defendant is recommitted to the department pursuant to Subsection (5)(b), the court shall hold a hearing one year following the recommitment.

(7) At the hearing held pursuant to Subsection (6), except for defendants charged with the crimes listed in Subsection (8), a defendant who has not been restored to competency shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(8) If the defendant has been charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (6), the court may order the defendant recommitted for a period not to exceed 18 months for the purpose of treatment to restore the defendant to competency with a mandatory review hearing at the end of the 18-month period.

(9) Except for defendants charged with aggravated murder or murder, a defendant who has not been restored to competency at the time of the hearing held pursuant to Subsection (8) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(10) If the defendant has been charged with aggravated murder or murder and the court determines that he is making reasonable progress towards restoration of competency at the time of the mandatory review hearing held pursuant to Subsection (8), the court may order the defendant recommitted for a period not to exceed 36 months for the purpose of treatment to restore him to competency.

(11) If the defendant is recommitted to the department pursuant to Subsection (10), the court shall hold a hearing no later than at 18-month intervals following the recommitment for the purpose of determining the defendant's competency status.

(12) A defendant who has not been restored to competency at the expiration of the additional 36-month commitment period ordered pursuant to Subsection (10) shall be ordered released or temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c).

(13) In no event may the maximum period of detention under this section exceed the maximum period of incarceration which the defendant could receive if he were convicted of the charged offense. This Subsection (13) does not preclude pursuing involuntary civil commitment nor does it place any time limit on civil commitments.

(14) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and may order periodic reviews to assess the defendant's competency to stand trial.

(15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services to People with Disabilities, or Title 62A, Chapter [~~12,~~] 15, Substance Abuse and Mental Health Act, [~~or Title 62A, Chapter 5, Services to People with Disabilities,~~] may still be adjudicated competent to stand trial under this chapter.

(16) (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (7), (9), (12), or (13), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

(b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7), (9), (12), or (13) shall not be dismissal of the criminal charges.

(17) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.

(18) At any time that the defendant becomes competent to stand trial, the clinical director of the hospital or other facility or the executive director of the Department of Human Services shall certify that fact to the court. The court shall conduct a hearing within 15 working days of the receipt of the clinical director's or executive director's report, unless the court enlarges the time for good cause.

(19) The court may order a hearing or rehearing at any time on its own motion or upon recommendations of the clinical director of the hospital or other facility or the executive director of the Department of Human Services.

(20) Notice of a hearing on competency to stand trial shall be given to the prosecuting

attorney. If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.

Section 134. 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 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 felony. 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 5, Services to People with Disabilities, or Title 62A, Chapter [~~12~~] 15, Substance Abuse and Mental Health Act [~~or Title 62A, Chapter 5~~].

Section 135. Section **77-16a-204** is amended to read:

**77-16a-204. UDC acceptance of transfer of guilty and mentally ill persons -- Retransfer 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 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 Section [~~62A-12-204.6~~] 62A-15-605.5.

(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.

Section 136. Section **77-16a-302** is amended to read:

**77-16a-302. Persons found not guilty by reason of insanity -- Disposition.**

(1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within ten days to determine whether the defendant is currently mentally ill. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.

(2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:

(a) the defendant is still mentally ill; and

(b) because of that mental illness the defendant presents a substantial danger to himself or others.

(3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had he been convicted and received the maximum sentence for the crime of which he was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter [~~12~~] 15, Substance
Abuse and Mental Health Act.

Section 137. Section **77-18-1** is amended to read:

**77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**

**-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.**

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may suspend the imposition or execution of sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.

(d) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation

report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support he is legally liable;

(iv) participate in available treatment programs;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 78-11-20.7;

(viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection [~~77-18-1~~](10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why his failure to pay should not be treated as contempt of court.

(b) (i) The department shall notify the sentencing court, the Office of State Debt Collection,

and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) (i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(13) The court may order the defendant to commit himself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or his designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection [~~62A-12-209~~] 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports, including presentence diagnostic evaluations, are classified protected in accordance with Title 63, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee

may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Section 138. Section **78-3a-104** is amended to read:

**78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a minor who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a minor who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78-3a-103;

(d) a protective order for a minor who is alleged to be an abused child or neglected child, except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor;

(e) the determination of the custody of a minor or to appoint a guardian of the person or

other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a mentally retarded minor;

(h) a minor who is a habitual truant from school;

(i) the judicial consent to the marriage of a minor under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a minor when consent is required by law;

(j) any parent or parents of a minor committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure youth corrections facility, the parent or parents of a minor committed to a secure youth corrections facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure youth corrections facility therapist, who has supervision of that parent's or parents' minor, or any other therapist the court may direct, for a period directed by the court as recommended by a secure youth corrections facility;

(k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority or to the legal custody of the Division of Substance Abuse and Mental Health in accordance with the procedures and requirements of Title 62A, Chapter [~~12~~] 15, Part [~~2A~~] 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section [~~62A-8-501~~] 62A-15-301;

(n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63-46b-15; and

(o) adoptions conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the minor.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive

jurisdiction over any traffic or boating offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic or boating offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following offenses committed by a minor under 18 years of age:

(a) Section 76-5-207, automobile homicide;

(b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

(c) Section 41-6-45, reckless driving or Section 73-18-12, reckless operation;

(d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and

(e) Section 41-6-13.5 or 73-18-20, fleeing a peace officer.

(3) The court also has jurisdiction over traffic and boating offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(4) The juvenile court has jurisdiction over questions of custody, support, parent-time, and visitation certified to it by the district court pursuant to Section 78-3a-105.

(5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

(a) is beyond the control of his parent, guardian, lawful custodian, or school authorities to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

(b) has run away from home.

(6) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78-3a-602.

(8) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78-3a-320.

Section 139. Section **78-3a-118** is amended to read:

**78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.**

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include the specific offenses for which the minor was adjudicated.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) his parent or guardian;

(B) the Division of Youth Corrections; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or malice as provided in Section 63-30-4; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Youth Corrections, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

(B) Prior to the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Prior to committing a minor to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the minor's removal from his home.

(d) (i) The court may commit the minor to the Division of Youth Corrections for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth Corrections.

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Youth Corrections for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Youth Corrections.

(f) (i) The court may commit the minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to those minors adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78-3a-901.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place the minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) The court may order the minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318 and impose fines in limited amounts. If a minor has been returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of

employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the suspension of driving privileges for an offense under Section 78-3a-506 are governed only by Section 78-3a-506.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest

of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

(C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be placed in the legal custody of the Division of Substance Abuse and Mental Health or committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter [~~12~~] 15, Part [~~2A~~] 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as

required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minor. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection 78-3a-105(4).

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the minor reaches majority;

(B) are not subject to review under Section 78-3a-119; and

(C) may be modified by petition or motion as provided in Section 78-3a-903.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction he may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) The court shall order that a DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Youth Corrections, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The court shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) The court shall order the minor to reimburse the agency obtaining the DNA specimen for $75 toward the costs of obtaining the specimen, unless the court finds the minor is unable to pay the reimbursement. Reimbursements shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78-3a-318.

Section 140. Section **78-3a-119** is amended to read:

**78-3a-119. Period of operation of judgment, decree, or order -- Rights and responsibilities of agency or individual granted legal custody.**

(1) A judgment, order, or decree of the juvenile court does not operate after the minor becomes 21 years of age, except for:

(a) orders of commitment to the Utah State Developmental Center or to the custody of the Division of <u>Substance Abuse and</u> Mental Health;

(b) adoption orders under Subsection 78-3a-104(1)(o);

(c) orders permanently terminating the rights of a parent, guardian, or custodian, and permanent orders of custody and guardianships; and

(d) unless terminated by the court, orders to pay any fine or restitution.

(2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an order vesting legal custody or guardianship of a minor in an individual, agency, or institution may be for an indeterminate period. A review hearing shall be held, however, upon the expiration of 12 months, and, with regard to petitions filed by the Division of Child and Family Services, no less than once every six months thereafter. The individual, agency, or institution involved shall file the petition for that review hearing. The court may terminate the order, or after notice and hearing, continue the order if it finds continuation of the order necessary to safeguard the welfare of the minor or the public interest. The findings of the court and its reasons shall be entered with the continuation order or with the order denying continuation.

(b) Subsection (2)(a) does not apply to minors who are in the custody of the Division of Child and Family Services, and who are placed in foster care, a secure youth corrections facility, the Division of Substance Abuse and Mental Health, the Utah State Developmental Center, or any agency licensed for child placements and adoptions, in cases where all parental rights of the natural parents have been terminated by the court under Part 4, Termination of Parental Rights Act, and custody of the minor has been granted to the agency for adoption or other permanent placement.

(3) (a) An agency granted legal custody may determine where and with whom the minor will live, provided that placement of the minor does not remove him from the state without court approval.

(b) An individual granted legal custody shall personally exercise the rights and responsibilities involved in legal custody, unless otherwise authorized by the court.

Section 141. Section **78-3a-121** is amended to read:

**78-3a-121. Continuing jurisdiction of juvenile court -- Period of and termination of jurisdiction -- Notice of discharge from custody of Division of Substance Abuse and Mental Health or Utah State Developmental Center -- Transfer of continuing jurisdiction to other district.**

(1) Jurisdiction of a minor obtained by the court through adjudication under Section 78-3a-118 continues for purposes of this chapter until he becomes 21 years of age, unless terminated earlier. However, the court retains jurisdiction beyond the age of 21 of a person who has refused or failed to pay any fine or victim restitution ordered by the court, but only for the purpose of causing compliance with existing orders.

(2) (a) The continuing jurisdiction of the court terminates:

(i) upon order of the court;

(ii) upon commitment to a secure youth corrections facility; or

(iii) upon commencement of proceedings in adult cases under Section 78-3a-801.

(b) The continuing jurisdiction of the court is not terminated by marriage.

(3) When a minor has been committed by the court to the custody of the Division of Substance Abuse and Mental Health, a local mental health authority or its designee, or to the Utah State Developmental Center, the director of the Division of Substance Abuse and Mental Health, the local mental health authority or its designee, or the superintendent of the Utah State Developmental Center shall give the court written notice of its intention to discharge, release, or parole the minor not fewer than five days prior to the discharge, release, or parole.

(4) Jurisdiction over a minor on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, may be transferred by the court to the court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges. The receiving court has the same powers with respect to the minor that it would have if the proceedings originated in that court.

Section 142. Section **78-3a-209** is amended to read:

**78-3a-209. Mental health evaluations -- Duty of administrator.**

(1) The administrator of the juvenile court, with the approval of the board, and the executive director of the Department of Health, and director of the Division of Substance Abuse and Mental Health shall from time to time agree upon an appropriate plan:

[~~(1)~~] (a) for obtaining mental health services and health services for the juvenile court from the state and local health departments and programs of mental health; and

[~~(2)~~] (b) for assistance by the Department of Health and the Division of Substance Abuse and Mental Health in securing for the juvenile court special health, mental health, and related services including community mental health services not already available from the Department of Health and the Division of Substance Abuse and Mental Health.

[~~(3)~~] (2) The Legislature may provide an appropriation to the Department of Health and the Division of Substance Abuse and Mental Health for this purpose.

Section 143. Section **78-3a-910** is amended to read:

**78-3a-910. Cooperation of political subdivisions and public or private agencies and organizations.**

Every county, municipality, and school district, the Division of Child and Family Services, the Department of Health, the Division of Substance Abuse and Mental Health, the State Board of Education, and state and local law enforcement officers, shall render all assistance and cooperation within their jurisdiction and power to further the objects of this chapter, and the juvenile courts are authorized to seek the cooperation of all agencies and organizations, public or private, whose object is the protection or aid of minors.

Section 144. **Repealer.**

This act repeals:

Section **62A-12-101, Definitions.**

Section **62A-12-102, Division of Mental Health -- Creation -- Responsibilities.**

Section **62A-12-102.5, Fees for mental health services.**

Section **62A-12-103, Director -- Qualifications.**

Section **62A-12-104, Board of Mental Health -- Authority and responsibilities -- Powers and duties of board.**

Section **62A-12-105, Allocation of funds to local mental health authorities -- Formula.**